

**TCS on Sale of Goods under section 206C(1H) of the
Income Tax Act with effect from 01st October 2020**



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TCS on Sale of Goods

In order to widen and deepen the tax net, the Finance Bill 2020 proposed to insert in section 206C of the Income Tax Act, sub-section (1H) to levy TCS on sale of goods, which was to be effective 1st April, 2020. However, the Parliament while passing the Bill in the Lok Sabha has amended the said section and has also deferred the date from which it becomes operative to 01st October, 2020 instead of 1st April, 2020

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

(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% 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 Aadhar 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 "5%", the words "1%" 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 from 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 '10 crore 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.

Following Frequently Asked Questions are answered to have more clarity on this new provision:

Frequently Asked Questions**1. Date of applicability**

The new TCS provision is applicable from 1st October, 2020.

2. Rate of TCS applicable

Rate of TCS to be collected is at 0.1% (1% in case buyer does not furnish PAN/ Aadhaar) on sale consideration received in excess of INR 50 lakhs on sale of goods.

The rate of TCS shall be reduced to 0.075% for FY 2020-21 where buyer produces PAN/ Aadhaar. This is as part of the relief measures announced by the government in response to the Covid-19 pandemic.

3. Is it applicable on the sales invoice or collection basis?

TCS applicability is on all sales order executed on or after 1st October, 2020. However, TCS is to be collected as and when the amount is received.

4. What is the basis of charging?

The Sub Section provides trigger point at the time of receiving any amounts as consideration for sale of any goods. The term Buyer means a person who purchases any goods. The term Seller means a person having sales or gross receipts or turnover exceeding the threshold limit during the financial year immediately preceding the financial year in which the sale of goods is carried out. On a conjoint reading of the definition of Buyer & Seller and the meaning assigned to "carried out" for the applicability of Sub Section (1-H), it is not necessary that the sale of goods should have been completed i.e. the ownership in respect thereof should have been transferred. The Sub Section will trigger if any amount is received as a consideration in the course of completing the sale of goods.

The various situations are analysed as under:

- A. Sale Order (SO) is prior to 1st October 2020 but the sale is not completed as up to that date- TCS will not be applicable for any amount received against the said SO up to 30/09/2020 but would be applicable for the amount received on or after 01/10/2020.
- B. Sales Order executed on or after 01/10/2020- As and when the amount is received, TCS would have to be collected.
- C. In case of consignment sale / sale on approval- As stated above, it is not necessary that for the applicability of TCS provision for sale of goods, the transfer of ownership is must. However, as and

when any amount is received as a consideration in case of consignment sale / sale on approval, the provisions of TCS would be applicable.

5. Is it applicable for all types of assesses like individuals and firms?

The provisions are applicable to all types of assesseees whoever satisfies the definition of seller/ buyer and not included in the specific exclusion list.

6. Applicability on bad debts?

As mentioned above, TCS is collected at the time of collection of consideration amount. Hence if any amount has become bad debt, TCS cannot be collected on the amount and paid to the government.

7. What about the sales return? Whether the sales return and bad debts can be adjusted in the subsequent bill/ collection?

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. Further, against the subsequent sales, if the same gets adjusted and net consideration is paid then on such net consideration TCS should be collected.

8. If the amount of sale consideration is adjusted against the amounts payable for purchases from the said party, whether provisions of TCS would be applicable?

TCS is to be collected at the time of receipt of amount of consideration. As in the instant case, though the amount is not received in cash / cheque / electronic mode but a genuine debt (receivable and payable is adjusted) it is received by any other mode and hence, the provisions for TCS will be applicable.

9. Whether we need to consider the sales made prior to the notified date?

TCS is collected at 0.1% of the sales amount in case sale value exceeds 50 Lakhs which will be over and above the invoice value. The 50 lakhs exemption is for one financial year for a single customer. The applicability is explained below in the following examples:

- a. If the total receipts/ invoice amount during a financial year is Rs. 40 Lakhs, then TCS provisions will not be applicable.

