

The Chamber of Tax Consultants

Recent Developments in TDS and TCS

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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
- Not applicable if
 - Buyer is liable to deduct TDS and has deducted
 - Buyer is Central / State Government, Embassy, High Commission etc.
- **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
 - 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%

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
- Not applicable if
 - Buyer is liable to deduct TDS and has deducted
 - Buyer is Central / State Government, Embassy, High Commission etc.
- **Finance Act : Applicability deferred to 1-10-20**

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
 - 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
- Amount received upto 30-9-20 Rs. 35 Lakhs + Received from October to March Rs. 30 Lakhs – Whether TCS applicable ?
- Whether TCS is to be charged in Sales Invoice
- If not then How to account for it ?

TCS by seller – Issues

- Whether TCS is to be collected on GST portion
- Whether GST to be levied on TCS if it is part of Invoice – CBDT circular in relation to TDS
- 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

TCS by seller – Issues

- Advance received for future sales whether TCS applies
 - Can it be said as consideration for sale of any goods ?
 - What if the Advance is subsequently returned back and there is no sale
- For deciding the amount of Rs. 10 Crores, whether GST is to be added or not
- In the earlier year Turnover – Rs. 9.50 Crores and Interest Income is Rs. 60 Lakhs – whether TCS applicable
- Whether TCS applies to sale of Immovable Properties ?

TCS by seller – Issues

- Whether TCS applies on sale of Shares and Securities – off market transaction and both parties are dealers in shares
- Whether TCS is applicable where the assessee sales his furniture / machinery for more than Rs. 50 Lakhs during the year
- Buyer buying goods as Capital Asset – whether relevant
- When the buyer will claim credit of TCS – year of purchase or year of TCS collection – section 199 in relation to TDS
- Buying and selling from same person – Accounts settled without receipt and payment by mutual set off of balances – Whether TCS applicable ? How ?

