

# **Tax Collection at Source (TCS) on Sale of Goods**

**[As per Section 206C(1H) of the Income Tax Act,  
1961]**

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## Section 206C(1H)- Effective from 1<sup>st</sup> October 2020

**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 Section 206C(1H):**

**(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 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,<sup>4</sup> by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein.

# Analysis of Section 206C(1H)

## A. Definition of seller, buyer & threshold limit:

### 1. Meaning of seller:

- A person, being Individual, HUF, Partnership Firm, Company, LLP etc.
- having business activity during preceding previous year
- business turnover exceeding Rs. 10 crores during the preceding previous year,
- Excluding the persons as notified by the Central Govt. (CBDT Circular explained in **Slide 16**)

### ISSUES:

#### ➤ **Whether person incorporated in current year, covered in definition of seller for sec. 206C(1H)?**

*No, it is mandatory for seller to be carrying out business in the preceding previous year. Person(s) who have incorporated business during current year is not liable for TCS under this section.*

#### ➤ **The seller must be carrying on any business activity.**

#### ➤ **Whether seller covered in case where person changes its business nature or diversify in many business verticals from last year?**

*Yes, if the seller expanded or changed business nature like service provider also dealing in sale of goods, from last year, it does affect the applicability.*

*The only condition is that it must carrying on business in preceding*

## **2. Meaning of Buyer:**

- Any person, being Individual, HUF, Partnership Firm, Company, LLP etc,
- who purchases any goods
- But does not includes
  - CG/SG, Embassy, Legation, High Commission, Commission, Consulate and the trade representation of foreign state.
  - Local Authority
  - Person importing goods into India or any person(s) as notified by CG.

### **ISSUES:**

#### **➤ Whether an exclusive service provider covered under buyer definition in this section?**

*Yes, the service provider being purchaser, covered in buyer for the section 206C(1H), the only condition is that it is a purchaser of goods. The goods may or may not be used for the purpose of business operation.*

#### **➤ Is it necessary for the buyer to be an exclusive purchaser of taxable goods?**

*No, the buyer may be a purchaser of any type of goods whether taxable, exempted, nil rated.*

#### **➤ A person, being NRI selling goods from foreign to Indian resident, liable to collect TCS?**

*No, 'person who is importing goods from outside India' excluded from the definition of Buyer hence the seller is not liable for TCS*

### **3. Coverage of threshold limit of Rs.50 Lakhs:**

- TCS under section 206C(1H) is to be collected, in case where the sale consideration received after 01.10.2020 in relation sale of goods made before 1.10.20, it is irrelevant that the sales were made in single or multiple transactions or related to any years.
- Where the seller receives consideration in relation to goods and services, above Rs. 50 Lakhs then the service portion in such consideration shall not be considered in applicability of section 206C(1H).
- Receipt of sale consideration of Rs. 50 Lakhs shall include the GST.

### **4. Meaning of Total sales, Gross receipts or Turnover:**

- The meaning of sales/turnover has not been defined in Income Tax Act, 1961.
- ICAI has issued a Guidance note on Tax Audit u/s 44AB of the Income Tax Act, 1961 wherein the turnover, total sales or gross receipts was defined referring the definition of other Acts like. Central Sales Tax Act, Schedule-III of Companies Act, 2013 etc

**As per the Guidance Note on Tax Audit [Para 5.5 on Page No. 21 of Guidance Note on Tax Audit]**

**“Sales Turnover” means-** “The aggregate amount for which sales are effected. The ‘gross turnover’ & ‘net turnover’ (or ‘gross sales’ and ‘net sales’) are sometimes used to distinguish the sales aggregate before and



For the purpose of Section 44AB, turnover shall be construed taking into consideration the following:

- Normally turnover shall exclude excise duty, custom duty, sales tax and cess etc. *(Depending on the Method of accounting followed by the assessee)* **[As per the Book "A Compendium of Issues on Income Tax" by Dr. Girish Ahuja & Dr. Ravi Gupta]**
- Trade discounts given in invoice is to be excluded but cash discounts are not to be excluded.
- Commission allowed to third parties shall be included in the turnover.
- Amount of sales returns shall be excluded from the turnover.