- b. If the total receipts/ invoice amount during a financial year is Rs.72 Lakhs, then TCS provisions will be applicable and TCS will be collected only on 22 lakhs (amount in excess of Rs.50 Lakhs) which will be Rs.2200.
- c. If the first invoice during a FY is Rs.40Lakhs (TCS not applicable) and second invoice in the same FY is for Rs.30 lakhs, then TCS has to be calculated on Rs.20 lakhs which is Rs.2000.

10. Is it applicable for the goods alone or includes services also?

The new TCS provisions are applicable on sale of goods only.

11. Whether TCS will be applicable on Export Sales?

TCS would not be applicable in respect of Export Sales as the consideration for sale of goods excludes consideration towards goods exported out of India and accordingly, the definition of buyer excludes a person importing goods from India.

12. Whether GST is payable on the same as section 9 levies on all amounts collected other than GST collected.

GST department has issued a Circular that GST is not applicable on TCS portion of goods as TCS is only an interim levy.

13. Whether the consideration will include the amount collected towards GST?

The word 'consideration' is not defined. The dictionary meaning of consideration is compensation, payment or reward. In terms of Section 145A irrespective of the treatment in books of accounts, the value of sales will include the amount of any tax recovered. Hence the consideration amount will be inclusive of GST for the purpose of collection of TCS.

Applicability of TCS on GST

Central Board of Direct Taxes ('CBDT') vide Circular No. 23/2017 dated July 19, 2017 has clarified that no tax shall be deducted under Chapter XVII-B, if the GST on services is indicated separately. The above clarification issued by the CBDT covers only tax deduction under chapter XVII-B, whereas section 206C of the Act is governed by Chapter XVII-BB.

The FAQ issued by the Income Tax Department on TCS provides that the "amount debited to the account of buyer or payment shall be received by seller inclusive of VAT /Excise /GST. TCS to be collected on inclusive of GST." This view was also affirmed by Madhya Pradesh HC in case of Vinod Rathore (278 ITR 122).

Considering the above ruling, FAQ and no specific clarification in respect of section 206C(1H), TCS may be collected on the GST component as well.

14. Whether the consideration amount will be at FOB/CIF.

It would depend upon the terms of the contract. If the contract is on CIF basis, the consideration will include insurance and freight.

15. Is it payable for advances received?

Applicability of TCS will not depend merely on receipt of money but on whether such receipt of advance money qualifies as "sale consideration" or not. Thus, if the amount is received as advance for sale, then TCS provisions are applicable on the same.

16. Whether TCS is required to be collected on trade receivables of goods standing in books as on 30th September, 2020

"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, 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. Hence, the trigger point for collection of the TCS is the financial year in which the sale of goods is carried out and provisions are operative effective 01.10.2020. The dictionary meaning of term "carried out" means

- a. to bring to a successful issue: complete, accomplish, carry out the assignment;
- b. to put into execution / carry out a plan; and
- c. to continue to an end or stopping point.

That being so, as the new TCS provisions are applicable from 01.10.2020, for the sales which were completed on or before 30.09.2020, provisions would not be applicable. Accordingly, TCS is not required to be collected on trade receivables of goods standing in books as on 30th September, 2020.

17. TCS applicable for unbilled revenue?

TCS is applicable on collection of unbilled revenues as well.

18. Which is the base year for the threshold limit of Rs.50 lakhs?

Limit of 50 lakhs is considered in each financial year. The 50 lakhs exemption is for one financial year for a single customer.

19. Whether interest debited will form part of the limit of Rs.50 lakhs?

One view would be that this interest is not as part of the consideration for sale of goods, and hence, TCS will not be applicable on the same. It may be noted that GST Regulations presume that interest charged to the customer partakes the same character as that of the original transaction and hence, GST is applicable on the interest, if the original transaction is subject to GST. Going by this principle, there can be an alternative view as well. Further, definition of "interest" u/s 2 (28A) also covers only the interest on the money borrowed or debt incurred and apparently does not cover interest paid on the delayed purchase payments. Hence, it would be safer to include interest also as part of the consideration for the purpose of TCS.

