



# **The Chamber of Tax Consultants**

**TCS Provisions applicable from  
1<sup>st</sup> October, 2020**

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**15<sup>th</sup> October, 2020**

# TCS – Section 206C – LRS

- Authorised Dealer to collect TCS for remittance out of India if amount of remittance exceeds 7 Lakhs in a financial year from a buyer under Liberalised Remittance Scheme of RBI
- Tax Rate 5% – Sec. 206CC – 10% if PAN is not furnished
- **Finance Act Amendments :**
  - Applicability has been deferred w.e.f. 1-10-20
  - TCS will be @ 5% of the amount in excess of 7 Lakhs – 7 Lakhs becomes a threshold – 2<sup>nd</sup> Proviso
  - If the LRS is on account of Education Loan from financial institution as defined in section 80E – Rate of collection will be 0.5% instead of 5% – 3<sup>rd</sup> Proviso

# TCS – Section 206C – Overseas Tour Program Package

- Seller of overseas tour program package to collect TCS from buyer of such package
- Overseas tour program package
  - Means any tour package offering visit to a country outside India and
  - Includes Exps for Travel or hotel stay or boarding and lodging or any similar expenses in relation to the tour
  - No difference between business tour and personal tour
- No Threshold
- Tax Rate 5% – Sec. 206CC – 10% if PAN is not furnished
- **Finance Act : Applicability deferred to 1-10-20**

# TCS – LRS & Overseas Tour

- Not applicable if
  - Buyer is liable to deduct TDS and has deducted
  - Buyer is Central / State Government, Embassy, High Commission etc.
- Remittance directly made by the buyer under LRS for the purpose of Overseas Hotel Booking or any other travel related expenses – Threshold of seven lakhs will not be available.
- Authorised Dealer not to collect TCS from seller of Overseas Tour Program package – 4<sup>th</sup> Proviso
- Over the counter sale of Foreign Currency or Travel Card by Authorised Dealers – Whether covered under LRS ?

# INCOME TAX



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

# TCS by seller of Any Goods – Section 206C – (1H) – Provisions

- Every person being a seller who
- Receives any amount as consideration for sale of any goods exceeding Rs. 50 Lakhs in any previous year
- Liable to collect **at the time of receipt of such amount**
- TCS @ 0.1% (0.075% till 31-3-21) **of sale consideration exceeding Rs. 50 Lakhs** as Income-tax
- If PAN or Aadhar not furnished – rate will be 1% (0.75% till 31-3-21)

# TCS by seller of Any Goods – Section 206C – (1H) – Provisions

- Excluded Goods
  - Goods exported out of India – (Deemed exports not covered)
    - Not applicable to Fuel supplied to Non-resident Airlines at Airports in India – Para 4.7 of Circular No. 17
  - Goods covered by sub section (1) or (1F) or (1G)
- No TCS if Buyer is liable to deduct TDS and has actually deducted
- Excluded Buyers
  - **Importer**
  - Central / State Government / Local Authorities / Embassy etc.
  - Persons to be Notified

# TCS by seller of Any Goods – Section 206C – (1H) – Provisions

- 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 financial year
  - In which sale of goods is carried out
- Sellers can be notified by Government for exclusion with conditions specified

# TCS by seller – Summary

- TCS is to be collected at the time of receipt of the amount
- However, TCS is to be computed as a % of sale consideration
- Basic Threshold of Rs. 50 Lakhs is provided – TCS to be collected only on amount in excess of 50 Lakhs
- Export and Import transactions are excluded – FA amendment
- Government as a buyer is excluded but government companies as seller is not excluded
- Applicable where sales, turnover, gross receipts in business of seller exceeded 10 Crore in immediately preceding financial year
- Lower collection certificate is not possible – Not covered by sub. Section 9
- If TDS deducted by buyer – TCS does not apply – Availability of trail

# TCS by seller – Issues



- Whether TCS is required where amount is received post 1-10-20 but sales made
  - In FY 20-21 prior to 1-10-20
  - In earlier financial years
    - Circular No. 17 Dt. 29-9-20 Para 4.4.2 (ii)
    - Press Release dated 30-9-20 – purpose explained – for simplicity
- Amount received upto 30-9-20 Rs. 35 Lakhs + Received from October to March Rs. 30 Lakhs – Whether TCS applicable ?
  - Circular No. 17 Dt. 29-9-20 Para 4.4.2 (iii)
    - For computation of Threshold – receipts from April to September are to be included – However TCS will apply only on the receipts post 1-10-20 (press release dated 30-9-20)
    - In our Example – applicable on 15 Lakhs
    - If Receipt upto September 60 lakhs – Receipt from October 2020 30 Lakhs – TCS will apply on 30 Lakhs

# TCS by seller – Issues

- Whether TCS is to be charged in Sales Invoice
- If not then How to account for it ?
- Whether TCS is to be collected on GST portion
  - Circular No. 17 says GST is part of Turnover for TCS ???
- Whether GST to be levied on TCS if it is part of Invoice – CBDT circular in relation to TDS
  - CBIC Circular No. 76/50 dated 31-12-18 – Taxable value for the purpose of GST is inclusive of TCS
  - Corrigendum dated 7-3-2019 – Reconsidered in consultation with CBDT – TCS is not a tax on goods but an interim levy