In our view, the 'Qualifying Turnover' of Rs. 10 crores for the purpose of section 206C(1H) shall have the meaning as defined in the above guidance note issued by ICAI.

### **ISSUES ON QUALIFYING TURNOVER:**

**1. Does service(s) rendered also include in computation of Turnover, sales or gross receipts ?**

*Yes, the service rendered will be included in the computing the total turnover of Rs.10 crores during prec. previous year.*

**2. Whether the turnover limit of Rs. 10 cr. shall be inclusive of GST<sup>9</sup> or exclusive of GST ?**

*The Turnover shall be calculated excluding GST or any other taxes in*

## B. Definition of Goods:

The term 'goods' had not defined in the Income Tax Act, 1961 so far. So, the definition of a specific term may be borrowed from other sister legislature as laid down by General Clauses Act, 1897

### i. Sale of Goods Act

*“(7) “goods” means every kind of moveable 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”*

### ii. Goods and Services Tax Act

*“(52) “goods” means every kind of movable property other than*

<b>Item</b>	<b>As per Sales of Goods Act</b>	<b>As per CGST Act</b>	<i>crops, are only”</i>
Movable Property	Yes	Yes	
Money	No	No	
Actionable Claims	No	Yes	
Grass, Growing crops	Yes	Yes	
<b>Securities</b>	Yes	<b>No</b>	

## Analysis of the Goods definition:

The Sale of Goods Act, 1930 is a specific law which deals with the 'sale of goods' whereas the CGST Act deals with tax on 'Supply of Goods'. Thus, the definition of term 'goods' can be referred from the Sale of Goods Act, 1930 for the purpose of Section 206C(1H).

Therefore, the tax to be collected from the receipt of consideration in respect of the sale of the following, but subject to TDS or TCS not applicable under any other provisions:

1. Movable Property;
2. Commodities, Share & Securities (if traded through RSE then TCS u/s 206C(1H) not applicable)
3. Electricity (Certain transactions in electricity has been excluded from TCS collection via CBDT circular no. 17)
4. Agriculture & forest produce;
5. Fuel;
6. Sculptures ;
7. Motor Vehicle;
8. Liquor;
9. Automobiles ;

## **Issues on definition of Goods**

- i. 206C(1H) does not cover: Parking lot, Toll plaza, Mining and quarrying as they are not goods.
- ii. Sale of Flat, shops etc. by builder/developer does not attract provisions of section 206C(1H) since these are immovable property not goods.

### **iii. Is Electricity goods ?**

*Electricity has been held to be “goods” by a Constitution Bench of the Supreme Court in the case of **State of Andhra Pradesh vs. National Thermal Power Corporation Ltd. (2002) 5 SCC 203**. It was held that electricity though an intangible object is ‘goods’ covered by Entry 54 of List II of Schedule VII to the Constitution of India. Hence the said section will come into effect. Further, Transactions in Electricity through regd. Power exchanges specifically excluded for seller u/s 206C(1H) vide CBDT Circular no. 17 dated 29.09.2020.*

### **iv. Are Shares and debentures sale of goods ?**

*Transactions in securities and commodities which are traded through recognized stock exchange including IFSC exchanges specifically excluded from seller definition vide CBDT Circular no. 17 dated 29.09.2020. transactions which are traded off-market shall be liable for TCS.*

### **v. Bills of exchange are sale of goods ?**

**vi. Whether lottery is goods?**

*No, The Constitutional Bench of the Supreme Court in **Sunrise Associates vs. Government of NCT of Delhi reported in 2000 (10) SCC 420** (decided on 28 April 2006), holding that the sale of **lottery tickets is not 'goods'** and is, at best, only a transfer of an actionable claim. Further, actionable claim does not fall within the meaning of 'Goods' as per Sale of Goods Act, 1930.*