20. Whether TCS u/s 206C(1H) is applicable for the sale of immovable property, sale of business as going concern or sale of part of the business units, sale of fixed assets etc?

In the absence of a definition for the term 'goods', a question which arises is what all may be covered under TCS regime. Below is the list of goods as defined under various legislations.

Particulars	CGST Act, 2017	Customs Act, 1962	Sale of goods Act, 1930
Definition of Goods	Every kind of movable property other than services	Inclusive definition to cover all goods	Every kind of movable property
Inclusions	Actionable claims, crops, grass and things attached to land	Vessels, stores, baggage, currency, negotiable instrument & other kind of movable property	Stocks & shares, Crops, Grass and things attached to Land
Exclusions	Money & Securities	-	Actionable claims & money

Considering that the Act does not specify the definition of goods, revenue authorities may draw reference from any of the above laws for levying TCS. Therefore, TCS could be levied on actionable claims, currency, negotiable instruments and stocks & shares.

21. There is already TCS on scrap. If the same buyer purchases the goods more than Rs.50 lakhs, whether this will be another TCS?

The new sub clause (1H) inserted vide Finance Act itself clarifies that, if sub sections (1) or (1F) or (IG) of section 206C is applicable, then provisions of this sub clause is not applicable to those payments. The section 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% of the sale consideration exceeding fifty lakh rupees as income-tax:*

However, consideration received against sale of goods not coming under the purview of any other sub clause has to be considered separately and TCS will be applicable on the same if the amount exceeds Rs.50 Lakhs in a year.

22. What is the accounting and tax depositing code?

Challan Number- 281

Company Deductee- 0020 and Non- Company Deductee- 0021

Tax Depositing code- 200 (TDS/TCS Payable by Taxpayer)

Collecton code- 6CR

23. Return format to declare the same with the government.

Every tax collector has to submit quarterly TCS return i.e in Form 27EQ in respect of the tax collected by him in a particular quarter. CBDT has amended Rule 31AA [relating to Statement of collection of tax], notified TCS rules for newly introduced TCS on sale of goods u/s. 206C(1H) vide Finance Act, 2020. The Board also notified consequential amendments in TCS return Form 27EQ.

24. What is the frequency of filing the return and consequences if there is any delay in filing?

Quarterly returns are to be submitted by the collector of tax. The due date for these returns are 15 days from the end of the quarter i.e., 15th July, 15th October, 15th January, 15th May. For FY 2020-21, the due date for filing the TCS return for first two quarters are extended to 31st March, 2021.

If the returns are not filed on time, penal provisions will be applicable. As per section 234E, where a person fails to file the TDS/TCS return on or before the due date prescribed in this regard, then he shall be liable to pay, by way of fee, a sum of Rs. 200 for every day during which the failure continues. The amount of late fees shall not exceed the amount of TDS/ TCS.

25. Applicability of TCS on works contract if single invoice issued

Scenario - A construction contract involving supply of goods, labour and other services is now classified as a service under the GST Regulations. Till 30th September, 2020 no TCS was leviable on sale of goods if a separate invoice was issued.

However, if a single invoice is issued with no bifurcation into value of goods and services, a question then arises whether the provisions of TDS & TCS applicable on the single invoice?

The 2nd proviso to section 206C(1H) provides that the provisions of 206C(1H) shall not be applicable if the buyer has deducted tax at source under any other provisions of the Act.

Therefore, if a buyer has deducted TDS on the complete invoice, the provisions of section 206C(1H) shall not be applicable.

26. Applicability of TCS on contract manufacturing

Scenario - Company A sells component to Company B for processing, which in turn is sold back to Company A for further sales.

In the above scenario, Company A would be liable to collect TCS for sale of component to Company B, and Company B shall in turn levy TCS on sale of finished product to Company A, as the same would be treated as separate transaction.

