With Blessings of Devi Saraswati

Provisions applicable w.e.f 01.10.2020

- u/s 206C[1H] -seller to collect TCS from the amount received as consideration for the sale of goods if it exceeds Rs. 50 lakhs in any previous year.
- u/s 206C [1G]a **Authorised dealer receiving an amount or an aggregate of amounts of seven lakh rupees or more in a financial year for remittance out of India under the LRS of RBI, must collect TCS, if he receives sum in excess of said amount from a buyer being a person remitting such amount out of India @5%. In non-PAN/ Aadhaar @10%
- u/s 206C[1G]b – Seller of an overseas tour program package receiving any amount from any buyer of a package, to collect TCS @5%. In non-PAN/ Aadhaar @10%
- u/s 194O - E-commerce operator to deduct TDS for any Sale of Goods or providing services or both through an E-commerce participant.

SECTION 206C(1H)- TCS on Sale of Goods

Provisions of section 206C(1H)

Who to Collect TCS	Whom to Collect TCS from	Time of collection of TCS	Rate of TCS
• By seller • Seller means a person whose total sales, gross receipts or turnover from the business carried on by him exceed Rs.10 crore 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 Govt. may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein	TCS to be collected from such buyers to whom value or aggregate value of goods sold exceeds fifty lakh rupees in a previous year.	TCS is to be collected at the time of actual receipt of consideration by the seller.	• If PAN or Aadhaar No. is provided by buyer – 0.1% of the sale consideration exceeding fifty lakh rupees • In otherwise case – 1% of the sale consideration exceedingRupees fifty lakh.

Exempted Transactions

TCS u/s. 206C(1H) is not to be collected on following transactions:

- Sale of services either in India or outside India;
- Export of goods out of India (Whether SEZ covered?)
- Sale of goods covered by section 206C(1) and/or 206C(1F) and/or 206C(1G);
- If the buyer is liable to deduct TDS and has deducted TDS under any provision of the Act on the goods purchased by him from the seller;
- Sale of goods by such 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;
- Sale of goods to any of the following:

  – Central Government, a State Government, an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State; or

  – a local authority as defined in the Explanation to clause (20) of section 10; 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.

How to calculate limits?

- For the purpose of calculating threshold of Rs. 10 crores total sales, gross receipts or turnover from the business is to be taken into consideration i.e. sale of goods and services both shall be considered for calculating threshold of Rs.10 crores.
- Threshold of Rs.10 crores is to be checked for the previous year immediately preceding the previous year in which sales is carried out irrespective of the previous year in which consideration for sale of goods is actually received.
- For the purpose of calculating threshold of Rs. 50 Lakhs only sale of goods is to be taken into consideration.
- These thresholds are to be checked for each previous year separately.

Illustrations

Let us take a look on the following illustrative transactions assuming no sale is made on credit:

Sl. No	Seller	Buyer	Total Turnover of Seller		Aggregate value of Sales		TCS u/s. 206C (1H)	Remarks
			FY 19-20	FY 20-21	Upto 30.9.20	After 30.9.20		
1.	A	B	13 crores	8 crores	25 lakh	65 lakh	4,000	0.1% on 40 lakh (being excess of Rs. 50 lakhs)
2.	A	B	10 crores	13 crores	25 lakh	65 lakh	NA	Since turnover in FY 19-20 does not exceed Rs. 10 crores
3.	A	B	13 crores	15 crores	60 lakh	55 lakh	5,500	On Rs.55 lakh being turnover and receipt after 30.9.20

Illustrations-Cont…

Let us take a look on the following illustrative transactions assuming no sale is made on credit:

Sl. No	Seller	Buyer	Total Turnover of Seller		Aggregate value of Sales		TCS u/s. 206C (1H)	Remarks
			FY 19-20	FY 20-21	Upto 30.9.20	After 30.9.20		
4.	A	State Govt.	13 crores	15 crores	60 lakh	55 lakh	NA	Since section 206C (1H) is not applicable if buyer is State Govt.
5.	A (Job Worker	B (deducts TDS u/s. 194C)	13 crores	15 crores	60 lakh	55 lakh	NA	Since TDS is already deducted on this transaction
6.	A (Auto Dealer)	B	13 crores	15 crores	Nil	70 lakh	NA	Since on this transaction TCS shall be collected u/s. 206C(1F)

FAQs

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.

  The interpretation in the point (c) above shall be more convenient, realistic and reasonable and in support of this, we have the arguments discussed in the ensuing paragraphs.