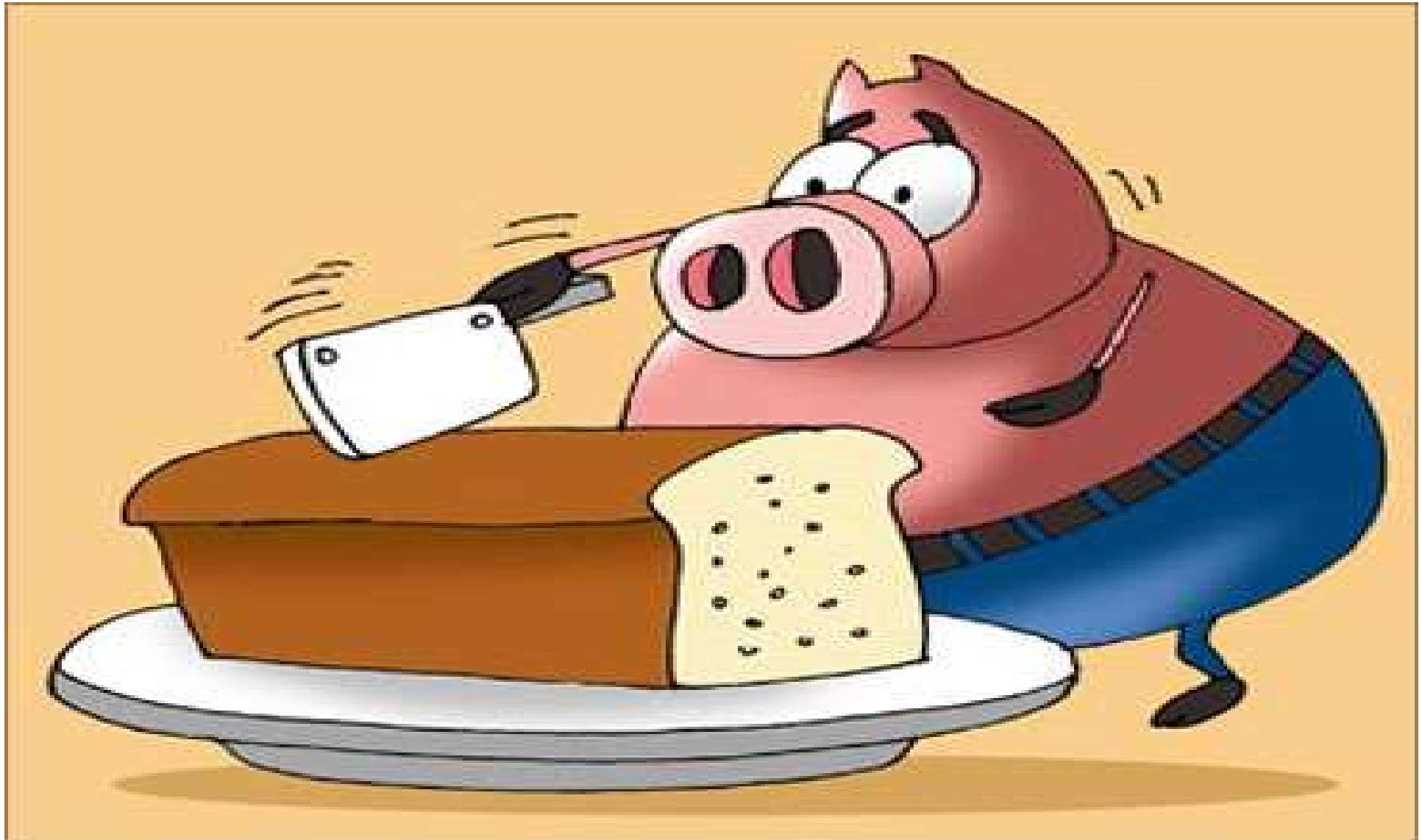
Applicability in various situations

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		
60 Lakh	30 Lakh	55 Lakh	35 Lakh	40 Lakh	Receipt > 50 Lakh
60 Lakh	30 Lakh	85 Lakh (inc. Adv)	10000	35.10 Lakh	Advance received earlier will be considered as consideration for sales post 1-10-20 when actual sales is made
15 Lakh	45 Lakh	10 Lakh	39 Lakh	Nil	Receipts < 50 Lakh

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	Not received as consideration for sale of goods

Tax Deduction at Source



Section 194N



- TDS to be deducted by Banking Co. / Co. Op. Bank / Post Office on amount withdrawn from bank from one or more accounts
- Threshold – 1 Crore
- Rate of TDS : 2% on sum exceeding 1 Crore
- Exceptions
 - Payment to Govt. / Banks / Post Office
 - Business correspondent of Bank
 - White label ATM operator of banks authorised by RBI
 - Such other person or class of person as may be notified
- Effective Date : 1st September 2019

Replacement of Section 194N

- Finance Act : Substituted the section 194N w.e.f. 1-7-20
- In the case of a recipient who has not filed the Returns of Income for all the three Assessment Years for which the time limit u/s. 139(1) has expired, before the previous year in which the payment of the sum is made :
 - Threshold amount will be Rs. 20 Lakhs instead of 1 Crore – Deduction to be made @ 2%
 - If it exceeds 1 Crore – deduction will be @ 5%
- If the Return for AY 19-20, 18-19 and 17-18 are not filed then this will apply

Section 194N – Issues

- TDS is Tax on Income – Whether there is any Income at the time of withdrawal of money from bank account
 - Tirunelveli District Central Co. Op. Bank Ltd. Vs. JCIT (TDS) (2020) 119 taxman.com 21(Mad) – *If the sum received by the assessee is not income in his case, Section 194N will not apply*
- Section 199 – TDS credit will be available in the year in which income is offered to tax

Section 194N – Return filing Issues

- What if one of the years' Return is filed – Two years not filed
- What if the Return/s are filed beyond due date u/s. 139(1)
- Return not filed since income below threshold
- Newly incorporated entities
- Extra Burden on Banks to determine the correct threshold and rate

TDS by E-commerce Operators



- New Section 194O inserted w.e.f. 1-10-2020 (Earlier 1-4-20) by Finance Act 2020
- Section 194O – applicable for sale of goods or provision of services of E-commerce participants facilitated by E-commerce operators
- E-commerce operator to deduct TDS from payments to be made to E-commerce participants
- TDS Rate – 1% of gross amount of sale / service / both
- If PAN not furnished – TDS @ 5% – section 206AA amended

TDS by E-commerce Operators

- Payment made by purchaser of goods or services directly to participant shall be deemed to be payment made by E-commerce operator to participant
- **Finance Act Amendment**
 - Definition of E-commerce operator initially had a condition that he shall be responsible for paying to E-commerce participant
 - Anomaly due to the language where payment is directly made by purchaser of goods or services
 - Anomaly now removed by Finance Act by amending definition of E-commerce operator
 - Also sub-section (6) inserted – For the purpose of this section E-commerce operator shall be deemed to be the person responsible for paying to E-commerce participant

TDS by E-commerce Operators

- Threshold Amount
 - Participant is Individual or HUF and furnishes PAN or Aadhar Number → 5 Lakhs
 - Otherwise → No Threshold
- A transaction in respect of which TDS has been deducted u/s. 194O or no deduction is required due to threshold limits will not be subjected to TDS under any other provisions.
- E-commerce participants will continue to make TDS from E-commerce operator's Income u/s. 194C, 194I, 194J etc. as applicable – Two way TDS
- If E-commerce operator is Non-resident, Equalisation Levy will be applicable

