



# ENIGMA OF NEWLY INTRODUCED TCS ON SALE OF GOODS

21 September 2020



THE POWER OF BEING UNDERSTOOD

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# Overview

- Finance Act, 2020 expanded the scope of Tax Collected at Source (“TCS”) through section 206C(1H) of the Income Tax Act, 1961 (“the Act”). TCS is now levied on sale of goods also and the provisions are effective from **1 October 2020**.
- As per the new TCS provisions, **every seller** who receives any amount as consideration for **sale of any goods (other than exports) exceeding INR 50 lakhs** in any previous year, shall **at the time of receipt** of such amount, **collect TCS from the buyer** at the rate of **0.1% of the sale consideration** exceeding INR 50 lakhs.
- As per Government of India’s Press Release dated 13 May 2020, **reduced rate of 0.075%** instead of 0.1% shall apply **from 1 October 2020 to 31 March 2021**.
- If the buyer does not provide PAN or AADHAR number to the seller, applicable rate of TCS shall be 1%.

# Overview

- ‘Seller’ has been defined to include a person whose **total sales, gross receipts or turnover** from the business carried on by him **exceeds INR 10 crore** during the financial year **immediately preceding the financial year** in which the sale of goods is carried out.
- TCS provision is not applicable on following categories of buyer:
  - If the buyer/ seller is liable to **deduct TDS/ collect TCS under any other provision of the Act** and has deducted/ collected such amount on the goods; or
  - If the buyer is the **Central/ State Government**, an embassy, a High Commission, legation, consulate, the trade representation of foreign state, local authority; or
  - Any person **importing goods to India** or any class of person notified by the Central Government in the official gazette.

# Compliances

Compliance requirement of payment of TCS, return filing and issuance of TCS certificate remains same as applicable to the existing TCS provisions, which are as under:

Quarter Ended	Due date of furnishing of return (Form 27EQ)	Due date of issuance of TCS Certificate (Form 27D)	Due date of payment
30 <sup>th</sup> June	15 July	30 July	One week (7 days) from end of the month in which tax is collected at source
30 <sup>th</sup> September	15 October	30 October	
31 <sup>st</sup> December	15 January	30 January	
31 <sup>st</sup> March	15 May	30 May	

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# Questions calling for clarity

## Q. 1 What forms part of 'Goods'?

### Our comments:

- The term 'Goods' has not been defined under the Act.
- However, the same has been defined under the GST law [section 2(52)] as **every kind of movable property other than money and securities** but includes actionable claims, 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.
- Thus, the above definition of 'Goods' can be borrowed from GST Act and be used in relation to TCS provisions. *Similar definition can be found in Sales of Goods Act, 1930 also, with certain modifications.*

## Q. 2 Whether 'sale of property' is covered by the levy of newly introduced TCS provisions?

### Our comments:

- Property being immovable in nature is not covered by the definition of 'goods' (as discussed above).
- TDS provisions under section 194 – IA of the Act distinctly cover sale of properties. Since TCS provisions under section 206C(1H) specifically exclude those items to which existing provisions of TDS apply, sale of property should be excluded.

# Questions calling for clarity

## Q. 3 How is the qualifying limit of turnover of INR 10 crores to be determined?

### Our comments:

- Limit of INR 10 crore needs to be checked on year-on-year basis for preceding financial year.

Scenario	Turnover of seller in FY 2019-20	Turnover of seller in FY 2020-21	Applicability in FY 2020-21
1	Less than INR 10 crores	More than INR 10 crores	TCS provisions shall not apply
2	More than INR 10 crores	Less than INR 10 crores	TCS provisions shall apply
3	Nil (Newly commenced business)	More than INR 10 crores	Possible to argue that TCS provisions not to apply. However, on conservative basis, one may consider to apply such provisions



# Questions calling for clarity

## Q. 4 Whether income from provision of services be considered for the criteria of INR 10 crore?

### Our comments:

- As per the definition of seller, 'Seller' means a person whose total sales, gross receipts or turnover from the business carried on by him exceed INR 10 crore during the financial year immediately preceding the financial year in which the sale of goods is carried out.
- The phrase 'total sales, gross receipts or turnover from the business' implies that the **entire income** accruing to the business should be taken, whether through sale of goods or through provision of services.
- Thus, income from provision of service would likely form part of turnover.

