

# CNK & Associates LLP

## Newsflash:

 CBDT Clarifications on newly introduced TCS provisions

Issued on: 30<sup>th</sup> September 2020



### Summary:

*The Finance Act, 2020 extended the scope of applicability of TCS provisions to sale of goods from 1<sup>st</sup> October 2020. With a view to provide clarity to certain interpretational issues in the provisions, the CBDT issued a circular providing some guidelines. The key issues addressed in the circular were whether TCS would apply to sales undertaken before 1<sup>st</sup> October 2020 and whether TCS would be required to be collected on the GST component as well.*

### Background

The Finance Act, 2020 extended the scope of applicability of the Tax Collected at Source ('TCS') provisions to sale of goods from 1<sup>st</sup> October 2020 [section 206C(1H)]. TCS is to be collected on consideration received from sale of goods by a person, whose turnover in the preceding financial year exceeded INR 10 crores, from a person who had purchased goods exceeding INR 50 lakh during the said financial year. The rate of TCS prescribed is 0.1% (0.075% in case of TCS applicable up to 31<sup>st</sup> March 2020) which was increased to 1% in case the buyer of the goods did not furnish PAN or Aadhar details to the seller. There were various interpretational issues in the newly introduced provisions. Some of these issues were discussed or referred to in our note dated 10<sup>th</sup> September 2020. With a view to provide clarity on the provisions, the CBDT issued circular no. 17 of 2020 dated 29<sup>th</sup> September 2020.

### Clarification in respect of "goods"

Transactions involving securities and commodities which are traded through

recognized stock exchanges have been clarified to be outside the scope of TCS provisions. Similarly, transactions in electricity, renewable energy certificates and energy saving certificates traded through registered power exchanges are clarified to be outside the scope of TCS provisions.

### CNK Comments:

While the extended provisions of TCS would apply to sale of goods, the term "goods" has not been defined and therefore, resulted in ambiguity as to the applicability of TCS on certain specific items. One of the key areas of ambiguity with regard to the definition of the term "goods" was whether "shares and securities" would be considered as goods. While such assets would fall under the definition of the term "goods" under the Sale of Goods Act, 1930, one could possibly argue that the Income Tax Act, 1961 has duly bifurcated between goods and securities in various provisions and therefore, one may need to consider shares and securities as not falling under the definition of "goods" for TCS provisions. By clarifying that TCS shall not apply to transaction in shares and securities

undertaken over recognised stock exchanges (which in any case, could not have been covered as seller of the shares does not know the identity of the buyer in case of such transactions), it seems that the TCS provisions would apply to transaction of shares and securities not undertaken through recognised stock exchanges. This may have far-reaching consequences as TCS provisions may be considered applicable on all goods – tangible as well as intangible. Further, sale of electricity, other than through a registered power exchange would also be liable to TCS, subject to the threshold limit.

#### Clarification in computation of threshold

It has been clarified that while TCS provisions would apply only to consideration received after 1<sup>st</sup> October 2020, one would need to consider the amounts received from 1<sup>st</sup> April 2020 to 30<sup>th</sup> September 2020 whilst computing the threshold limits.

#### CNK Comments:

This clarification is similar to the view expressed in our note dated 10<sup>th</sup> September 2020 as the threshold is to be computed in respect of the amounts received during a financial year. However, one of the issues which has been addressed is whether one considers the sales undertaken during the financial year or the amounts received during the financial year for the computation of the threshold. By clarifying that for the purpose of computing the threshold

limit, one would need to consider amounts received from 1<sup>st</sup> April 2020 to 30<sup>th</sup> September 2020, the CBDT has considered receipts as against sales. Therefore, for the computation of threshold qua each buyer, one would need to include the consideration received during the financial year irrespective of the year in which the corresponding sale for which the consideration received, has been undertaken. However, it is clarified that for FY 2020-21, while the consideration received during 1<sup>st</sup> April 2020 to 30<sup>th</sup> September 2020 is to be considered for the threshold computation, the TCS would apply only for consideration received on or after 1<sup>st</sup> October 2020.

#### Clarification on transitional issues

It has been clarified that TCS would apply on all sales consideration (including advance received for sale) received on or after 1<sup>st</sup> October 2020 even if the sale was carried out before 1<sup>st</sup> October 2020 provided the threshold limits are satisfied.

#### CNK Comments:

This clarification may lead to certain practical challenges as one may need to levy TCS even on outstanding invoices for sales undertaken before 1<sup>st</sup> April 2020. Further, generally, advance is not considered as ‘consideration for sale’ until the sale has been undertaken. However, the circular has equated advance with sales consideration. Therefore, TCS would apply on receipt of money, whether received as advance or as consideration. In such a situation, one may be able to take a

position that advance received before 1<sup>st</sup> October 2020 for sale undertaken on or after 1<sup>st</sup> October 2020 shall not be subject to TCS. The implications of the said clarification have been tabulated in various scenarios below:

Sr. No.	Date of sale	Date of receipt	Whether TCS applies (subject to threshold limits)
1	31 <sup>st</sup> March 2019	1 <sup>st</sup> October 2020	✓
2	1 <sup>st</sup> April 2020	1 <sup>st</sup> October 2020	✓
3	1 <sup>st</sup> October 2020	31 <sup>st</sup> March 2019	X
4	1 <sup>st</sup> October 2020	1 <sup>st</sup> April 2020	X

#### Clarification on TCS application on GST

It is clarified that no adjustment on account of sale return, discount or indirect taxes including GST is required to be made for TCS.

#### CNK Comments:

There was ambiguity in respect of whether one would need to consider GST while computing the sale consideration received for TCS purposes. The Circular by stating that no adjustment is required to sales consideration seems to suggest that GST is to be considered in the sales consideration for determination of TCS and therefore, a conservative view may be taken

and GST be included in the consideration for the determination of TCS. Further, in respect of discount and sales return, unless the amount received from the buyer is reduced on account of the said discount or returns, TCS may apply on the entire amount and one may not be able to adjust the same for the determination of TCS.

#### Clarification on TCS on fuel to airlines

The Circular has clarified that fuel supplied to non-resident airlines at Indian airports shall not be subject to TCS.

#### CNK Comments:

This is a welcome move as the Circular has cleared the ambiguity whether fuel supplied to non-resident airlines at Indian airports constituted export of goods outside India. This would apply to all non-resident airlines, irrespective of the fact as to whether the activities constitute a Permanent Establishment in India.

#### Clarification on sale of motor cars

It is clarified that in respect of sale consideration received for sale of motor car by a dealer to a consumer, the provisions of section 206C(1H) shall apply if the value of each motor car sold does not exceed INR 10 lakh but the aggregate consideration for sale to each buyer during the financial year exceeds INR 50 lakh. If the sale consideration by a dealer in respect of sale of motor car to a consumer exceeds INR 10 lakh for each motor car, the provisions of section

206C(1F) would apply and tax would need to be collected at the rate of 1% and not 0.1%. Further, in respect of sale of motor car to a dealer by the manufacturer, TCS provisions under section 206C(1F) shall not apply and therefore, only the aggregate limit of INR 50 lakh per buyer would need to be considered irrespective of the value of each motor car.

### Concluding remarks

While the Circular may pose practical challenges with regards to the collection of tax at source, a

taxpayer may choose not to follow the guidelines in the Circular as CBDT Circular is binding on the tax authorities but not on the taxpayer. However, not following the guidelines in the Circular could lead to litigation and therefore, a considered conservative may be taken.

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