- On the doubt of applicability of the TCS provision on the consideration received before 01-10-2020, the CBDT in Circular No. 17, dated 29-09-2020, at Para 4.4.2(ii) has clarified that "this provision applies on receipt of sale consideration, thus the provision of this sub-section shall not apply on any sale consideration received before 01-10-2020. 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". Though the clarification has been given in respect of another issue, but the language of the CBDT's circular indicates that the tax should be collected when the consideration received during the previous year exceeds the threshold limit. Further, it brings administrative convenience both for the collector and the revenue as it will be easy to correlate the actual receipt during the previous year with the tax so collected during the same period. Thus, the tax should be collected at the time of receipt of amount from the buyer if the value of sale ous year exceeds Rs. 50 lakhs.

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- Example, the applicability of rate of tax has been enumerated in the below table:

Particulars	2019-20	2020-21	2021-22	2022-23
Sale (A)	Rs. 60,00,000	Rs. 70,00,000	Rs. 55,00,000	Rs. 55,00,000
Outstanding balance as on the first day of the year (B)	-	Rs. 40,00,000	Rs. 10,00,000	Rs. 20,00,000
Total Receipt (C)	Rs. 20,00,000	Rs. 1,00,00,000 (Rs. 55 lakhs received on or before 30-09-2020)	Rs. 45,00,000	Rs. 65,00,000
Outstanding balance as on last day of the year (D = A+B–C)	Rs. 40,00,000	Rs. 10,00,000	Rs. 20,00,000	Rs. 10,00,000
Tax to be collected	Nil (Note 1)	Rs. 3,375 (note 2)	Nil (Note 3)	Rs. 1,500 (note 4)

- Note 1: As Section 206C(1H) is applicable from 01-10-2020, no tax to be collected in the financial year 2019-20.
- Note 2: Tax will be collected only in respect of sale consideration received on or after 01-10-2020, i.e. Rs. 45,00,000 * 0.075% = Rs. 3,375/-.
- Note 3: No tax shall be collected as the amount of sale consideration received during the year does not exceed Rs. 50 lakhs.
- n receipt in excess of Rs. 50 lakhs, i.e. 15,00,000 * 0.1% = 1,500.

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.

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

- The term 'goods' is not defined in the Income-tax Act. The term 'goods' is of wide import. Anything which comes to the market can be treated as goods. However, this term 'Goods' has been defined under the Sale of Goods Act, 1930 and Central Goods and Services Tax Act, 2017.
- **Sale of Goods Act, 1930**

  'Goods' means every kind of movable 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"
- **Central Goods and Services Tax Act, 2017**

  'Goods' means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply"
- The Sale of Goods Act, 1930 is a specific statute which deals with the 'sale of goods' whereas the CGST Act, 2017 deals with tax on 'supply of goods'. Thus, the definition of term 'goods' can be referred to from the Sale of Goods Act, 1930 for the purpose of Section 206C(1H).

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- 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:

  (a) Movable property;

  (b) Any commodity;

  (c) Shares or Securities;

  (d) Electricity;

  (e) Agriculture produce;

  (f) Fuel;

  (g) Motor vehicle;

  (h) Liquor;

  (i) Jewellery or bullion;

  (j) Art or Drawings;

  (k) Sculptures;

  (l) Scraps;

  (m) Forest produce, etc.

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

- Concerns have been raised about the applicability of the TCS provision in respect of transactions through stock exchanges (or commodity exchange)as there is no one-toone contract between the buyers and sellers.
- 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).
- Off-market deals still covered by TCS.

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.

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. Under this provision, the tax shall be collected from every buyer who pays any amount as consideration for the purchase of motor vehicle of value exceeding Rs. 10 lakhs. The Finance Act 2020 has introduced a general provision for collection of TCS on sale of goods under section 206C(1H). This provision specifically excludes TCS on motor vehicle, which is covered under section 206C(1F), from its ambit.
- Vide Circular No. 22/2016, dated 8-6-2016, 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 [illegible] shall be subject to TCS under this new provision.

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

- Section 206(1H) provides for the collection of tax on the sale consideration received for the sale of goods. The Apex Court in the case of State of Andhra Pradesh v. National Thermal Power Corporation (NTPC) (2002) 5 SCC 203, held that electricity is a movable property though it is not tangible. It is a 'good'. Further, Custom Tariff Act has covered 'Electricity' under heading 2716 00 00, which also clarifies that Electricity is a goods. Thus, it is clear that electricity is a good. Thus, the tax shall be collected from the consideration received in respect of the transaction in electricity.
- A transaction in electricity can be undertaken either by way of direct purchase from the company engaged in generation of electricity or through power exchanges. The CBDT has clarified that the transaction in electricity, renewable energy certificates and energy-saving certificates traded through power exchanges registered under Regulation 21 of the CERC shall be out of the scope of TCS under this provision. **Thus, it can be concluded that tax is required to be collected where electricity is purchased directly from electricity generation companies**

