

As you are already aware, sub-section (1H) has been inserted in Section 206C by Finance Act, 2020 for collection of TCS by the seller on sale of any goods. Though collection of TCS on sale of certain goods was already covered under different sub-sections of Section 206C, however all the remaining goods, which were not so covered under other provisions of section 206C, have now been brought under the ambit of TCS by inserting sub-section (1H) in Section 206C.

The provisions of sub-section (1H) of section 206C that has been made effective from 1st October 2020 are reproduced below for ready reference:

- A Seller of Goods is liable to collect TCS from Buyer on Sale of any goods;
- Turnover of seller is more than ₹ 10 Crores in preceding financial year;
- TCS to be collected if the Value/Aggregate Value received for Goods from a buyer is more than ₹ 50 Lakhs in a financial year;
- TCS to be collected on [Total Sale Value received – ₹ 50 Lakhs];
- Rate of TCS is 0.1%, if PAN of buyer is available [1% if **PAN** not Available].

Considering the doubts being raised by trade & industry in relation to interpretation and compliance of the newly introduced provisions, Central Board of Direct Taxes [CBDT] has come up with a slew of clarifications by way of Circular 17/2020 dated 29th September 2020 and press release dated 30th September 2020.

We have earlier issued a comprehensive document providing a detailed checklist for readiness to cope with the new compliance obligations and detailed FAQs to dispel any doubts regarding the interpretation and implementation of the same. Through this document, we have updated the FAQs taking into consideration clarifications issued by CBDT.

FAQs:

1. What is the meaning of Seller under the provisions of section 206C(1H)?

Here, Seller means a person whose Total Sales, Turnover, Gross Receipts from the business being carried out by him in preceding Financial Year exceeds ₹ 10 Crores.

The term turnover has not been specifically defined in the sub-section. In the **“Guidance Note on Terms used in Financial Statements”** published by ICAI, “the expression “Sales Turnover” has been defined as: “The aggregate amount for which sales are effected or services rendered by an enterprise.

In the statement issued by ICAI on the CARO the word ‘turnover’ has been defined as under- “The term ‘turnover’ for the purposes of this clause may be interpreted to mean the aggregate amount for which sales are effected or services rendered by an enterprises”.

2. Whether sales consideration includes GST component?

Clarification provided by CBDT on 29th September 2020 states that “it is hereby clarified that no adjustment on account of sale return or discount or indirect taxes including GST 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.” Thus, the intent is to have the TCS on sales consideration collected including GST.

3. Whether TCS to be collected on total sales value to the buyer to whom sales in excess of ₹ 50 Lakhs has been made or only to the amount in excess of ₹ 50 Lakhs?

Section 206C(1H) envisages that TCS at the rate of 0.10% of the sale consideration received in excess of ₹ 50 Lakhs shall be collected by the seller. As such, TCS shall be collected on Total Sale Value received less ₹ 50 lakh.

4. For calculating the amount of sales of ₹ 50 Lakhs, whether the sales before 01-10-2020 shall be considered?

This section was introduced by way of Finance Act 2020 and was initially to be made effective from 01-04-2020 i.e. from the beginning of the financial year 2020-21. Now, since, it is being made effective from 01-10-2020 i.e. middle of the FY 2020-21, the pertinent question that arises is whether the consideration received for sales effected up to 30-09-2020 shall be considered while determining the threshold of ₹ 50 Lakh.

Now, CBDT has clarified that since the threshold of ₹ 50 Lakh is with respect to the financial year, calculation of receipt of sale consideration for triggering TCS under sub-section (1 H) of section 206C shall be computed from 1st April 2020. Hence, if a person being seller has already received ₹ 50 Lakh or more up to 30th September 2020 from a buyer, the TCS under sub-section (1H) of section 206C shall apply on all receipt of sale consideration during the previous year, on or after 1st October 2020, from such buyer.

CBDT has further issued a Press Note on 30-09-2020 to provide that TCS shall be applicable only on the amount received on or after 01-10-2020.

Illustration 1: Sales made to a buyer is less than ₹ 50 Lacs up to 30-09-2020

1.	Sales up to 30-09-2020	₹ 35 Lacs
2.	Amount received up to 30-09-2020	₹ 25 Lacs
3.	Invoices raised from 01-10-2020	₹ 30 Lacs

As TCS shall be applicable beyond receipts of ₹ 50 Lacs. Therefore, on the initial receipt of ₹ 25 Lacs after 01-10-2020, TCS shall not be applicable. Consequently, TCS shall be applicable as and when ₹ 15 Lacs [₹ 35 Lacs + ₹ 30 Lacs - ₹ 50 Lacs] shall be received.

