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Chartered Accountants

*kcm*Guide

Corporate Tax

TCS on Sale of Goods

FAQs on 206C (1H)
Let's simplify

September 23, 2020

Background & Coverage

Tax Collection at Source (TCS) - Sale of Goods

Yes, it is going to be a reality from October 1, 2020 and hence this update would be of prime importance to you. Finance Act, 2020 has inserted clause (1H) in section 206C of the Income-tax Act, 1961 ("the Act") expanding the scope of TCS provisions, whereby a seller of goods is now required to collect tax at source @ 0.1% from a buyer of goods on receipt of consideration for sale of goods.

"To widen and deepen the tax net" - is conveyed as the objective by the government for introduction of this provision. Considering that we already have GST on sale of goods (if not exempted) and CBDT has data sharing facility with GST department, how this objective would be achieved will remain a mystery considering that the threshold for TCS on sale of goods is Rs. 50 lakh, which in any case would capture taxpayers who otherwise undertake GST compliances.

How would the new provision work?

A seller of goods worth of Rs.1,00,000 will collect tax of Rs.100 in addition to sales consideration from a buyer. Such seller will deposit sum of Rs.100 with tax authority in the name of buyer and will issue certificate thereof to buyer. Based upon such certificate, such buyer will claim credit of TCS while filing his tax return. Now, such buyer needs to take care to compute advance tax liability after considering credit of TCS.

Since such provision, which though does not cost you but may block the working capital, has now been made a part of law, one needs to adhere to it unless one wishes to take a bold step of challenging the constitutional validity thereof.

Considering the applicability of such provision on transaction being sale of goods, it has vast implications on day to day business transactions and will increase the tax compliance and accounting burden. One may need to change or alter the accounting software to incorporate necessary changes for complying with such provision and its proper monitoring for tax and reporting purposes. Hence, it is necessary to understand the provision, its applicability and coverage, and its implications on various practical business transactions.

To help you understand various nuances of the new provisions of TCS on Sale of Goods, we have tried to analyse the same in form of FAQs.

1. When does section 206C(1H) come into effect?

The provision is applicable with effect from October 01, 2020.

2. Who is required to collect tax at source on sale of goods?

Every person, being a seller of goods, is required to collect tax at source from the buyer in a financial year if total sales, turnover or gross receipts from the business carried on by such seller in the immediately preceding financial year is more than Rs. 10 Crore.

In case of any doubt regarding calculation of the value of sales, turnover or gross receipts, one can resort to Guidance Note of ICAI on Tax Audit in view of identical language appearing in section 44AB(a).

3. From whom is tax required to be collected at source?

Tax is required to be collected from a "buyer" of goods in a financial year when the total consideration (excluding the consideration for goods exported outside India) received during such financial year from such buyer exceeds Rs. 50 lakh.

4. What is the applicable rate of TCS?

Tax is required to be collected at source @ 0.1%. However, if the buyer of goods does not provide Permanent Account Number (PAN) / Aadhar Number, tax is required to be collected @ 1%.

It is to be noted that in respect of financial year (FY) 2020-2021, as per CBDT press release dated May 13, 2020, TCS shall be collected at 0.075%. Further, such reduction may not be

applicable in case buyer does not furnish PAN / Aadhar Number and in such a case, tax would have to be collected at 1%.

5. At what point in time is tax required to be collected at source?

Tax is required to be collected at the time of receipt of consideration.

6. On what amount is tax required to be collected at source?

Tax is required to be collected on the amount of consideration exceeding Rs.50 Lakh.

7. When is TCS to be deposited with Government?

As per Rule 37CA, TCS is required to be deposited within 7 days from the end of the month in which tax is collected at source.