Miscellaneous

- **Adjustment for sale return, discount or indirect taxes**
  - It is requested to clarify that whether adjustment is required to be made for sales return, discount or indirect taxes including GST for the purpose of collection of tax under sub-section (lH) of section 206C of the Act. It is hereby clarified that no adjustment on account of sale return or discount or indirect taxes including GST is required to be made for collection of tax under sub-section (IH) of section 206C
- **Fuel supplied to non-resident airlines**
  - It is requested to clarify if the provisions of sub-section (IH) of section 206C of the Act shall apply on fuel supplied to non-resident airlines at airports in India. To remove difficulties it is provided that the provisions of sub-section (1 H) of section 206C of the Act shall not apply on the sale consideration received for fuel supplied to non-resident airlines at airports in India.

Whether TCS should be collected on the sale of software?

- Taxation of software has always been a subject of debate under the Income-tax Laws. The issue was also litigative under the erstwhile indirect tax laws (VAT, Service Tax etc.) where states were levying VAT on the sale of goods and Centre were levying service-tax on the provision of services. With the passage of time, the Judiciary has laid down some principles, which enable the taxpayers, to determine when the supply of software would qualify as a supply of goods and when it would be a supply of services. The issue is not much litigative under the GST regime as the tax rate in both cases is the same.
- However, in absence of any guidelines in the Income-tax, such classification has always been a subject matter of litigation. The Finance Act 2012 has made the clarificatory amendments in Section 9 to broaden the scope of taxation of royalty. This has been clarified by the amendment that the consideration for the use or right to use of computer software is a royalty. The factors of the medium, ownership, use or right to use and location have been clarified as immaterial. The amendments have, thus, given a new dimension to tax administration in the sphere of royalty taxation. The payment towards royalty is subject to TDS under Section 194J or Section 195. The provision of section 206C(1H) would not apply where the buyer is liable to deduct tax at source on the purchase of goods from the seller and has deducted the tax at source.
- 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.

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.

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. Once a person is qualified as a seller he will be liable for the collection of tax where the value or aggregate of the value of sale consideration received exceeds Rs. 50 lakhs in any previous year, irrespective of the fact that the sale is in course of the business or not. Thus, where a person, who is re-selling the goods, falls within the definition of the seller, he will be liable for the collection of tax. 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.
- Example, Mr A (a salaried person) buys jewellery of Rs. 60 lakhs from a Jeweller. The Jeweller collects a tax of Rs. 1,000 (0.1% of Rs. 10 lakhs) under section 206C(1H). If Mr A re-sells the jewellery for Rs. 70 lakhs to the same jeweller, he shall not be liable to collect tax as he is not engaged in any business or profession. (Consumer reselling is not covered under TCS).

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

- It is imperative to accurately determine the amount of sales consideration as it is relevant both for the applicability of the provision and amount from which tax should be collected. Additional, allied or out-of-pocket charges recovered from the customers may or may not form part of the 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.

At what rate tax is to be collected?

Date of Receipt	PAN/Aadhaar	Rate of Tax	Remarks
13th Feb 21	Yes	0.075%	Reduced Rate for payments received till 31st March 21
18th March 21	No	1%	No PAN/Aadhaar of Buyer
1st April 21	Yes	0.1%	Reduced Rate expires on 31st March 21

The rate shall not be further increased by Surcharge and Health & Education Cess if the sum is collected from a resident person. 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.

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.

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

- Yes, these provisions are applicable to the "amount" received in connection with the sale and if any advance related to it is received on or after October 1, 2020 then the provisions of TCS will also be applicable. However, if the advance amount is received before October 1, 2020 and the supply is made on or after October 1, 2020 then TCS is not required to be collected because no amount is received on or after 1st. Oct. 2020.
- Section 206C(1H) provides that tax is required to be collected where the amount is received as consideration for the sale of goods. It does not mention whether such sale needs to be effected immediately or at a future date. As the tax is required to be collected at the time of receipt of consideration, it should be reasonable to conclude that the provision may get attracted even if such sale happened in past, happens in present or would happen in future. Further, the CBDT vide Circular No. 17, dated 29-09-2020, has clarified that TCS is required to be collected under this provision from the advance received for sale.
- 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.

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

- The CBDT vide Circular No. 17, dated 29-09-2020 has clarified that provisions of section 206C(1H) shall not apply on any consideration received before 01-10-2020. 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.
- In simple words, the tax should be collected where the amount is received on or after 01-10-2020. Thus, 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.

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.

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.
- TCS is qua PAN.

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.

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.

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

- Normally 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).

How to deposit the TCS and What is the due date to deposit TCS?

- A corporate assessee and other assessees (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.
- Tax collected during the month shall be deposited on or before 7th day of the next month in which tax has been collected.

