

## NDA Update - TCS on Sale of Goods under Section 206C (1H) of the Income Tax Act, 1961

Applicable with effect from	01-10-2020
Person responsible to collect	<p>Seller of goods having total sales, gross receipts or turnover exceeding Rs.10 crores in previous financial year.</p> <p>For applicability of these provisions during FY 2020-21, the turnover or gross receipt during FY 2019-20 should exceed Rs 10 crores. If it is below Rs 10 crores, there is no requirement to collect tax at source.</p> <p><b><i>The threshold limit of Rs 10 crores is required to be tested every year in respect of immediately previous financial year.</i></b></p>
Total sales, gross receipt or turnover	For the purpose of calculating threshold of Rs. 10 crores, <b><i>sale of goods and services both shall be considered.</i></b>
TCS to be collected from	<p>TCS to be collected from such buyers from whom the seller receives any amount as consideration for sale of any goods of value exceeding Rs 50 lacks in a previous year.</p> <p>TCS to be collected only on amount exceeding Rs 50 lakhs.</p> <p>Example – Suppose a seller collects Rs 75 lakhs from a buyer during the year then he shall be liable to collect TCS on Rs 25 lakhs (Rs 75-50 lakhs)</p>
Rate of TCS – If PAN or Aadhar No is provided by the buyer	<p>FY – 2020-21 : 0.075% of sale consideration in excess of Rs 50 lakhs</p> <p>After FY 2020-21 : 0.1% of sale consideration in excess of Rs 50 lakhs</p>
Rate of TCS – If PAN or Aadhar No is not provided by the buyer	1% of sale consideration in excess of Rs 50 lakhs
Applicability for FY 2020-21	<p>It will apply on sale consideration received on or after 01-10-2020 <b><u>irrespective of date of sale.</u></b> It will not apply on any sale consideration received before 01-10-2020. Consequently it would apply on all sale consideration received on or after 01-10-2020 even if the sale transaction was carried out before 01-10-2020.</p> <p>(CBDT Circular No. 17 of 2020 dt 29-09-2020)</p> <p>Example – Suppose out of total collection of Rs 75 lakhs during the year, Rs 40 lakhs is collected on or before 30-09-2020 and Rs 35 lakhs after 30-09-2020, the seller shall be liable to collect TCS on Rs 25 lakhs (Rs 75-50 lakhs). However, if the seller has already collected Rs 55 lacs on or before 30-09-2020, he shall be liable to collect TCS on Rs 20 lakhs (Rs 75-55 lakhs).</p>

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Point of collection	Tax is required to be collected at the time of receipt and not at the point of sale / invoicing.
Mode of collection	<p>It is suggested that the seller should charge TCS in the invoices raised on or after 01-10-2020 on the buyers liable for TCS.</p> <p>Since TCS will also apply on collections made on or after 01-10-2020 against invoices raised before 01-10-2020, we suggest that in respect of buyers liable for TCS, debit note should be raised in respect of TCS element on the invoices raised before 01-10-2020 but remaining outstanding as on that date.</p>
Calculation of threshold limit for FY 2020-21	<p>Since the threshold of Rs 50 lakhs is with respect to the previous year, calculation of receipt of sale consideration for the purpose of TCS shall be computed from 01-04-2020. Hence, if a seller has already received Rs 50 lakhs or more up to 30-09-2020 from a buyer, the TCS shall apply on all receipt on or after 01-10-2020, from such buyer. (CBDT Circular No. 17 of 2020 dt 29-09-2020)</p>
Transactions exempted from the provisions of TCS	<ul style="list-style-type: none"> <li>• Sale of services</li> <li>• Export of goods outside India</li> <li>• If the buyer is liable to deduct TDS and has deducted TDS under any provision of this Act on goods purchased</li> <li>• Transactions already covered for TCS under other subsections of Sec 206C <ul style="list-style-type: none"> <li>• Sale of Alcohol, timber, scrap etc</li> <li>• Sale of Motor vehicle exceeding Rs 10 lakhs</li> <li>• Sale of Forex / tour packages</li> </ul> </li> <li>• Sale to Central Government, State Government, Local Authority etc</li> <li>• Buyer importing goods in India</li> <li>• Any person as notified by the Central Government for this purpose</li> </ul>
Applicability of TDS on advance payment	<p>TCS is made applicable on receipt. Thus it would also apply on advance received against sale. If any advance against sale is received from applicable buyer on or after October 1, 2020 then the provisions of TCS will also be applicable.</p> <p>The threshold limit of Rs 50 lakhs has to be calculated considering both sale consideration as well as advance received.</p>