8. Which type of transactions do not attract TCS provisions?

TCS provisions are not applicable to following transactions:

- Export (where goods are exported out of India)
- Import (where goods are imported into India)
- Sale of goods where the buyer is liable to deduct tax (TDS) under any provision of the Act and has also deducted such tax at source [e.g.in case of contract manufacturing, if buyer of goods is liable to deduct tax at source u/s.194C and has deducted the same at source]
- Sale of goods when such goods are subjected to TCS under any provision of section 206C other than section 206C(1H) [e.g. Sale of Scrap which is liable to TCS u/s.206C(1)]

- If a buyer of goods is Central Government or State Government or an Embassy, High Commission, Legation, Commission, Consulate and Trade representation of foreign state or local authority as referred to in section 10(20) of the Act
- Any other person as the Central Government may notify (no such notification has been issued as on date).

9. What are the compliances to be undertaken by seller?

A seller is required to undertake the following compliances:

- Filing of Quarterly TCS returns in form No.27EQ

| Quarter ended | To be Filed by |
|---------------|--------------------------|
| June | 15 th July |
| September | 15 th October |
| December | 15 th January |
| March | 15 th May |

- Issuance of TCS certificate

Certificate of TCS is required to be issued by seller to a buyer in Form No.27D within 15 days from the due date of filing TCS return as mentioned above.

10. Whether a seller is required to report the transactions of sale of goods that do not attract TCS, in the TCS returns?

A seller is required to report following transactions even if the same do not attract TCS:

- Non collection of tax at source by a seller where a buyer of goods has deducted tax under any other applicable provision of the Act
- If a buyer of goods is Central Government or State Government or an Embassy, High Commission, Legation, Commission, Consulate and Trade representation of foreign state or local authority as defined as referred in section 10(20) of the Act or any other any other person as specified by the Central Government

11. Who is entitled to claim credit of TCS and in which year?

A buyer (from whose account tax has been collected at source) is entitled to claim credit of TCS.

Such TCS credit shall be allowed in the financial year in which such tax collection has been made by the seller. Such amount of tax collected and deposited by the seller will be reflected in Form No. 26AS of the buyer based on TCS return filed by the seller. The same can also be verified based on TCS certificate as received from seller.

12. Whether amount of TCS is required to be shown in the sales invoice or receipt advice?

There is no statutory requirement under the Act to disclose TCS amount either in invoice or in the receipt advice. However, since the seller is required to collect such tax from buyer, one may consider to intimate the same to the buyer either through invoice or through a debit note to demonstrate that the seller is collecting the tax at source from the buyer.

13. Whether a buyer of goods can apply for lower / non-collection certificate from tax authorities?

The provisions of section 206C(9) empowers the assessing officer to grant certificate to the buyer for non-collection / collection at a rate lower than specified rate of TCS in respect of transactions covered by sub-section (1) or (1C) of section 206C of the Act. However, such provision is yet not made applicable to TCS on sale of goods under section 206C(1H). Hence, the buyer of goods would not be eligible for such benefit.

14. While computing the threshold of Rs. 50 Lakh for FY 2020-21, whether the consideration received from a buyer between April- September 2020 is to be included?

Yes.

Though the TCS provision on sale of goods is operative with effect from October 01, 2020, the provision casts an obligation to collect tax at source when the total consideration received *during the previous year* exceeds by Rs. 50 Lakh. Accordingly, amount of consideration received during April 2020 to September 2020 is required to be included while computing the threshold of Rs. 50 Lakh.

15. Whether the threshold of Rs. 50 Lakh is to be tested for all the buyers cumulatively or is it an individual limit applicable to each buyer?

The threshold of Rs. 50 Lakh is applicable for each individual buyer.

16. I have newly set up my business in April 2020. Whether TCS will apply in my case if turnover during the current year is likely to exceed by Rs. 10 Cr.?

No.

TCS is applicable to a seller only if turnover or receipts from business in immediately preceding year has exceeded Rs. 10 Cr. In case of newly set up business in April 2020, the turnover or receipts in immediately preceding year is not available and hence should be considered as Nil. Hence, in such case, seller should not be required to collect TCS in FY 20-21.

Cut-off situations

- 17. Whether tax is to be collected in respect of consideration received on or after October 01, 2020 in respect of sale of goods made during April-September 2020?**

No.

Considering that the TCS provisions are effective only from October 1, 2020, in our view, the provisions should apply only in respect of transaction of sale effected on or after October 1, 2020 and accordingly, since the sale was made prior to October 01, 2020, such amount should not be subject to TCS.