**vii. Slump sale/Merger/Amalgamation of businesses are covered in sale of goods ?**

*No, Slump sale is a transfer of 'business' and not 'goods'. Since slump sale is not a sale of goods therefore does not attract TCS under this section.*

**viii. High seas sales is covered or not ?**

*Yes, A person selling goods as part of High Sea Sales, cannot be said to be an importer. Section 206C(1H) exempts from its purview a buyer who imports goods into India. Thus in our view, the person selling the goods as High Seas Sales shall collect TCS from the person buying the goods.*

**ix. Whether supplies to SEZ or IFSC units are export or not ?**

*As defined under Chapter-7 of Foreign Trade Policy*

*Special Economic Zone (SEZ) is a specifically delineated duty-free enclave and shall be deemed to be foreign territory for the purposes of trade*

Definition of "Export" Under SEZ Act, 2005

- (i) *taking goods, or providing services, out of India, from a Special Economic Zone, by land, sea or air or by any other mode, whether physical or otherwise; or*
- (ii) *supplying goods, or providing services, from the Domestic Tariff Area to a Unit or Developer; or***
- (iii) *supplying goods, or providing services, from one Unit to another Unit or Developer, in the same or different Special Economic Zone*

Definition of "Export" Under Customs Act, 1962

(18) "export, with its grammatical variations and cognate expressions, means taking out of India to a place outside India;

Definition of "Export" Under Foreign Exch. Management (Export of Goods & Services) Regulations, 2015:

(iv) 'export' includes the taking or sending out of goods by land, sea or air, on consignment or by way of sale, lease, hire-purchase, or under any other arrangement by whatever name called, and in the case of software, also includes transmission through any electronic media ;

One of the view that goods supplies to SEZ or IFSC units will be treated as export out of India as per the FTP & SEZ Act however other acts denying that such goods

**x. Is TCS liable on sale of Jewellery ?**

*Yes, since the TCS liability u/s 206C(1D) has been withdrawn with Finance Act 2017 hence TCS u/s 206C(1H) is liable to be collected.*

**xi. Whether TCS is collectible on re-sale of goods ?**

*If the seller fulfills the condition of turnover of Rs. 10 crores and receipt of consideration for sale of goods exceed 50 Lakhs, this section shall apply.*

## C. Exclusions from the limit of sale of goods Rs. 50 Lakhs:

- i. Exports of Goods
- ii. Goods covered by **sub section 1** of section 206C which are:
  - a) Alcoholic liquor for human consumption,
  - b) Tendu Leaves,
  - c) Timber obtained under forest lease or any other mode
  - d) Scrap,
  - e) Minerals, being coal or lignite or iron ore
  - f) Any other forest produce
- iii. Goods covered by 206C(1F) i.e. TCS on sale of Motor Vehicle exceeding Rs.10 Lakhs
- iv. Goods covered by 206C(1G) i.e.
  - a) Liberalized Remittance Scheme
  - b) Overseas Tour Programme



- v. Goods sold by Central/State Government
- vi. Goods sold by Local Authority
- vii. A person importing goods into India.
- vii. Other persons as notified by Central Govt (CBDT Circular No. 17 dated 29.09.2020)
  - a) Transactions in **Securities** which are **traded through Recognized Stock Exchanges** and settled by recognized clearing corporation including stock exchange, clearing corporation located in IFSC (Para 4.1.2 (i)).
  - b) Transactions in **Commodities** which are **traded through Recognized Stock Exchanges** and settled by recognized clearing corporation including stock exchange, clearing corporation located in IFSC(Para 4.1.2 (i)).
  - c) Transactions in electricity, renewable energy certificates and energy saving certificates traded through power exchanges registered in accordance with regulation 21 of CERC (Para 4.1.2 (ii)).