## Q. 5 Whether TCS provisions cover export sales?

### Our comments:

- TCS is not applicable in respect of export sales as the Act expressly excludes consideration received towards goods exported out of India.
- However, sale of goods to SEZ, EOU, etc., which are 'deemed export' for certain purposes may not be eligible for exemption from TCS. 'Export' seems to be referring to supplies to a foreign destination and not to buyers located in India.

# Questions calling for clarity

**Q. 6 What is the point of collection of tax? Is TCS applicable on advance amount received from the buyer against any sale of goods?**

**Our comments:**

- TCS is to be collected from the buyer 'at the time of receipt'. Thus, TCS may need to be collected on advances also. Few scenarios that may arise while applying the TCS provisions are discussed below:

Scenario	Sale	Consideration received	Remarks
1	Prior to 1 October 2020	Prior to 1 October 2020	TCS provisions not to apply since TCS provisions are operative from 1 October 2020.
2	Prior to 1 October 2020	On or after 1 October 2020	A view may be taken that TCS does not apply since the provisions are effective from 1 October 2020. However, contrary view is also possible as TCS applies on 'receipt'.
3	On or after 1 October 2020	Prior to 1 October 2020 (advance)	If advance against a concluded sale, TCS may not apply since provisions are effective from Oct 1, 2020. However, in case of refundable advance which is adjustable against future sales, TCS may apply when adjusted.
4	On or after 1 October 2020	On or after 1 October 2020	TCS provisions apply.

# Questions calling for clarity

## Q. 7 How is the limit of INR 50 lakhs for sale of goods determined?

### Our comments:

- TCS provisions apply if sales consideration from a buyer (except exports) exceed INR 50 lakhs in a year.
- Collection of TCS shall be made only on the **portion of sales consideration exceeding INR 50 lakhs**. Suppose, the total consideration is INR 55 lakhs, TCS shall apply on INR 5 lakhs only.
- Sales are to be **considered cumulatively in a financial year** for application of the provision i.e. if sales to a particular party till August 2020 is INR 40 lakhs and next sale in November 2020 amounts to INR 30 lakhs, TCS shall apply on INR 20 lakhs (INR 40 lakhs + INR 30 lakhs – INR 50 lakhs). Thus, for the purpose of determining threshold exceeding INR 50 lakhs, sales made to the buyer during financial year 2020-21 prior to 1 October 2020 shall also be considered.

## Q. 8 Will 'sales return' be considered while determining the limit of INR 50 Lakhs for the financial year?

### Our comments:

- The term 'consideration for sale of goods' ideally means 'net' of sales return. Therefore, the limit of INR 50 lakhs may be considered after adjustment of sales return.

# Questions calling for clarity

## **Q.9 What happens in case of cancellation of sale whose advance has been received/ TCS collected?**

### **Our comments:**

- Practical difficulties arise if advance is collected for sale of goods and TCS is collected but subsequently, contract is cancelled. Similar, issues may arise if discount offered after TCS collection.
- In such case, seller may refund only the primary sale consideration received and take a position not to refund the TCS collected, which has already been deposited with the government. Since TCS is creditable, buyer can take credit of TCS as appearing in Form 26AS. Alternatively, adjustment against a future sale could also be explored, which may involve revision of return.

## **Q. 10 What is the basis of collection and deposit of TCS?**

### **Our comments:**

- As per the existing TCS charged on sale of alcoholic liquor, tendu leaves, timber, scarp etc., seller needs to collect TCS at the time of debiting the amount payable by the buyer or at the time of receipt, whichever is earlier.
- However, such time parameters are not provided in the new TCS levy. The section provides that the liability arises 'at the time of receipt'.
- While TCS needs to be deposited 'at the time of receipt', however, for ease and to meet practical difficulty of tracking 'receipts', many companies are considering to deposit TCS at the time of invoicing.