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.

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.

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.

Quarter	Due Date
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

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.

SECTION 206C(1G)- TCS on foreign remittance through Liberalised Remittance Scheme (LRS) & TCS on selling of overseas tour package

Section 206C(1G)(a) – TCS on foreign remittance through Liberalised Remittance Scheme (LRS)

- An authorised dealer receiving an amount or an aggregate of amounts of **seven lakh** rupees or more in a financial year for remittance out of India under the LRS of RBI, shall be liable to collect TCS, if he receives sum in excess of said amount from a buyer being a person remitting such amount out of India, at the **rate of five per cent**.
- In **non-PAN/Aadhaar cases** the rate shall be **ten per cent**.
- This section will not be applicable in following cases:
  - If the buyer is liable to deduct TDS under any other provisions and has deducted
  - If a buyer is CG, SG, an embassy, a high commission, a legation, a commission, a consulate, the trade representation of a foreign state, a local authority or any other person as notified by CG
- "**authorised dealer**" is proposed to be defined to mean a person authorised by the Reserve Bank of India under sub-section (1) of section 10 of Foreign Exchange Management Act, 1999 to deal in foreign exchange or foreign security.

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The section can be summed up as follows:

Nature of Transaction	:Remittance under Liberalized Remittance Scheme
Person Responsible for collection	:An Authorized Dealer
From whom to collect	:From buyer of Foreign Currency remitting outside India under LRS
Time of Collection	:At the time of debiting the buyer or receipt from buyer, whichever is earlier
Rate of TCS	:•5% of the amount received from buyer •0.50% if the amount being remitted out is a loan obtained from any financial institution as defined in section 80E, for the purpose of pursuing any education •10%, in case no PAN of such person is available

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Threshold Limit	:No TCS shall be collected, if the amount being remitted by buyer is less than ₹ 7 Lakh in a financial year.
Exceptions	:No TCS shall be collected if the buyer is •If the buyer is liable to deduct tax TDS under any other provision of this Act and has deducted such amount; •The Central Government, a State Government, an embassy, a High Commission, a legation, a commission, a consulate, the trade representation of a foreign State, a local authority etc.
Other Points	:•The Authorized Dealer shall collect TCS at the respective rates calculated on the amount of ₹ 7 lakh or more in a financial year. **•The relief measures announced by the government on 12-05-2020 does not includes section 206C(1G) and hence the rate of 5%/10% will be applicable.**

Practical Example of TCS on foreign remittance through Liberalised Remittance Scheme (LRS)

Q. Mr. A has made remittance during FY 2020-21 as follows:

Transaction 1 – Rs. 5,00,000

Transaction 2 – Rs 8,00,000

Transaction 3 – Rs 1,50,000

Ans: TCS applicability transaction wise is as under (Basic exemption of 7 lacs is available):

Transaction	TCS Applicability
Transaction 1 – Rs. 5,00,000	No Tax will be collected since the amount is below Rs 7,00,000/-
Transaction 2 – Rs 8,00,000	TCS will be applicable on Rs 6,00,000 [(Rs 5,00,000 + Rs 8,00,000 = Rs 13,00,000) – Rs 7,00,000 = Rs 6,00,000]
Transaction 3 – Rs 1,50,000	TCS will be applicable on Rs 1,50,000 entirely since Rs 7,00,000 limit has been exceeded in transaction 2 only.

Other Important Points

- Though the TCS on all forex transactions under LRS will be applicable from 1st October, 2020. But, for tracking the threshold limit of INR 7 lakhs, all under LRS made from 1st April, 2020 would be considered.

- The TCS will be applicable even if the foreign exchange facility is availed in Cash or Forex cards.

Section 206C(1G)(b) – TCS on selling of overseas tour package

- A seller of an overseas tour program package who receives any amount from any buyer, being a person who purchases such package, shall be liable to collect TCS at the **rate of five per cent**.
- In **non-PAN/ Aadhaar** cases the rate shall be **ten per cent**.
- There is **no monetary limit** for this transaction, irrespective of any amount TCS must be collected by seller of that package (liable from Re. 1).
- This section will not be applicable in following cases:
  - If the buyer is liable to deduct TDS under any other provisions and has deducted
  - If a buyer is CG, SG, an embassy, a high commission, a legation, a commission, a consulate, the trade representation of a foreign state, a local authority or any other person as notified by CG
- "**Overseas tour program package**" is proposed to be defined to mean any tour package which offers visit to a country or countries or territory or territories outside India and includes expenses for travel or hotel stay or boarding or lodging or any other expense of similar nature or in relation thereto.