## C. How and when TCS to be collected and payable

At the time of receipt of such amount i.e. consideration of sale of goods and payable to the govt. Account by the 7<sup>th</sup> of following month in which receipt of consideration.

### **ISSUES:**

#### **i. Inter adjustment of sale with purchase between buyer and seller:**

*The seller may have purchase transactions with the buyer and the sale consideration may be adjusted with the purchase consideration. Such adjustment by book entry may be treated as receipt of consideration hence liable for TCS collection. Board clarification shall be required whether book entry date can be treated as receipt of consideration*

#### **ii. Receipt by someone else like C&F agent, Aggregator**

*TDS u/s 194-O has to be deducted by e-commerce operator where it receives payment on behalf of e-commerce participants, hence not covered here.*

*In case of C&F agent, all such transactions amount to receipts on behalf of a seller and hence the seller will be under obligation to collect TCS from the buyer.*

#### **iii. Recovery of bad debts**

iv. TCS shall be collected on the advance received on or after 01.10.2020 in connection with sale of goods from a buyer.

**v. Goods sold on approval basis**

*The Provisions of TCS under section 206C(1H) shall also apply to goods sold on approval basis. If the goods are returned unapproved, there will be no payment of consideration and thus section 206C(1H) cannot apply.*

vi. The TCS shall be calculated after charging the tax, duty i.e GST, the manner is as follows:

Correct Way	
Sales Value	xxxx
Add: GST	xxxx
<b>Total</b>	<b>xxxx</b>
Add: TCS@ . 1%	xxxx

Wrong Way	
Sales Value	Rs.xxxx
Add: TCS	xxxx
<b>Total</b>	<b>xxxx</b>
Add: GST	xxxx

As per CBDT Circular No. 17 dated 29.09.2020

- a) No TCS on any sale consideration received up to 30.09.2020 including advance received for sales which will be made 1<sup>st</sup> October 2020 onwards, even if it exceeds Rs. 50 Lakhs (Para 4.4.2(ii))
- b) Calculation of receipt of sale consideration for the purpose of section 206C(1H) shall be calculated from 1<sup>st</sup> April 2020 therefore if the seller already received an amount for sale of goods equal to or exceeding an amount 50 lakhs till 30<sup>th</sup> Sept 2020, then TCS liability u/s 206C(1H) will be applicable on all subsequent receipts with such buyer (Para 4.4.2(iii))
- c) As section 206C(1F) applicable for receipt of consideration for single sale of motor vehicle for a value exceeding Rs. 10 Lakhs, to a buyer being consumer but not the dealer. Therefore, section 206C(1H) will come into effect where:
  - Receipt for sale of motor vehicles having individual vehicle value below Rs. 10 Lakhs from a buyer being consumer or ultimate user. (Para 4.5.2(ii))
  - Receipt of sale consideration from a dealer who is not subjected<sup>20</sup> to TCS u/s 206C(1F). (Para 4.5.2(i))

## D. When TCS not to be collected

- Any sale of goods on which TDS deductible on sale consideration & have been deducted.
- If you receive payments above 50 lakhs for full year from a buyer but you have not received any payments on or after 1<sup>st</sup> October 2020, then the seller is not required to collect any TCS on payments received before 30 September 2020, no TCS is payable.
- This section mandate to collect TCS to those persons whose turnover or gross receipts was exceeding Rs.10 crores during prec. previous year, it reveals that the section 206C(1H) applies on business-persons. **TCS would not to be applicable if the sale of goods being household items or non-commercial transactions, was undertaken**, Such as unlisted shares or any other capital asset is sold by a person who is not in any business. **The seller must be engaged in any business.**
- **Whether TCS be collected in case fuel supplied to the Non-resident airlines?**

*No, the CBDT has clarified vide circular no. 17 dt. 29.09.2020 that the*

➤ **Whether TCS be collected in case fuel supplied to the Non-resident airlines?**

