

FAQs on new provision requiring collection of TCS on sale of goods

With effect from 01-10-2020, the Finance Act, 2020 inserted Sub-Section (1H) in Section 206C. This provision requires a seller to collect tax at source from the amount received as consideration for the sale of goods if it exceeds Rs. 50 lakhs in any previous year. To clarify certain doubts about the applicability of the provision and the computation of the threshold, the CBDT has issued Circular No. 17/2020, dated 29-09-2020.

In this article, we have covered all Frequently Asked Questions (FAQs) about the requirement to collect TCS on sale of goods with effect from 01-10-2020.

Q 1. Who is liable to collect tax on the sale of Goods?

Tax is required to be collected by a person carrying on business whose total sales, gross receipts or turnover exceeds Rs. 10 crores in the financial year immediately preceding the financial year of sale.

Example, the liability to collect tax in the financial year 2020-21 arises if the turnover was more than Rs. 10 crores in FY 2019-20. There is no obligation to collect TCS in financial year 2020-21 if turnover was less than Rs. 10 crores in financial year 2019-20.

Q 2. From whom tax shall be collected?

The tax shall be collected from a buyer if the following conditions are satisfied:

- (a) There is a sale of goods to such a person;
- (b) The seller receives any amount as consideration for the sale of any goods of the value or aggregate of such value exceeding Rs. 50 lakhs in any previous year; and
- (c) The buyer should not be in the list of persons excluded from the provision for collection of tax.

The list includes: Central Government; State Government; An Embassy, High Commission, a Legation, a Commission, a Consulate or Trade Representation of a Foreign state; Local Authority; A person importing goods into India; and Any other notified person.

Q 3. What shall be the timing of collection of tax?

Following three interpretations can be derived after a plain reading of the provision:

- (a) Tax to be collected when both the amount of sale and the amount received as sale consideration exceeds Rs. 50 lakhs during the previous year;
- (b) Tax to be collected when the amount of sale exceeds Rs. 50 lakhs irrespective of the amount of sale consideration received during the previous year; or
- (c) Tax to be collected when the amount received as sale consideration exceeds Rs. 50 lakhs irrespective of the amount of sale made during the previous year.

Consequently, it would apply on all sale consideration (including advance received for sale) received on or after 01-10-2020 even if the sale was carried out before 01-10-2020.

Thus, the tax should be collected at the time of receipt of amount from the buyer if the value of sale consideration received in a previous year exceeds Rs. 50 lakhs.

Q 4. Is a non-resident, selling goods from outside India, required to collect tax at source under this section?

The definition of a buyer in Explanation to Section 206C(1H) specifically excludes 'any person importing goods into India' from its ambit. Hence, the obligation to collect tax at source is not triggered in the hands of the non-resident seller.

Q 5. In absence of any definition of 'goods', what shall be construed as a sale of goods?

The definition of term 'goods' can be referred to from the Sale of Goods Act, 1930 for the purpose of Section 206C(1H).

Thus, the tax shall be collected from the sale consideration received from the sale of any good, provided the tax is not collected or deducted under any other provision. Therefore, the tax to be collected from the receipt of consideration in respect of the sale of the following:

Movable property; Any commodity; Shares or Securities; Electricity; Agriculture produce; Fuel; Motor vehicle; Liquor; Jewellery or bullion; Art or Drawings; Sculptures; Scraps; Forest produce, etc.

Q 6. Whether a transaction in securities through stock exchanges shall be subject to TCS under this provision?

The CBDT has clarified that provisions of this section shall not be applicable in relation to transactions in securities (and commodities) which are traded through recognised stock exchanges or cleared and settled by the recognised clearing corporation, including recognised stock exchanges or recognised clearing corporations located in International Financial Service Centre (IFSC).

Q 7. Whether TCS to be collected on the sale of immovable property by a developer?

As referred to above, 'goods' means every kind of movable property subject to certain exceptions and inclusions. Thus, the immovable property shall not be treated as 'goods'. Consequently, the TCS shall not be collected from the sale of immovable property by a developer.

Q 8. Whether TCS shall be collected on the sale of a motor vehicle?

There is a specific provision in Section 206C(1F) for the collection of tax on the sale of a motor vehicle. The CBDT has clarified that the provisions of Section 206C(1F) will not apply on sale of motor vehicles by manufacturers to dealers/distributors. The CBDT vide Circular No. 17, dated 29-09-2020 now clarifies that the tax shall be collected under Section 206C(1F) in the case of sale of a motor vehicle to a consumer (B2C), and sub-section (1H) shall apply for the sale of motor vehicle to the dealers or distributors (B2B). Hence, the sale of Motor vehicles to dealers which is not covered in section 1(F) shall be subject to TCS under this new provision. Further, sales to consumer where the consideration for a single vehicle is less than Rs. 10 lakhs but the aggregate value of which exceeds Rs. 50 Lakhs during a previous year, it shall be subject to TCS under this new provision.