27. Applicability of TCS on inter-unit transfer having multiple TAN

Scenario - Transfer of raw material from one unit in State A to another unit in State B for a consideration is treated as a turnover for GST Purposes. Though this is a branch transfer, the transferring unit has to offer this amount as a turnover. A question would arise whether it would also be covered by TCS.

Though the two units may have different TANs, considering that the PAN of both the units remains same, such amount will not be treated as sales for Income tax purposes and hence no TCS shall be collected for such inter-unit transfers.

28. Transfer of goods for testing purpose

Section 206C(1H) provides that seller shall collect TCS on consideration received on sale of goods. Considering that the goods are transferred for the purpose of testing and no consideration is received, no TCS shall apply.

29. TCS on capital goods

Section 206(1H) provides that consideration for sale of any goods other than goods mentioned under sub-section (1) / (1F) / (1G) shall attract levy of TCS. That is, the provision of TCS could be applicable irrespective of the end use by the buyer.

30. Application for lower collection of taxes

Section 206C(9), which allows the buyer to obtain a lower collection certificate ('LDC'), has been amended to exclude transactions covered under section 206(1H).

Therefore, a buyer shall not be eligible to obtain an LDC for any purchase of goods covered by virtue of section 206C(1H).

31. When is the due date to deposit the tax? And penal consequences for not depositing the tax within the time.

The seller has to deposit the TCS amount in Challan 281 within 7 days from the last day of the month in which the tax was collected. As per section 206C(7), if the person responsible for collecting tax does not collect the tax or after collecting the tax fails to pay it to the credit of Government within the due date prescribed in this regard, then he shall be liable to pay simple interest at the rate of 1% per month or part thereof on the amount of such tax. Interest shall be levied for a period from the date on which such tax was collectible to the date on which the tax was actually paid. Further, as per section 206C(7), interest for delay in payment of TCS should be paid before filing the TCS return.

Any seller responsible for collecting tax at source, who fails to collect / post collecting fails to remit to the credit of the Government shall be treated as an Assessee in default ('AID'). The proviso to sub-section 6A which provides for instances where the seller shall not be treated as AID if the buyer has filed ROI / paid taxes on such income, has been amended to exclude sub-section (1H) within its ambit.

Thus, even if the buyer furnishes the ROI / pay taxes on such transaction, the seller shall be deemed as AID if he fails to deduct taxes / remit taxes post collection. The above position can lead to adverse impacts including interest and penalty and prosecution, for seller who misses to collect / remit taxes.

32. Consequences of being assessee in default as per Income Tax Act, 1961:

The consequences of being assessee in default are as under:

➤ Levy of Interest u/s 220

Simple interest @ 1% per month is payable on the amount not paid within the time allowed in the notice u/s 156. Further, this interest can be charged only till the date the ROI is filed by the Purchaser of the goods. However, the Principle Chief Commissioner / Chief Commissioner / Principle Commissioner/Commissioner can reduce the interest if being satisfied with all the three following conditions that:

- a. Payment of such amount has/ would cause genuine hardship to the assessee;
- b. Default was due to the circumstances beyond the control of the assessee, and
- c. The assessee has co-operated in the inquiry relating to assessment/recovery proceedings

➤ **Penalty u/s 221**

Assessing Officer may direct payment of a penalty which can be any amount or amounts not exceeding the tax in arrears. The AO may, if satisfied that the default was for good and sufficient reasons, not direct the penalty.

➤ **Recovery Proceedings u/s 222, 227, 229 and 232**

Apart from penalties, recovery proceedings shall be initiated against the assessee /person responsible under section 222 (Certificate to Tax Recovery Officer), 227 (Recovery through State Government), 229 (Recovery of penalties, fine, interest and other sums) or 232 (Recovery by suit or under other law not affected) of the Act.

➤ **Prosecution Proceedings**

The consequences do not stop at mere imposition of penalties and steps to recover arrears but include the risk of being prosecuted under Chapter XXII of the Income Tax Act, 1961 sections including 276BB, 276C depending upon the nature and gravity of the default. If a person fails to pay to the credit of the Central Government, the tax collected by him he shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine (Section 276BB).

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