Sub-section (4) and (5) by FA

- Sub-section (4) & (5) inserted by Finance Act while enacting
- CBDT has acquired power to issue guidelines to remove any difficulty in implementation of the provisions of the section
- Guidelines to be issued with the approval of Central Government
- Guidelines to be laid before both houses of Parliament and shall be binding on authorities and E-commerce operator

Issues



- E-commerce operator receives Cash on Delivery from customer – How TDS will be deducted ?
- What about Goods Returned ?
- Aggregator Model – Ola / Uber / Urban Clap etc.
- Part payment to operator and part payment to participants
- A Non-resident operator will also need to deduct TDS from Resident participant
 - No Change contrary to expectation
 - Section 204 – person responsible for paying
 - Person himself / Authorised Person / Agent u/s. 163 included
- Gross amount of Sale or Service – whether GST will be included in this – Earlier CBDT circular for other sections

Section 194M

- Applicable to Individual / HUF
- Other than required to deduct TDS u/s. 194C, 194H and 194J
- Responsible for payment for any work / commission or brokerage / prof. fees paid to a resident
- Rate of TDS – 5%
- Threshold – 50 Lakhs
- Sec. 203A – Requirement of TAN not applicable
- Coverage
 - Personal payments
 - Payments of Business if no Tax Audit applicable
- Effective Date : 1st September 2019

TDS Provisions – Sec. 194M



- Issue : If Tax audit applicable – whether TDS will be required on personal payments ??
- 194M – applies to Individuals / HUF (Other than those who are required to deduct income tax as per provisions of 194C, 194H or 194J)
- 194C – sub-section (4) – personal payments excluded
- 194J – third proviso to sub section (1) – personal payments excluded
- 194H – No such exclusion for personal payments

Section 194 & 195 – Dividends

- Change in method of taxing dividends
- Abolition of Dividend Distribution Tax
- TDS on dividend @ 10%
- Threshold – Rs. 5,000/- for Individuals only
- No threshold for HUF etc
- Dividend paid to LIC / GIC or any other Insurance company not subjected to TDS
- Section 195 – TDS on Dividend by Non-residents at Rates in Force

Section 194A

- TDS not applicable where Co-operative Societies (other than Co-op Bank) make payment of Interest to its members or to any other co-operative society
- Amendment : TDS will be required if the total sales / gross receipts / turnover of the Co-operative society exceeds 50 Crore
- Threshold of Rs. 50,000 for senior citizens and Rs. 40,000 for others available
- Discouraging deposits with larger societies

TDS – Section 194C

- Section 194C is not applicable where the transaction is for sale of goods even if the specifications are given by customer
 - CIT Vs. Reebok India Co. 306 ITR 124 (Del.)
 - CIT Vs. Glenmark Pharmaceuticals Ltd. 324 ITR 199 (Bom.)
- Works contract includes manufacturing or supplying a product according to requirement or specification of a customer **by using material purchased from such customer**
- Amendment : If material is purchased from an associate or related party of the customer also it will be treated as works contract and TDS provisions will apply
- Purpose : To overcome the cases of avoiding TDS provisions by resorting to purchase from associated parties
- Difficulty in identifying the associate or related party of customer
- Certification by Tax Auditor

TDS – Section 194J

- Section 194 J – TDS rate in case of fees for technical services is reduced from 10% to 2% w.e.f. 1-4-2020 if it is not in the nature of professional services
- **Finance Act : TDS on Royalties where such royalty is in the nature of consideration for sale, distribution or exhibition of a cinematographic film will also be subjected to TDS @ 2%**
- Professions are notified under section 44AA
 - Accountancy
 - Architectural
 - Authorised Representative
 - Company Secretary
 - Engineering
 - Film Artists/Actors, Cameraman, Director, Singer, Story-writer etc.
 - Interior Decoration
 - Legal
 - Medical
 - **Technical Consultancy**

Section 194K

- Deduction by MF for payment to a resident @ 10% w.e.f. 1-4-20 Threshold – Rs. 5,000/-
- Language of section :
 - Any income in respect of units of Mutual Fund
- View that even Capital Gains will suffer TDS deductions
- Press note dated 4-2-20 clarifying that it will be only in respect of Dividend from Mutual Fund and not for capital gains
- **Finance Act : Specifically provides that no TDS will apply if Income is of the nature of Capital Gains**

Few other Developments

- De-linking of TDS amount to Section 44AB – Express mention of Rs. 1 Crore as Turnover in cases of Individual and HUF
- Reduction in rates of TDS and TCS to 75% of normal rates due to Covid – 19
 - Press Release dated 13th May, 2020
 - The Taxation & Other Laws (Relaxation and Amendment of Certain Provisions) Bill 2020
 - Section 197B and section 206C (10A)
- Lower Deduction Certificates obtained in FY 2019–20 valid upto 30–9–20 – Renewal due now
- No Extension of TDS Statements for Q4 of FY 2019–20 or for furnishing certificates





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