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Applicability of TDS on GST element in the invoice	The CBDT vide Circular No. 17, dated 29-09-2020, has clarified that since TCS is applicable on receipt of the amount of sale consideration, no adjustment on account of indirect taxes including GST is required to be made for the collection of tax under this provision. Thus, TCS is required to be collected on the sale consideration inclusive of GST.
Whether adjustment can be made for sales return / post sale discount	No. Tax is required to be collected at source on receipt of sale consideration. Thus no adjustment can be made for any sale return or post sale discount.
Due date of deposit of TCS	7 <sup>th</sup> day of next month in which amount is collected from the buyer.
Due date of filing of TCS Return	The statement of tax collected at source shall be filed in Form 27EQ on a quarterly basis as under: <ul style="list-style-type: none"> <li>• Q/E June – 15<sup>th</sup> July</li> <li>• Q/E September – 15<sup>th</sup> October</li> <li>• Q/E December – 15<sup>th</sup> January</li> <li>• Q/E March – 15<sup>th</sup> May</li> </ul>
Consequence for failure to collect or pay tax	If a person fails to collect or after collection fails to pay it to the credit of Central Government, he shall be liable to pay interest at the rate of 1% for every month or part thereof on the amount of tax he failed to collect or pay from the period starting from the date on which tax was required to be collected and ending on the date on which the tax is deposited.
Consequence for failure to file return	If there is a delay in filing of TCS return, the late filing fee shall be payable at the rate of Rs. 200 per day for the period such failure continues. However, the amount of fee shall not exceed the total amount deductible or collectable, as the case may be. Besides, penalty may also be leviable under Sec 271H.
Collection of tax at lower rate	The buyer cannot get the certificate for collection at lower rate because Sec 206C (9) of the Act does not extend the benefit to the buyer to apply for collection at source at lower rate for the collection under Sec 206C (1H).
Whether TCS shall apply on branch transfer	No. It will not apply on branch transfer because branch transfer is not sale and a person cannot collect tax from himself.
Meaning of “Goods”	The term “Goods” has not been defined under this Section or elsewhere under the Income Tax Act. Thus the definition under the Sale Of Goods Act 1930 has to be considered.

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	<p>Under Sale of Goods Act, 'Goods' means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.</p> <p>From the above definition, Goods may include any commodity, shares or securities, electricity, Agriculture products, moveable property, vehicles, liquor, jewellery, bullions, forest products, scraps etc.</p> <p>Sale of vehicle up to Rs 10 lacs, alcohol, scrap, certain forest products is already subject to TCS.</p> <p>CBDT vide its circular no 17 dated 29-09-2020 has clarified that TCS provisions will not apply on:</p> <ul style="list-style-type: none"> <li>• Transactions in shares, securities and commodities which are traded through recognized stock exchanges or cleared and settled by the recognized clearing corporation.</li> <li>• Transactions in electricity, renewable energy certificates and energy saving certificates traded through power exchanges registered with CERC.</li> </ul>
Applicability on sale of electricity	<p>Electricity is being considered as goods in various judicial pronouncements. Hence TCS provision shall apply of consideration received on sale of electricity except for transactions in electricity, renewable energy certificates and energy saving certificates traded through power exchanges registered with CERC.</p>

### Issue:

As per Circular No 17 dt 29-09-2020, no adjustment on account of sale return or discount is required to be made for collection of tax under sub-section (1H) of section 206C of the Act since the collection is made with reference to receipt of amount of sale consideration. However, in case where the buyer makes payment after adjusting the amount pertaining to sales return or any other rebate, the seller will receive lesser amount. Although as per circular no adjustment is required but it will be adjusted suo moto with lower amount received by the seller.