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The section can be summed up as follows:

Nature of Transaction	:	Receipt for buying an Overseas Tour Package
Person Responsible for collection	:	Seller of Overseas Tour Package
From whom to collect	:	From buyer of Overseas Tour Package
Time of Collection	:	At the time of debiting the buyer or receipt from buyer, whichever is earlier
Rate of TCS	:	•5% of the amount received from buyer •10%, in case no PAN of such person is available

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Threshold Limit	:	No threshold limit has been prescribed for collection of tax under this section.
Exceptions	:	No TCS shall be collected if the buyer is •liable to deduct tax TDS under any other provision of this Act and has deducted such amount; •the Central Government, a State Government, an embassy, a High Commission, a legation, a commission, a consulate, the trade representation of a foreign State, a local authority etc.
Other Points	:	•**'Overseas Tour Package'** shall mean tour package which offers visit to a country outside India and includes expenses for travel or hotel stay or boarding or lodging or any other expenditure of similar nature or in relation thereto. •The Authorized Dealer shall not collect the sum on an amount in respect of which the sum has been collected by the seller. •**TCS need to be collected on the total cost to the buyer including GST.** •**The relief measures announced by the government on 12-05-2020 does not includes section 206C(1G) and hence the rate of 5%/10% will be applicable**

FAQs

Q1. Whether TCS on foreign remittance through Liberalised Remittance Scheme (LRS) will be applicable on entire amount of remittance or only on excess of Rs 7 Lacs?

- Ans: TCS shall be applicable on amount in excess of ₹ 7 lakhs in a financial year and not on the total amount.

Q2. Whether all foreign remittance transactions through Liberalised Remittance Scheme (LRS) will be charged at 5%?

- **Ans:** Normally, Yes all remittance out of India under the LRS of RBI, shall be liable to collect TCS at 5%. But in non-PAN/Aadhaar cases the rate shall be 10% But please note that in cases where the amount is remitted for the purpose of pursuing education through a loan obtained from any financial institute, rate of TCS shall be 0.5% on amount exceeding ₹ 7 lakhs.
- **Note:** Remember, there is no monetary threshold prescribed for remittance for the purchase of overseas tour program package and the bank will collect the TCS on the entire amount irrespective of its value.

FAQs

Q3. Elaborate tax implication on remittances for pursuing overseas education?

- The TCS at 0.5% shall be applicable on the amount exceeding INR 7,00,000 in a financial year under LRS, if the amount remitted is obtained out of a loan from a Financial Institution for pursuing education.
- 'Financial Institution' means a banking company to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act); or any other financial institution which the Central Government may, by notification in the Official Gazette, specify in this behalf.
- For instance, if the total amount remitted under LRS in a financial year is INR 8,00,000 for pursuing overseas education, TCS at 0.5% will be applicable on INR 1,00,000 (INR 8,00,000 – INR 7,00,000).
- **Note:**

  a) If the education abroad is incurred from own fund or loan has been taken from non-specified or private parties then TCS at 5% will be applicable on remittances exceeding Rs 7 lacs in a financial year.

  b) Remember, if the educational program is subsequently decided to cancelled or not persuaded, then the bank will not refund the TCS collected by it. But, the credit for the same can be available to the customer and they can claim refund by filing income tax

FAQs

Q4. Elaborate tax implication of remittances for the purchase of overseas tour program package under LRS?

- The TCS at 5% will be applicable on the total amount remitted and the bank will collect the TCS on the entire amount irrespective of its value.
- For instance, if the amount remitted is INR 2,00,000, the TCS at 5% will be applicable on entire INR 2,00,000.
- Note: Remember, if the tour package is subsequently decided to cancelled, then the bank will not refund the TCS collected by it. But, the credit for the same can be available to the customer and they can claim refund by filing income tax returns.

Q.5 Will GST be applied on Tax collected at source under Liberalised Remittance Scheme (LRS)?

- The GST will continue to apply on currency conversion and on Remittance Service Charge. GST will not be applied on TCS.

FAQs

Q.6 What are the scenarios under which the provision will not apply?

- The above mentioned TCS provisions will not applicable in the following cases:
  - The remitter is liable to deduct tax at source under any other provision of the act and the amount has been deducted and proof of the same is submitted to the bank
  - The remitter is the Government or any another person notified by the Government
  - The seller of the overseas tour program package has already collected TCS

Q7. Can customer avail tax credit of the TCS?

- Yes, the customer can claim credit for the tax collected by the bank while filing for their tax returns as the TCS is deemed to be a payment of tax on behalf of the person from whom the amount has been collected.

Section 194O-TDS on Payment of certain sums by e-commerce operator to e-commerce participant.

Section 194O-TDS on Payment of certain sums by e-commerce operator to e-commerce participant.