*No, the CBDT has clarified vide circular no. 17 dt. 29.09.2020 that the provisions of this section shall not apply on receipt of consideration from fuel supplied to non-resident airlines at airports in India.*

➤ **Whether TCS be collected on Software?**

*Its as debatable issue that software is 'good' or 'service'. As the Supreme Court held in case of 'Tata consultansy Services vs. state of A.P.' that canned software are goods and as such assessable for sales tax. Thus, the TCS shall be collectible if the judgement of apex court is applied otherwise not.*

➤ **Whether TCS will apply where loan taken from Buyer ?**

*No, Loan received is not a consideration for sale of goods hence it is not covered in this section.*

Different scenario are mentioned in Non-applicability of Section 206C(1H)

Scenario	Is TCS applicable	Reason for non applicability
1. Advance received on 15.09.20 for the Sale of Goods of Rs.75 lakhs to be deliver after 01.10.2020	No	TCS u.s 206C(1H) applicable w.e.f. 01.10.20 but received the consideration before 01.10.20
2. Car dealer sold Car of Rs.60 lakhs to Mr. Aditya	No	TCS covered in 206C(1F)
3. Sale of Goods of Rs.75 lakhs including services supply of Rs.25 lakhs	No	Sale of goods except services value not exceeding 50 Lakhs
4. A seller started business in July 2020 & made a sale of Rs. 1 crore to Mr. Shanker	No	Seller is not satisfying tuover limit of Rs.10 crore in last year
5. Building material supplied to Municipality	No	'Buyer' definition excludes local Authority
6. Mr. Rakesh sold Shares of Reliance company held as 'Investment' for Rs. 90 Lakhs	No	Firstly the shares sold in personal capacity not carrying any business and secondly CBDT Circu. No.17 applies

## E. Rate of TCS

Basic Rate	Revised Rate for 01.10.20 to 31.03.2021	Whether PAN/Aadhaar furnished by buyer ?
0.1%	0.075%	YES
1%	1%	NO

- The rate of TCS is reduced to 0.075% from 14-05-2020 to 31-03-2021. Since this provision has come into effect from 01-10-2020, the reduced rate of TCS shall apply from the 1st day of its applicability till the end of FY 2020-21.
- Where the buyer does not furnish PAN/Aadhaar, there will be no reduction in the basic rate as stipulated in respective section. [Para 4 of CBDT Press Release dt. 13.5.2020]
- The Surcharge and Health & Education Cess are not applicable in case of resident Indian but applicable in case of foreign company and non-resident Indian



## F. Due date for filing of TCS Return

The TCS return in Form 27EQ shall be filed with the Income Tax Department on quarterly basis within 15 days from the end of the month in which the TCS was collected except for the last quarter which is furnished till 15<sup>th</sup> may, simply mentioned in table below:

Quarter	Due dates
Quarter-1 (Apr to Jun)	15 <sup>th</sup> July of current FY
Quarter-2 (Jul to Sept)	15 <sup>th</sup> October of current FY
Quarter-3 (Oct to Dec)	15 <sup>th</sup> January of current FY
Quarter-4 (Jan to Mar)	15 <sup>th</sup> May of the next financial year

- In case the TCS return was not filed within due dates specified, or delayed in filing the return, then the collector shall be liable to pay late fees of Rs. 200 per day till the default continues u/s 234E. The amount of late fees payable before filing return and shall not exceed the amount collectible or collected.
- If the person has not filed or does not file it by due dates or furnished inaccurate details, he shall be liable to pay penalty u/s 271H. The amount of penalty under section 271H for the said defaults is Rs. 10,000 which may extend to Rs. 1,00,000/-.

## G. Failure to collect & pay TCS

- If any person, who is liable to collect TCS, fails to collect, whether full or part and after collection fails to deposit the same to government account, then he shall be treated as assessee in default.

# Thank You!...

**Presented By: CA. Sanjay**

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