Illustration 2: Sales made to a buyer is more than ₹ 50 Lacs up to 30-09-2020:

1.	Sales up to 30-09-2020	₹ 65 Lacs
2.	Amount received up to 30-09-2020	₹ 30 Lacs
3.	Invoices raised from 01-10-2020	₹ 20 Lacs

As TCS shall be applicable beyond receipts of ₹ 50 Lacs. Therefore, on the initial receipt of ₹ 20 Lacs after 01-10-2020, TCS shall not be applicable. Consequently, TCS shall be applicable as and when ₹ 35 Lacs [₹ 65 Lacs + ₹ 20 Lacs - ₹ 50 Lacs] shall be received.

Illustration 3: Amount received from a buyer is more than ₹ 50 Lakh up to 30-09-2020:

1.	Sales up to 30-09-2020	₹ 65 Lacs
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2.	Amount received up to 30-09-2020	₹ 55 Lacs
3.	Invoices raised from 01-10-2020	₹ 20 Lacs

As TCS u/s 206C(1H) shall be effective from 01-10-2020, therefore TCS cannot be charged on collections made prior to 01-10-2020. Therefore, in this case, TCS shall be charged on the receipt of amount on or after 01-10-2020 i.e. on ₹ 30 Lacs [₹ 65 Lacs + ₹ 20 Lacs - ₹ 55 Lacs].

5. What is the meaning of the buyer?

Any person who purchases any Goods but does not include:

- the Central Government, a State Government, an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State
- a local authority
- a person importing goods into India

6. Whether TCS shall be collected on any kind of sales including sale of services?

TCS shall be collected on sale of goods only.

7. 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.

8. Whether TCS shall be collected on export of goods?

No, TCS shall not be collected on export sales being made outside India.

9. For calculating the limit of ₹ 10 crore in the preceding financial year, whether sale of services to be included?

For calculating the threshold limit of ₹ 10 crore in the preceding financial year, section 206C(1H) provides that Total Sales, Turnover, Gross Receipts from the business shall be considered. As such, the receipts of sale of services shall also be considered.

10. In the case of non-availability of PAN or Aadhaar of the buyer, what shall be rate at which TCS to be collected?

Section 206C(1H) specifically provides that TCS shall be collected at the rate of 1% of sale consideration in case buyer of the goods fails to provide its PAN. Provisions of section 206CC have been specifically overruled by section 206C(1H).

11. Whether TCS shall be collected at the time of debiting the buyer with the sale value or at the time of collection?

Section 206C(1H) specifically provides that the seller shall collect from the buyer a sum equals to 0.1% of the sales consideration at the time of receipt of such amount. That means the liability to collect TCS will arise even in case of advance payment received though the goods will be physically delivered at a later date.

Further, CBDT by way of press release dated 30-09-2020 has also clarified that in order to simplify and ease the compliance of the collector, it may be noted that this TCS provisions shall be applicable on the amount of all sale consideration received on or after 01-10-2020, without making any adjustment for the amount received in respect of sales made before 01-10-2020.

12. Since, TCS to be collected on advance payments, what shall be the course of action in case, the advance has to be refunded as the sale is not affected?

Where the seller receives an advance for selling the goods and he deposits the TCS thereon, however later on such deal stands cancelled, in such a case, post month-end, no refund of the TCS can be made to a buyer. Even if it is collected on higher amount, the same will be deposited with the government. The buyer can claim credit for the TCS amount while depositing Advance Tax and/or determining the final tax liability.

CBDT has also clarified that no adjustment on account of sales return or discount or indirect taxes including GST 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.

13. Whether the rate of TCS shall be reduced by 25% in line with the Covid-19 relief measures announced by the government?

As part of relief measures undertaken by the Central Government on 12-05-2020, it was announced that in order to provide more funds at the disposal of the taxpayers, the rates of TDS for non-salaried specified payments such as payment for contract, professional fees, interest, rent, dividend, commission, brokerage etc. made to residents and rates of TCS for specified receipts shall be reduced by 25% of the existing rates. This reduction was made effective from 14-05-2020 up to 31-03-2021.

Therefore, in line with the same rate of TCS u/s 206C(1H) shall also be reduced by 25% i.e. rate at which TCS to be collected shall be 0.075% up to 31-03-2021.

14. Whether TCS shall be collected by the seller where the buyer is also obliged to deduct TDS on payments being made?

Second proviso to section 206C(1H) specifically provides that this sub-section shall not apply where 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.

15. Whether TCS to be collected on the amount of sale including 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.

Further, 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. As such, TCS to be collected on inclusive of GST."

Further CBDT has clarified on 29th September 2020 that TCS need to be discharged on sales consideration received and no adjustment on account of GST is to be done.

16. Whether GST to be charged by the seller on the amount of sale including TCS?

Corrigendum to CBEC Circular No. 76/50/2018-GST issued on 07-03-2019 provides clarifications on certain issues that includes valuation methodology in case of TCS under Income Tax Act. In this matter, it states 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 Laws.