- According to the section, where sale of goods or provision of services of an e-commerce participant is facilitated by an e-commerce operator through its digital or electronic facility or platform (by whatever name called), such e-commerce operator shall, at the time of credit of amount of sale or services or both to the account of an e-commerce participant or at the time of payment thereof to such e-commerce participant by any mode, whichever is earlier, deduct income-tax at the rate of one per cent of the gross amount of such sales or services or both.
- For the purposes of this sub-section, any payment made by a purchaser of goods or recipient of services directly to an e-commerce participant for the sale of goods or provision of services or both, facilitated by an e-commerce operator, shall be deemed to be the amount credited or paid by the e-commerce operator to the e-commerce participant and shall be included in the gross amount of such sale or services for the purpose of deduction of income-tax under this sub-section.

Scope of Section 194O

- The TDS is to be paid by e-commerce operator for facilitation service of selling of goods/provision of service provided by it through its digital or electronic facility or platform. In other words, burden of payment of TDS is kept on mediator between buyer and seller.
- E-commerce operator is required to deduct TDS at the time of credit or payment, whichever is earlier. Credit means credit to the account of e-commerce participant and payment means payment through any mode.
- Further this section provides that if a buyer of goods or service has made payment directly to e-commerce participant it shall be deemed that payment has been made by e-commerce operator or account has been credited by e-commerce operatorand same shall be added in gross amount for the purpose of deduction of tax.

Example to understand Section 194O

Q. ABC, a partnership firm selling its product X at Amazon India. Amazon India has credited the account of ABC on 31st December 2020 for the sale of products X made during the month of December 2020 by sum of Rs. 5,70,300 and made payment for sum of Rs. 5,70,300 on 03rd Jan 2021. Further Mr. Ram, who purchase product X from Amazon India has made the payment of Sum of Rs. 25,200 directly to ABC on 15th Dec. 2020. Now the following will be impact of provisions of section 194-O.

Ans;

- Amazon India has to be pay the TDS being the e commerce operator for facilitation service of selling of goods electronically.
- Amazon India has to deduct the TDS on 31stDecember 2020 being date whichever is earlier of payment or credit the account.
- TDS will be deducted at the rate of 0.75 percent on gross amount of Rs. 5,95,500 (Rs.5,70,300+ Rs.25,200) i.e.4,466.25/-. (Rate reduced from 1% to 0.75% in relief measure)
- Further, being Rs. 25,200 directly paid to seller by buyer is also deemed to be paid by e-commerce operator and the same has also to be included in gross amount along with the amount paid or credited by e-commerce operator for the purpose of deduction of

Applicability of Section 194O

The provision of this section will be applicable from 01st October 2020 on every person transacting over the e-commerce platform. Provision in respect of applicability states as under:

- This section will be applicable on e-commerce participant being resident in India selling the goods / providing services through E-commerce platform i.e. for non-residents this section will not applicable. (only resident participant covered) (Ecommerce operator resident and non-resident covered)
- Service is defined to include fee for technical services or fees for professional services.
- E-commerce operator is not required to deduct TDS If, the amount paid or credited to Individuals or HUF (having PAN or Aadhaar, furnishes to e-commerce operator) during the previous year does not exceed Rs. 5,00,000 i.e. rational behind non deduction of TDS for sum paid to Individual or HUF up to Rs. 5,00,000 is that any how income tax up to Rs. 5 lakh in NIL .
- A transaction in respect of which tax has been deducted by the e-commerce operator under this section or which is not liable to deduction under the exemption discussed in the previous bullet, there shall not be further liability on that transaction for TDS under any other provision of Chapter XVII-B of the Act. This is to provide clarity so that same transaction is not subjected to TDS more than once. **However, it has been clarified that this exemption will not apply to any amount received or receivable by an e-commerce operator for hosting advertisements or providing any other services which are not in connection with the sale of goods or services referred to in sub-section (1) of the proposed section.**
- This section also provides for lower deduction or Non deduction of TDS as specified u/s 197 on submission of Form No. 13 and subject to fulfilment such conditions as specified therein.

Rate of TDS under Section 194O

Section Nature of Payment	Thres-hold Limit (Rs)	TDS Rate (%) Upto 13th May, 2020		TDS Rate (%) From 14th May, 2020	
		Resident	Non – Resident [*]	Resident	Non – Resident [*]
Section 194O: Applicable for E-Commerce operator for sale of goods or provision of service facilitated by it through its digital or electronic facility or platform. (In case the E-commerce participant does not furnish PAN or Aadhar Number to the e-commerce operator, TDS shall be deducted at the rate *of 5%* under section 206AA of the Act) **(This Section is inserted by Finance Act, 2020 which is applicable from 01/10/2020)**	-	1 (w.e.f. 01st October, 2020)	-	0.75 (w.e.f. 01st October, 2020) (TDS rate applicable only till 31st March, 2021)	-

*The rate of TDS are after considering cess @4% and shall be increased by applicable surcharge.