# Questions calling for clarity

## Q. 11 Whether the sale consideration include the amount collected towards GST?

### Our comments:

- The word 'consideration' is not defined under the Act. However, reference can be drawn from section 145A of the Act which states that irrespective of the treatment in books of accounts, **the value of sales include amount of any tax recovered.**
- CBDT has clarified vide Circular No. 23/2017 that there would be no TDS on the GST component. However, no such clarification for the TCS provisions.
- Hence, sale consideration can be taken to be inclusive of GST for the purpose of collection of TCS.

## Q. 12 What would happen in case sale consideration is adjusted against amounts payable for earlier purchases from said party?

### Our comments:

- TCS is applicable on receipt of consideration. While consideration is not received in money's term, however the debt is settled by way of adjustment (of receivable & payable), which is in a way 'receipt' of consideration. Hence, TCS would apply on such adjustment.

# Questions calling for clarity

**Q. 13 Whether TCS is applicable only on B2C transaction or it is applicable on B2B transactions also?**

**Our comments:**

- While in earlier TCS provisions, exemption was available on B2B sales (i.e. goods utilized for manufacturing/ processing, etc.). However, in the absence of any specific provision, TCS to apply on sale of goods exceeding threshold of INR 50 lakhs to any buyer (B2B or B2C).

**Q. 14 Whether TCS is applicable in case of a composite supply i.e. sale of goods plus services both?**

**Our comments:**

- In case of composite supply like job work wherein TDS under section 194C is applied, TCS may not apply.
- However, if composite supply is not subject to TDS provisions, TCS provisions would apply.
- As a recommendation, invoice may be bifurcated into 'sale of goods' and 'sale of services' separately so that TCS can be applied on sale of goods part only.

**Q. 15 Whether TCS is applicable on Free of Cost ('FOC') transfer of goods?**

**Our comments:**

- GST may apply on FOC supplies in certain cases. However, TCS may not be applicable on such supplies in absence of any specific provision.

# Questions calling for clarity

## **Q. 16 Whether TCS is applicable on stock transfer of goods between branches of seller entity?**

### **Our comments:**

- Although stock transfer may be deemed as supply for GST purposes, however, such deeming fiction may not extend for TCS purposes in the absence of any specific provision. Considering the intent of the provision, TCS may not apply.

## **Q. 17 When can buyer claim credit of TCS?**

### **Our comments:**

- Buyer may take a position to claim credit of TCS in the year in which it appears in Form 26AS.

## **Q. 18 Can a buyer obtain certificate for Lower Collection of TCS?**

### **Our comments:**

- Section provides for certificate for lower collection of TCS only in relation to existing TCS cases like on sale of tendu leaves, scrap, timber etc. However, similar provision is not there in case of the new provision of TCS on sale of goods.
- Accordingly, buyer cannot obtain lower collection certificate from tax authorities.

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# Key Takeaways

- TCS provisions to apply to seller in any FY- if turnover of seller exceeds INR 10 crores in preceding FY.
- TCS may be collected on the Sales (inclusive of GST)- exceeding INR 50 lacs during the year to a buyer.
- TCS @ 0.1% (.075% for FY 20-21) needs to be collected 'at the time of receipt'. In absence of PAN/ Aadhar, applicable rate is 1%.
- TCS needs to be deposited within 7 days from end of the month. Quarterly returns to be filed as per prescribed timelines.
- At the time of entering into a contract, seller can analyse whether the transaction is liable to TDS/ TCS (under other provisions). If yes, TCS may not apply in such cases.
- Companies need to amend their accounting/ ERP systems, to ensure that TCS provisions are enabled as envisaged under the law. Due to practical difficulty of tracking receipts, many companies are taking a position of depositing TCS on accrual basis. Similarly, companies need to consider aspects like turnover criteria, sales returns, advance receipts, composite supplies, relevant export/ CG/ SG exemptions, etc.
- Industry is expecting that Government would come up with clarifications. In the absence of such clarifications, if contrary view is possible, it may be prudent to take conservative position on various issues.
- TCS is akin to advance tax/ TDS and buyer can claim credit of same in the tax return.



Thank you  
for your time  
and attention

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