However, such consideration is required to be included while computing the threshold of Rs. 50 Lakh for a buyer.

- 18. The seller has received an advance prior to October 01, 2020 and sales against the said advance will be recognized on or after October 01, 2020. Whether TCS is applicable on such sale?**

No.

TCS provision, which becomes effective from October 01, 2020 casts an obligation to collect tax at source at the time of receipt of consideration of sale of goods. Accordingly, in our view, since consideration for sale of goods has already been received prior to October 01, 2020, such amount should not be subject to TCS.

However, such consideration is required to be included while computing the threshold of Rs. 50 Lakh for a buyer.

Cut-off situations

- 19. Whether TCS provisions apply on advance received on or after October 01, 2020 where no sale has been recognised during the financial year 2020-21 against such advance?**

Yes.

Tax is required to be collected by a seller at the time of receipt of consideration for sale of goods. Since the seller has received the consideration for sale of goods on or after October 01, 2020 but prior to the sales event, in our view, to make such provision operative, it is advisable to collect tax at source on such advance received.

Export and Import of goods

- 20. Whether TCS provisions apply to a seller exporting goods from outside India to a buyer in India?**

The person importing goods from outside India has been excluded from the definition of 'buyer' and therefore, such transaction should not be subjected to TCS.

- 21. Whether TCS is applicable on high-sea sales or third country export?**

In case of high sea-sales or third country export, goods are not physically "exported out of India" and accordingly as per bare reading of the provisions of section 206C(1H), the exemption from TCS as applicable to goods being exported *out of India* may not be applicable.

However, it could be possible to argue that if the non-resident buyer does not have any income chargeable to tax in India, the provision of section 206C(1H) should not be applicable. This view could however invite significant litigation.

22. Whether TCS provisions apply to sale of goods to Export Oriented Units (EOUs) or to Special Economic Zone (SEZ) units?

TCS is not applicable on sale of goods exported out of India. While the term "goods exported out of India" has not been defined under the Act, the same should be interpreted and understood in common parlance and legislative intent behind amending the said section. Section 206C(1H) is not applicable in respect of export of goods outside India. Sale of goods to a SEZ unit or an EOU are considered as "deemed export". There is no physical movement of goods outside India. The territories of EOU and SEZ are located in India. Thus, TCS should apply in respect of deemed export of goods to SEZs and EOUs.

23. Whether tax is required to be collected on GST component included in sales consideration?

Arguments, both in favour and against exist in respect of applicability of TCS on GST component included in sales consideration.

Since the credit of TCS is given to the buyer of goods, the argument of applicability of TCS only on income component does not exist. Further, there are various judicial decisions where it has been held that TCS is also applicable on duty included in invoice value. It is worth noting that CBDT in one of its FAQs on Tax Deduction at Source, has clarified in the context of TCS on Sale of Scrap that tax should be collected on total value inclusive of GST. While there is a difference in the language of Section 206C(1) and Section 206C(1H), in our opinion, the same principle should apply even in cases of TCS pertaining to sale of goods and tax should accordingly be collected on the total value inclusive of GST.

24. Does TCS apply when part of the payment is received in cash/cheque and the balance is received through Journal Voucher adjustment?

Yes.

TCS is not dependent on mode of payment. Once the aggregate value of sales consideration received from a buyer (either in cash or in kind) during the year exceeds Rs. 50 Lakh, TCS is applicable.

- 25. Whether a transaction of sale of goods involving barter or where consideration is paid by way of passing journal voucher (e.g. by adjusting receivables against payable with same party or other party) attracts TCS?**

If consideration is not received in cash / cheque / electronic mode but same is received by way of either barter or by way of an adjustment of receivables against already existing liability (payable) or third party adjustment if approved by the buyer, tax is required to be collected at the time of passing of book entry since such book entry amounts to discharge of consideration by the buyer.

- 26. What would be the impact of sales return, debit note, and credit note while collecting tax at source?**

TCS is applicable at the time of receipt of consideration for sale of goods and therefore seller is required to collect TCS on actual consideration and not on sales value.