Miscellaneous Provisions of Section 194O

- All other provisions of the chapter TDS of the act will be applicable i.e. provision related to payment of TDS, filling of TDS return provision as applicable for non-filing of return, non-deduction or lower deduction, non-payment post deduction will be remain as applicable as mentioned in the chapter of TDS of the Act. For more clarity some words which were used in this section under this article has been explained as under:
- **E-commerce operator** means any person (**note that there is no distinction has been made for resident or non-resident**) who operates or manages digital or electronic facility or platform for electronic commerce and also responsible for paying the amount to e-commerce participant. Eg. Amazon, Flipkart, Myntra, Facebook etc.
- **E-commerce participant** means **any person resident in India** selling goods including **digital product**(**Electronic books, podcast, blogs, video etc.**) or providing service or both through digital facility or platform for electronic commerce.
- E-commerce means the supply of goods or services or both including digital products over the digital or electronic network. In simple words, the business of buying or selling of goods/services over the internet.
- Resident means as defined under section 6 of the income tax act.

Circular No. 17 of 2020 Dated: 29th September, 2020

- **Applicability on transactions carried through various Exchanges:**
  - It has been represented that there are practical difficulties in implementing the provisions of Tax Deduction at Source (TDS) and Tax Collection at Source (TCS) contained in section 194-0 and subsection (I H) of section 206C of the Act in case of certain exchanges and clearing corporations. It has been stated that sometime in these transactions there is no one to one contract between the buyers and the sellers.
  - In order to remove such difficulties, it is provided that the provisions of secti0n 194-0, and subsection (I H) of section 206C, of the Act shall not be applicable in relation to,-

    (i) transactions in securities and commodities which are traded through recognized stock exchanges or cleared and settled by the recognized clearing corporation, including recognized stock exchanges or recognized clearing corporation located in International Financial Service .Centre;

    (ii) transactions in electricity, renewable energy certificates and energy saving certificates traded through power exchanges registered in accordance with Regulation 21 of the CERC; and

    For this purpose,-

    (i) "recognized clearing corporation" shall have the meaning assigned to it in clause (i) of the Explanation to clause (23EE) of section 10 of the Act;

    (ii) "recognized stock exchange" shall have the meaning assigned to it in clause (ii) of the Explanation 1 to sub-section (5) of section 43 of the Act; and

    (iii) "International Financial Services Centre" shall have the meaning assigned to it in clause (q) of section 2 of the Special Economic Zones Act, 2005 .

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- **Applicability on payment gateway:**
  - In e-commerce transactions, the payments are generally facilitated by payment gateways. It is represented that in these transactions, there may be applicability of section 194-0 twice i.e. once on emain commerce operator who is facilitating sell of goods or provision of services or both and once on payment gateway who also happen to qualify as e-commerce operator for facilitating service. To illustrate a buyer buys goods worth one lakh rupees on e-commerce website "XYZ" . He makes payment of one lakh rupees through digital platform of "ABC". On these facts liability to deduct tax under section 194-0 may fall on both "XYZ" and "ABC".
  - In order to remove this difficulty, it is provided that the payment gateway will not be required to deduct tax under section 194-0 of the Act on a transaction, if the tax has been deducted by the ecommerce operator under section 194-0 of the Act, on the same transaction. Hence, in the above example, if "XYZ" has deducted tax under section 194-0 on one lakh rupees, "ABC" will not be required to deduct tax under section 194-0 of the Act on the same transaction. To facilitate proper implementation, "ABC" may take an undertaking from "XYZ" regarding deduction of tax.

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- **Calculation of threshold for the financial year 2020-21.**
  - Since both section 194-0 , and sub-section (I H) of section 206C, of the Act would come into effect from 1sl October, 2020, it was requested to clarify how the varioLls thresholds specified under these sections shall be computed and whether the tax is required to be deducted/collected in respect of amounts received before 15t October, 2020.
  - it hereby clarified that,-

(i) Since the threshold of five lakh rupees for an individual/ Hindu undivided family (being ecommerce participant who has furnished his PAN/Aadhaar) is with respect to the previous year, calculation of amount of sale or services or both for triggering deduction under section 194-0 of the Act shall be counted from 1 st April, 2020. Hence, if the gross amount of sale or services or both facilitated during the previous year 2020-21 (including the period up to 30th Sept 2020) in relation to such an individual! Hindu undivided family exceeds five lakh rupees, the provision of section 194-0 shall apply on any sum credited or paid on or after 15t October, 2020.