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.

17. How and when to charge TCS from buyer?

- **Alternative 1- The TCS can be collected by charging through invoice:**

In this case, both buyer and seller need to do accounting as receivable and payable for these amounts. It may be noted that if the payment is being made in next financial year, TCS obligation may not be applicable on seller (due to turnover threshold) or may not be applicable on buyer due to not making payments breaching 'collection' threshold in that financial year. In those case, one need to keep track and write off and reconcile it with the liability.

- **Alternative 2: The TCS can be collected by charging through debit note:**

The logic for issuance of debit note may be that debit note to be issued at the time of payment so that it can be charged only on the eligible cases and no hassles of write off etc. (as mentioned in above points). But in that case, a specific series of debit note number may need to be used to make sure that these debit notes do not create issues in GST compliance.

18. Whether this sub-section shall also apply on sale of motor vehicle:

The provisions of sub-section (1F) of section 206C of the Act apply to sale of motor vehicle of the value exceeding ₹ 10 Lakh. Further, Sub-section (1H) of section 206C of the Act exclude from its applicability goods covered under sub-section (1F). It may be noted he scope of sub-sections (1H) and (1F) are different. While sub-section (1F) is based on single sale of motor vehicle, sub-section (1H) is for receipt above ₹ 50 Lakh during a financial year against aggregate sale of good. While sub-section (1F) is for sale to consumer only and not to dealers, sub-section (1H) is for all sale above the threshold.

In this regard it CBDT has clarified that –

- Receipt of sale consideration of motor vehicle from a dealer would be subjected to TCS under sub-section (1H) of the Act, if such sales are not subjected to TCS under sub-section (1F) of section 206C of the Act.
- In case of sale to consumer, receipt of sale consideration for sale of motor vehicle of the value of ₹ 10 Lakh or less to a buyer would be subjected to TCS under sub-section (1H) of section 206C of the Act, if the receipt of sale consideration for such vehicles during the financial year exceeds ₹ 50 Lakh during the financial year.
- In case of sale to consumer, receipt of sale consideration for sale of motor vehicle of the value exceeding ₹ 10 Lakh would not be subjected to TCS under sub-section (1H) of section 206C of the Act if such sales are subjected to TCS under sub-section (1F) of section 206C of the Act.

19. Whether this sub-section shall also apply to fuel supplied to non-resident airlines:

In this regard, CBDT has clarified that the provisions of sub-section (1H) of section 206C of the Act shall not apply on the sale consideration received for fuel supplied to non-resident airlines at airports in India.

20. What are the compliance obligations cast upon business entities due to sec 206C(1H):

Some of the basic compliances that a business entity has to perform are as follows:

- TAN number – Seller needs to have Tax Deduction and Collection Account Number ("TAN"). No need to obtain a new number if the seller entity has already obtained TAN for tax deduction at sources (TDS).
- Collecting the tax – Tax to be collected at the time of receipt of sale consideration.
- Deposit with Government- The tax collected during the month need to be deposited within seven days of next month. Please note that there is no exception or extended time for the deposit of tax collected in the month of March. (Challan no 281)

- Filing of statement (Form no. 27EQ)- A quarterly statement of all the tax collected at source during the quarter needs to be submitted within 15 days from the close of quarter as mentioned in Table-1.
- Issuance of certificate (Form no 27D)– Certificate for tax collection need to be issued to the buyer by seller. Due dates mentioned in Table -1.

Table -1

Quarter Ending on	Due date of submission of return	Due date for issuance of certificate of tax collected
30 th June	15 th July	30 th July
30 th September	15 th October	30 th Oct
31 st December	15 th January	30 th Jan
31 st March	15 th May	30 th May

21. What are the steps to be taken by business entities to get prepared for implementation of sec 206C(1H):

Some of the general steps to be taken by business entities to get ready for new compliances are as follows:

- Firstly, the seller shall check whether the provisions are applicable on it. For this, key is the sales /gross receipts/turnover of immediately preceding financial year (i.e. sales of FY 2019-20 to be checked for applicability in FY 2020-21).
- To identify the customers from whom receipts for consideration for sale of goods is more than ₹ 50 lacs during the year. For this, customers already breached the threshold or potential customer who may cross the threshold shall be identified.
- The entity may insert a specific line item in invoice to charge TCS or it may charge TCS through debit note. Further, it has to be made sure that invoice or debit note format remains GST compliant.
- The buyer shall be intimated in advance regarding levy of TCS provisions and obligation on him to pay for TCS.
- Open a separate ledger account in books of account, to account for the TCS receivable from customer and TCS payable to Govt. A separate ledger account will help in reporting and reconciliation.
- Setup the check list and procedure for compliance such as deposit of TCS, filing of statement and issuance of certificate to buyer.

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