

CNK & Associates LLP

Note on TCS provisions applicable w.e.f 1st October 2020

Issued on: 10th September 2020



The Finance Act, 2020 has amended provisions related to Tax Collection at Source (TCS) which are effective from 1st October, 2020. The amendments and resultant implications are discussed herein.

Recap of the Amendment:

The TCS provisions have been extended to seller of goods. Every seller, whose turnover in the immediately preceding Financial Year (FY) exceeds INR 10 crore, who receives an amount exceeding INR 50 lakhs in aggregate from a buyer in any previous year on sale of goods (other than receipts from sale of scrap, alcohol, motor vehicles, remittances under Liberalised Remittance Scheme (LRS) and overseas tour program packages), shall collect a sum of 0.1% (0.075% for FY Year 2020-21), on the sale consideration exceeding INR 50 lakhs from the buyer of such goods. The rate is to be increased to 1% if neither PAN nor Aadhar number are provided.

Further, TCS shall not apply in case of sale of goods, where the seller is liable to collect TCS under any other provisions of Section 206C or the buyer is liable to deduct TDS under any other provisions of the Act and has deducted such amount.

Export of Goods outside India have also been excluded from the extended TCS provisions.

Purchases by the Central Government, State Government, Embassy / High Commission, Local Authority, as well as by an Importer of Goods into India have also been excluded from the collection of such tax.

Resultant Issues:

While TCS is applicable in case of sale of scrap, alcohol & motor vehicles, the amended provisions are extended to sale of all goods (excluding exports). The term "Goods" is not defined in the Income Tax Act, 1961. The amended provisions would apply to all goods. TCS provisions are triggered when the aggregate consideration from the sale of goods exceeds INR 50 Lakhs in any previous year to any buyer (excluding exports outside India). For computing the threshold limit of INR 50 lakhs, the aggregate receipts from a buyer during a FY would need to be considered.

The applicability of these provisions was deferred to 1st October, 2020. However, the threshold of INR 50 Lakhs is for "any previous year". In view of this, though a person will be liable for tax collection at source on or after 1st October, 2020, for the predominant view is that the aggregate receipts from sale of goods received from 1st April 2020 will be considered. Further, in determining the threshold of INR 50 Lakhs, sale consideration received from export of

goods is to be excluded. However, for the purposes of determining the total turnover of the preceding FY, (whether exceeds INR 10 Crores), export turnover will also be included.

TCS is to be made on the amount of consideration received for the sale of goods. Whether Goods & Service Tax (GST) is includible as a part of consideration for TCS is an issue that continues to be bordered with ambiguity. One can make reference to Circular No. 76/50/2018-GST issued by the Central Board of Indirect Taxes (CBIC) wherein it was clarified by CBIC that for the purpose of determination of value of supply under GST, TCS under the provisions of the Income Tax Act, 1961, would not be includible as it is an interim levy not having the character of tax. An alternative view based on judicial precedents, which prevails is that GST is includible as "consideration for sale of goods" and consequently tax is collectible at source on the amount of GST. Till such time as there is no clarification from the Central Board of Direct Taxes (CBDT), it would be advisable to collect TCS on the entire sale consideration, including GST.

The trigger for applicability of TCS provisions is the receipt of consideration, and therefore, there is a possible view that TCS may apply for sale of goods which have been undertaken in earlier FY, but the consideration for the same is received after 1st October (subject to the threshold limit).

As the above views are debatable, a clarification from the CBDT on the various issues would be welcome.

Following the change in the rules for credit for TCS, the buyer can claim credit for the TCS while furnishing the Income Tax Return (ITR) for the previous year in which the tax collection is undertaken i.e. in the year in which the payment for the consideration is made.

Practical Aspects:

PAN / AADHAR Details

The sellers of goods to whom the aforesaid provisions are applicable should update the PAN / AADHAR details for buyers where the threshold is likely to be exceeded. In absence of either the PAN / AADHAR details, the rate of TCS applicable will be 1% instead of 0.1% (0.075% for FY 2020-21.)

Income Tax Rules

The CBDT has amended the Income Tax Rules, in line with the above changes to the TCS provisions. Existing Rules require the assessee to file quarterly TCS returns in Form 27EQ. Under the amended Rules, the assessee (seller) is required to report the amount on which TCS is not collected from the buyer. An annexure for party wise break-up of TCS is also provided for in the form.

The new levy thus widens the scope of TCS and opens up a plethora of issues for the tax payers,

some of which we have summarised in the note. Further, various changes may be required to be undertaken in the accounting/ MIS softwares in order to ensure that proper control is maintained for the collection of tax at source. Feel free to reach out to us for further clarifications.

DISCLAIMER AND STATUTORY NOTICE

This e-publication is published by CNK & Associates, LLP, Chartered Accountants, India, solely for the purposes of providing necessary information to employees, clients and other business associates. Whilst every care has been taken in the preparation of this publication, it may contain inadvertent errors for which we shall not be held responsible.

This document is a proprietary material created and compiled by CNK & Associates LLP. All rights reserved. This newsletter or any portion thereof may not be reproduced or sold in any manner whatsoever without the consent of the publisher.

This publication is not intended for advertisement and/or for solicitation of work.

Our Offices in India

Mumbai

Mistry Bhavan, 3rd Floor,
Dinshaw Vachha Road, Churchgate
Mumbai 400020
Tel No. +91 22 6623 0600

Mumbai (Suburban Office)

501/502, Narain Chambers,
M.G. Road, Vile Parle (East)
Mumbai 400 057
Tel No:+91 22 6457 7600/01/02

Ahmedabad

'Hrishikesh',
2nd Floor, Vasantbaug Society,
Opp Water Tank, Gulbai Tekra
Ahmedabad 380 006
Tel. No. +91 79 2630 6530

Bengaluru

96, 7th Cross,
Domlur,
Bengaluru 560 071
Tel. No.+91 80 2535 1353

Chennai

Kochu Bhavan
Ground Floor, Old No 62/1, New No 57,
McNichols Road, Chetpet
Chennai 600 031
Tel No. +91 44 4384 9695

New Delhi

Suite 1101,
KLJ Towers, NSP
New Delhi 110 034
Tel No.+91 11 2735 7350

Vadodara

C-201/202, Shree Siddhi Vinayak
Complex,
Faramji Road, Alkapuri,
Vadodara 390 005
Tel. No. +91 265 234 3483

Our Overseas Office

Dubai

Suite#17.06 Dubai World Trade Centre
Shaikh Zayed Road, Dubai,
P.O.Box.454442
Tel. No. +971 04 355 9533