(ii) Since sub-section (1H) of section 206C of the Act applies on receipt of sale consideration, the provision of this sub-section shall not apply on any sale consideration received before 15t October 2020. Consequently it would apply on all sale consideration (including advance received for sale) received on or after 1 5t October 2020 even if the sale was carried out before 15t October 2020.

(iii) Since the threshold of fifty lakh rupees is with respect to the previous year, calculation of receipt of sale consideration for triggering TCS under sub-section (1 H) of section 206C shall be computed from 15t April, 2020. Hence, if a person being seller has already received fifty lakh rupees or more up to 30th September 2020 from a buyer, the TCS under sub-section (1 H) of section 206C shall apply on all receipt of sale consideration [illegible] 15tOctober 2020, from such buyer.

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- **Applicability to sale of motor vehicle:**
- The provisions of sub-section (1 F) of section 206C of the Act apply to sale of motor vehicle of the value exceeding ten lakh rupees. Sub-section (1H) of section 206C of the Act exclude from its applicability goods covered under sub-section (IF). It has been requested to clarifY that whether all motor vehicles are excluded from the applicability of sub-section (I H) of section 206C of the Act.
- The provisions of sub-section (1 F) of section 206C of the Act apply to sale of motor vehicle of the value exceeding ten lakh rupees. Sub-section (1H) of section 206C of the Act exclude from its applicability goods covered under sub-section (IF). It has been requested to clarify that whether all motor vehicles are excluded from the applicability of sub-section (I H) of section 206C of the Act. it hereby clarified that,-

  (i) Receipt of sale consideration from a dealer would be subjected to TCS under sub-section (I H) of the Act, if such sales are not subjected to TCS under sub-section (1 F) of section 206C of the Act.

  (ii) In case of sale to consumer, receipt of sale consideration for sale of motor vehicle of the value of ten lakh rupees or less to a buyer would be subjected to TCS under sub-section (1 H) of section 206C of the Act, if the receipt of sale consideration for such vehicles during the previous year exceeds fifty lakh rupees during the previous year.

  (iii) In case of sale to consumer, receipt of sale consideration for sale of motor vehicle of the value exceeding ten lakh rupees would not be subjected to TCS under sub-section (lH) of section 206C of the Act if such sales are subjected to TCS under sub-section (IF) of section 206C of the Act,

Clarification on doubts arising on account of new TCS provisions on 30/09/2020 by Ministry of Finance

- There are reports in certain sections of media wherein certain doubts have been raised regarding the applicability of the provisions relating to Tax Collection at Source (TCS) on certain goods introduced vide Finance Act, 2020. This press note is being issued to clarify those doubts about the applicability of these provisions.
- It has been reported in the media that TCS has been made applicable to the amount received before 1st October, 2020. It is clarified that this report is not correct. In this connection, it may be noted that this TCS shall be applicable only on the amount received on or after 1st October, 2020. For example, a seller who has received Rs. 1 crore before 1st October, 2020 from a particular buyer and receives Rs. 5 lakh after 1st October, 2020 would be required to collect tax on Rs. 5 lakh only and not on Rs. 55 lakh [i.e Rs.1.05 crore - Rs. 50 lakh (threshold)] by including the amount received before 1st October, 2020.

Cont…

- It has been reported in certain section of the media that this TCS is an additional tax. This is obviously not correct. In this regard, it may be noted that TCS is not an additional tax but is in the nature of advance income-tax/TDS for which the buyer would get the credit against his actual income tax liability and if the amount of TCS is more than his tax liability, the buyer would be entitled for refund of the excess amount along with interest.
- Assuming a net profit of 8% on sales, his business income in respect of this payment of Rs. 10 crore made for purchase would be around Rs. 87 lakh. The income-tax liability on the income of Rs. 87 lakh for an individual in the new taxation regime would be around Rs. 27 lakh. Hence, the amount of TCS collected i.e. Rs.50,000 (Rs. 37,500 this year) would be a miniscule part of his actual tax liability and would be easily adjusted against his tax liability. In a rare case, if his tax liability is less than even Rs.50,000 (Rs. 37,500 this year), he shall be entitled for refund of excess TCS with interest.
- It has also been reported in certain section of media that every seller will have to collect TCS. This is also not correct. In this context, it may be noted that in order to reduce the compliance burden, this TCS is made applicable to only those sellers whose business turnover exceeds Rs. 10 crore. In other words, those having turnover of less than Rs. 10 crore will not be required to collect TCS. There are only around 3.5 lakh persons who have disclosed business turnover of more than Rs. 10 crore in FY 2018-19. There are around 18 lakh entities which already deal with TDS/TCS. Therefore, this TCS collection under these new provisions would be required to be made by persons who, in most of the cases, would already be complying with the other provisions of

Issues for consideration

Queries please??????????????

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Thank you