Q 9. Whether TCS is required to be collected on transaction in electricity?

Thus, it can be concluded that tax is required to be collected where electricity is purchased directly from electricity generation companies.

Q 10. Whether Fuel supplied to non-resident airlines be subject to TCS under this provision?

A concern has been raised whether the tax should be collected from the supply of fuel to non-resident airlines. The CBDT vide Circular No. 17, dated 29-09-2020 has clarified that the provisions of this section shall not apply on the sale consideration received from the fuel supplied to non-resident airlines at airports in India.

Q 11. Whether TCS should be collected on the sale of software?

The Supreme Court in its landmark decision of Tata Consultancy Services v. State of A.P [2004] 141 Taxman 132 (SC) held that Canned software (off the shelf computer software) are 'goods' and as such assessable to sales tax. Hence, the requirement to collect TCS shall be decided on the basis whether the sale of software has been treated as 'sale of goods' or 'sale of service'. If the same has been treated as a sale of service, it shall not be subject to TCS but the provisions of TDS under section 194J or 195, as the case may be, may apply. However, if the sale of software has been treated as a sale of goods then the seller shall be liable to collect TCS subject to the fulfilment of other conditions of this provision.

Q 12. Whether TCS is liable to be collected on Sale of Jewellery by a Jeweller?

Up to the previous year 2016-17, Section 206C(1D) requires the collection of tax at source at the rate of 1% from the sale consideration received on cash sale of bullion, jewellery or any

other goods or for providing any service. The aforesaid provision has been omitted by the Finance Act, 2017 with effect from 1-4-2017.

The Finance Act 2020 has introduced a general provision for collection of TCS on sale of goods. Jewellery, being a movable property, is covered within the term goods. There is no specific exclusion under Section 206C(1H) for collection of TCS on sale of jewellery. Thus, a Jeweller shall be liable for the collection of tax if other conditions are also fulfilled.

Q 13. Whether TCS is liable to be collected from re-sale of goods?

Under Section 206C(1H), a person shall be treated as a seller if the total sales, gross receipts or **turnover of the business carried** on by him exceeds the threshold limit. However, if a person, re-selling the goods, **is not engaged in carrying on of any business**, no tax shall be collected under this provision.

Q 14. Whether additional, allied and out-of-pocket expenses form part of sale consideration?

Where these expenses have been reflected in the sales invoice itself, it should form part of the sale consideration. If they are charged through a separate invoice, it should not form part of the sale consideration.

Q 15. At what rate tax is to be collected?

The tax shall be collected by the seller of goods at the rate of 0.1% of the sale consideration exceeding Rs. 50 lakhs (The rate of TCS on sale of goods shall be 0.075% till 31-03-2021). If the buyer has furnished his PAN or Aadhaar, otherwise, the tax shall be collected at the rate of 1%. However, the rate of TCS shall be increased by the applicable surcharge and health and education cess if the payee is a non-resident person or a foreign company.

Q 16. From which date the threshold limit of Rs. 50 lakhs will be computed?

The CBDT vide Circular No. 17, dated 29-09-2020, has clarified that since the threshold of Rs. 50 lakhs is with respect to the previous year, calculation of sale consideration for triggering TCS under this provision 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, TCS under this provision shall apply on all receipts of sale consideration on or after 01-10-2020.

Q 17. Whether TCS is to be collected on the total invoice value including the GST?

Section 206C(1H) provides that TCS shall be collected on the consideration for "sale of any goods". Thus, in common parlance, the price bargained for the goods could be regarded as consideration of goods. The question arises whether the GST shall form part of the consideration or not.

The CBDT vide Circular No. 17, dated 29-09-2020, has clarified that since the collection is made with reference to 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.

Q 18. Whether TCS has to be collected on advance received from the buyer?

As long as the intention is to adjust the advance payment against the future sale of goods, the tax should be collected at the time of receipt of consideration. If the advance payment is not made with an intention to adjust it against future sale (deposit or loan) but eventually it is adjusted against the future sale, no tax is required to be collected at the time of receipt of such advance.

Q 19. Whether advance received before 01-10-2020 for sale to be made after this date will be subjected to TCS?

Where the trigger event (i.e., receipt of sale consideration) has occurred before the date of applicability of provision, no liability to collect tax will arise. On the contrary, where the sale has been made before the date of applicability of the provision but the sale consideration is received after the said date, the same shall be subject to TCS.

Q 20. Whether the amount received as loan from buyer shall come within the ambit of this provision?

The requirement to collect TCS under this provision arises if the sale consideration received during the previous years exceeds the threshold. The collection is to be made at the time of receipt of the consideration for the sale of goods. Since the loan received from the buyers is not a consideration towards the sale of goods, it shall remain outside the purview of this provision. Hence, there is no requirement to collect TCS on loan received from the buyer. However, if at any future date, such loan amount is settled against sales consideration the liability to collect TCS shall arise. The tax shall be collected on the date on which parties agreed to adjust the loan amount against the outstanding liability.