# TCS by seller – Issues

- What if there is no Sales in the current FY but amount is receivable from earlier balance – Can the assessee be said to be a Seller ? Which year's Turnover is to be checked?
- In the year of No Sales – there can be inquiry from department for TCS collected but transaction not reflected
- Advance received for future sales whether TCS applies
  - Can it be said as consideration for sale of any goods ? – Section 4(3) of Sale of Goods Act
  - What if the Advance is subsequently returned back and there is no sale
  - Circular No. 17 – para 4.4.2 (ii) –

# TCS by seller – Issues

- What about Sales Return ? – Circular No. 17 Para 4.6
- Effect of Discounts and Incentives
- Interest on delayed payment from customer ?
- For deciding the amount of Rs. 10 Crores, whether GST is to be added or not
- Assessee engaged in Goods and Services both
  - Whether Receipts from Service to be considered for deciding Turnover of earlier year
  - Whether current year's service receipts from a party to be included for deciding threshold of Rs. 50 Lakhs
- In the earlier year Turnover – Rs. 9.50 Crores and Interest Income is Rs. 60 Lakhs – whether TCS applicable

# TCS by seller – Issues

- Whether TCS applies to sale of Immovable Properties
- Whether TCS applies on sale of Shares and Securities
  - Transaction on Exchange
    - Para 4.1.2 of Circular No. 17 of 2020 dated 29-9-20
      - Not applicable for securities and commodities traded through recognised stock exchanges or cleared through recognised clearing corporation
      - Not applicable for sale of electricity, renewable energy certificate and energy saving certificate through registered power exchange
    - Off market transaction and both parties are dealers in shares ?
- Whether TCS is to be collected on sale of software ?
  - Goods Vs. Services
  - Tata Consultancy Services Vs. State of Andhra Pradesh 141 Taxman 132 (SC)
  - Applicability of Section 194J or 195
- Whether TCS is applicable where the assessee sales his furniture / machinery for more than Rs. 50 Lakhs during the year

# TCS by seller – Issues

- Purpose of goods for the Buyer buying goods whether relevant ?
  - Purchase as Capital Asset
  - Purchase for personal use
- When the buyer will be eligible to credit of TCS – year of purchase or year of TCS collection
  - Section 199 in relation to TDS
  - Rule 37-I of Income Tax Rules – sub rule (2A) inserted from 1-10-20
- Buying and selling from same person – Accounts settled without receipt and payment by mutual set off of balances – Whether TCS applicable ? How ?
- Seller not collecting TCS but buyer discharging his tax liability – Whether seller is Assessee in Default
  - Proviso to sub section 6A does not cover sub section (1H)

# Overlapping of sub section (1F) and (1H)

- Sub-section (1H) excludes goods covered under sub section (1) or (1F)
- Circular No. 17 Dated 29-9-20
  - Overlapping between Sub Section (1F) – Sale of Motor Vehicle and (1H) – Sale of Goods
  - Sub section (1F) is applicable for sale to consumers but sub section (1H) is applicable to receipts from debtors
  - TCS under sub-section (1H) is applicable if it is not subjected to TCS under sub section (1F).
  - In case of sale to consumer – for motor vehicle each less than 10 Lakhs but total receipt is more than 50 Lakhs – TCS under sub section (1H) is applicable
  - For Sale to Consumer – Sub section (1H) will not apply if it is covered by sub section (1F)

# Applicability in various situations

Sales		Receipt		Amt. subjected to TCS	Reason
Upto 1-10-20 (Including earlier FY)	After 1-10-20	April to Sept 2020	After 1-10-20		
15 Lakh	45 Lakh	10 Lakh	39 Lakh	Nil	Receipts < 50 Lakh
60 Lakh	30 Lakh	55 Lakh	35 Lakh	35 Lakh	Receipt > 50 Lakh but applicable only on amt from 1-10-20
60 Lakh	30 Lakh	85 Lakh (inc. Adv)	10000	10000	Advance received earlier will be considered as consideration for sales post 1-10-20 when actual sales is made

# Applicability in various situations

Sales		Receipt		Amt. subjected to TCS	Reason
Upto 1-10-20 (Including earlier FY)	After 1-10-20	April to Sept 2020	After 1-10-20		
64 Lakh	Nil	10 Lakh	54 Lakh	14 Lakh	Receipts > 50 Lakhs - No sales post 1-10-20 is irrelevant
30 Lakh	55 Lakh	Nil	35 Lakh	Nil	Receipts < 50 Lakhs - Sales post 1-10-20 is more than 50 Lakh is irrelevant
Nil	Nil	Nil	55 Lakh (Adv)	Nil (As per Cir No. 17 - 5 Lakhs)	Not received as consideration for sale of goods





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