However, if such sales return or debit note has the effect of reducing the amount of sales consideration already subjected to TCS, there is no option but that the buyer should claim credit of TCS on such amount in absence of any provision relating to refund of TCS by seller.

- 27. The buyer has deducted tax at source on sale of goods but has not deposited the same. Whether TCS is applicable on such transaction?**

No.

The seller is not required to collect tax at source if the buyer has deducted tax at source on purchase of goods in accordance with applicable provision under the Act. Once tax has been deducted, TCS is not applicable. It is not material whether the buyer has remitted such TDS to the government or not.

- 28. Does sale of software attract TCS provisions?**

In case of software, if tax is deducted at source u/s.194J of the Act, TCS provisions would not be applicable. Further, if the buyer has not deducted tax at source u/s.194J in view of CBDT Notification No.21 of 2012 [on account of declaration provided by seller that tax has already been deducted u/s.194J / 195 on the first sale], in our view, TCS would not be applicable.

In case tax is not deducted under section 194J for any other reason, a proper evaluation should be carried out to ensure compliance with TCS provisions (considering the fact that whether software represents "goods" or "services" is a highly litigative issue).

- 29. Whether TCS provisions apply on sale of immovable property?**

Immovable property cannot be regarded as "goods" considering various judicial pronouncements under the Act. Further, tax is required to be deducted at source u/s.194-IA on consideration for transfer of immovable property. Accordingly, TCS provisions should not be applicable to such transaction.

30. Whether a seller is required to collect tax at source on interest charges for delayed payments?

If the buyer of the goods has deducted tax u/s 194A of the Act, TCS provisions should not apply. However, in case the buyer has adopted a view that the interest partakes the character of sale consideration and hence, tax is not required to be deducted at source, TCS provisions should apply.

31. Under the Act, if a buyer of scrap has furnished a declaration in Form 27C to the effect that such scrap is to be utilized for manufacturing or further processing then a seller is not required to collect tax at source. Whether TCS u/s.206C(1H) shall apply on it?

TCS provision on sale of goods provides that goods covered under section 206C(1) is outside the ambit of TCS regime u/s 206C(1H). Section 206C(1) *inter alia* covers "Scrap". Therefore, TCS provision on sale of goods is not applicable to such scrap.

However, if such items are not subject to provision of section 206C(1) by virtue of not being regarded as "Scrap" as defined in section 206C, TCS on sale of goods should be applicable to it.

32. Whether sale of motor vehicle to dealers / distributors attracts TCS u/s section 206C(1H) of the Act?

The provisions of section 206C(1H) explicitly provides that goods covered by sub-section (1F) are outside the ambit of TCS regime u/s 206C(1H). Therefore, sale of motor vehicle for the value exceeding Rs. 10,00,000 as referred to in section 206C(1F) is not subject to TCS u/s.206C(1H).

Technically, TCS u/s.206(1H) on sale of motor vehicle should be applicable on sale of motor vehicle having value up to Rs. 10,00,000, if other conditions are fulfilled.

33. Should bad debt recovery attract TCS?

Since the amount realized from bad debt recovery is part of sale consideration, the seller is required to collect TCS thereon.

34. Whether TCS is applicable on sale of fixed assets?

The provisions of section 206C(1H) do not make any distinction between sale of capital goods and goods held for sale. Therefore, TCS provisions u/s 206C(1H) would apply, if other conditions are fulfilled.

35. Whether a refundable advance received in performance of contract of sale of goods attracts TCS u/s 206C(1H)?

In our view, refundable advances received from buyer of goods are considered as in nature of deposit rather than consideration for sale of goods in advance and hence, seller is not required to collect TCS on this transaction.

36. In case of composite supply of goods and services e.g. EPC contract, whether TCS is applicable on supply of goods?

In case of composite contract, if a buyer has deducted tax at source under any other provision of the Act on the value of composite contract which includes supply of goods, TCS shall not be applicable to seller on sale of such goods. However, if no tax is deducted at source on the component of supply of goods, a seller is required to collect TCS.

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