Q 21. Whether tax to be collected on the transfer of goods from one branch to another?

The TCS under this section is required to be collected by any person, being a seller receiving consideration for the sale of goods. Thus, the existence of two distinct parties as 'seller' and 'buyer' is a pre-requisite to construe a transaction as a sale. The condition of sale is not fulfilled in the context of branch transfer. Therefore, the provisions of this section shall not apply in the case of branch transfers.

Q 22. What shall be the treatment of credit note for computation of TCS?

As the tax has to be computed on the consideration received from the buyer, the adjustment made to the ledger of the buyer by issuing the credit note will not have an impact on the tax to be collected. The position would remain the same if, after the collection of tax, the seller repays some consideration to the buyer. In such a situation, the amount of sale consideration so received by the seller shall not be reduced with the amount so refunded for calculation of TCS.

Q 23. If the buyer has multiple units, whether sales made to different units need to be aggregated?

Where tax is required to be collected at source, the collectee is required to furnish his PAN or Aadhaar number to the collector failing which the tax is required to be collected at higher rates. If the PAN or Aadhaar number is available, the threshold limit of Rs. 50 lakhs shall be computed in respect of each PAN or Aadhaar number. In other words, if different units of buyer are under the same PAN or Aadhaar number, the amount received from all such units shall be aggregated to compute the limit of Rs. 50 Lakhs.

Q 24. Can a buyer apply for the certificate for lower collection of TCS?

An assessee can apply to the Assessing Officer to issue a certificate for collection of tax at lower rates. Such certificate shall be issued if existing and estimated tax liability of assessee justifies collection of tax at a lower rate.

However, Section 206C(9) of the Income-tax Act does not extend the benefit to apply for lower tax collection at source for the section 206C(1H). Hence, the assessee does not have the option to approach the assessing officer to issue lower tax collection certificate for transactions covered under section 206C(1H).

Q 25. How to deposit the TCS?

A corporate assessee and other assesseees (who are subject to tax audit under Section 44AB) will have to make payment of tax (including TCS) electronically through internet banking facility or by way of debit cards. To deposit the tax, the collector has to fill the Challan No. ITNS 281.

Other collectors can deposit the tax so collected into any branch of the RBI or the State Bank of India or of any authorized bank.

Q 26. What is the due date to deposit TCS?

Tax collected during the month shall be deposited on or before 7th day of the next month in which tax has been collected.

Q 27. What shall be consequences for failure to collect or pay TCS?

If any person, responsible for the collection of tax at source, fails to collect the whole or any part of the tax or after collection fails to deposit the same to the credit of the Central Government, then he shall be deemed to be assessee-in-default.

If a collector 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. The interest shall be calculated for the period starting from the date on which tax was required to be collected and ending on the date on which tax is deposited. The interest is required to be paid before furnishing the TCS return.

Q 28. Whether seller shall be treated as assessee in default if the buyer pays tax due on the income declared in the return of income?

A seller is not deemed to be in default if the amount is received from a person who has considered such amount while computing income in the return and has paid the tax due on such declared income. The receiver will have to obtain a certificate to this effect from a Chartered Accountant in Form No. 27BA and submit it electronically.

However, this relief is allowed only in respect of the following:

1. Sale of alcoholic liquor, scrap, etc. [Section 206C(1)]
2. Lease or licensing of parking lot or toll plaza or mine or quarry [Section 206C(1C)]

There is no reference of Section 206C(1H) under the provision providing the relief from being treated as an assessee in default. Hence, the seller shall continue to be deemed as assessee-in-default even if the buyer has taken in to account the purchase amount while computing his income and has paid tax due on the income declared in the return.

Q 29. What is the due date for filing of TCS return?

The statement of tax collected at source shall be filed with the Income-tax Department in Form 27EQ on a quarterly basis.

April- June	15th July of the Financial Year
July- September	15th October of the Financial Year
October- December	15th January of the Financial Year
January- March	15th May of the financial year immediately following the financial year in which collection is made

Q 30. What shall be consequences of non-filing of TCS return?

If there is a delay in filing of TCS return, the late filing fee shall be payable under Section 234E. The fee for default in furnishing the TDS/TCS Statement shall be levied at the rate of Rs. 200 per day during which such failure continues. However, the amount of fee shall not exceed the total amount deductible or collectable, as the case may be. The fee shall be payable before submission of the belated TDS/TCS Statement.

If a person fails to file the TCS return or does not file it by the due dates, he shall be liable to pay penalty under Section 271H. The penalty under Section 271H is also levied in case of furnishing of inaccurate information under TCS return. The minimum amount of penalty for failure to furnish TCS return or providing inaccurate information therein is Rs. 10,000 which can go up to Rs. 100,000.