# GIST ON TCS ON SALE OF GOODS U/S206C(1H)


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**October 1,** 2020, our Government has introduced a new provision for collecting TCS for the sale of goods and depositing the same to the Government. These provisions are given in Section 206C (1H) of the Income Tax Act . according to it if your turnover is more than 10 crores in the previous financial year i.e. the year ended 31 March 2020, then this year you will have to collect and deposit TCS on your receipts from sale of goods from such buyers from whom you received more than Rs. 50 Lakhs as sale consideration during the current Financial year. The TCS is payable on the amount of receipt which is greater than 50 Lakhs and received after 1st. Oct. 2020. The rate of TCS is 0.1% and Presently due to corona Pandemic 25% discount has been given in this tax rate till 31 March 2021 and its effective rate is 0.075%.

The provision that has been brought at this time is only in relation to **"sale of goods"** and services have been kept away from this provision. Therefore, this provision is not applicable to the payment of consideration received in relation to supply of services.

"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. **But** 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.

new provisions of TCS will not apply in relation to those items. Such as Tendu leaves, liqueurs for human consumption, scraps etc. Remember that the existing provisions of TCS already applicable on these goods will continue to applied issued on these items will continue.

**Exceptions to this Rule** Buyer” means a person , who purchases any goods , but does not include

- i. Goods sold during export.
- ii. If the buyer is Central Government, State Government, Embassy of any other country etc., local bodies like – Municipality etc., any person who is importing goods into India- These are excluded from the definition of Buyer.
- Remember that all the purchases made by them are exempt from this TCS but on the sale made by them, it if applicable, they have to be collected and deposited TCS from the buyers.
- iii. Goods which are already under TCS provisions like Tendu leaves, liquor for human consumption, scraps etc. In this regard, see the previously applicable TCS provision in the Income Tax Act, 1961. These goods will be governed by the existing provisions of TCS and new TCS provision will not be applicable on these goods.
- iv. Importers in India – These are excluded from the definition of buyer.
- v. If the Government notifies anyone who is to be excluded from the definition of buyer. Till today no such notification has not been issued by the Government.

- TCS applies only in cases where receipt of sale consideration exceeds Rs. 50 lakh in a financial year. As the threshold is based on the yearly receipt, it may be noted that only for the purpose of calculation of this threshold of Rs. 50 lakh, the receipt from the beginning of the financial year i.e. from 1st April, 2020 shall be taken into account.
- Provided that if the buyer has not provided the Permanent Account Number or the Aadhar number to the seller, then the provisions of clause (ii) of sub-section (1) of section 206CC shall be read as if for the words “5%”, the words “1%” had been substituted.
- Provided further that the provisions of this sub-section shall not apply , if the buyer is liable to deduct tax at source (TDS) under any other provision of this ACT on the goods purchased by him from the seller and has deducted such amount.
- “Seller” means a person whose total sales, gross receipts or turnover from the business carried on by his exceeds ‘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 Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein.

The person responsible for collecting tax shall deposit the TCS amount within 7 days from the last day of the month in which the tax was collected. • Every tax collector shall submit quarterly TCS return i.e., Form 27EQ in respect of the tax collected by him in a particular quarter.

The receipt of sale consideration from a buyer towards sale of goods shall include the GST amount also. This has been clarified by the CBDT in the guidelines issued by Circular No. 17/2020.

<u>Following not comes under ourview of TCS</u>

- Inter-branch transfers, stock transfers are not ‘sale of goods’, hence not liable for TCS.
- A contract for job-work or a works contract comes under the purview of TDS provisions under section 194C. Hence, TCS provisions under section 206C(1H) shall not apply on Job-works/works contracts.
- Land, buildings, flats, are immovable properties and are not ‘goods’. TCS provisions under section 206C(1H) do not apply to sale of immovable properties. It only applies to ‘goods’. Kindly refer this article for more discussion on ‘goods’.This holds true even if the land or building or flats are held as stock in trade or inventory by the seller.
- Jewellery are goods and hence comes within the purview of section 206C(1H). Prior to 01.04.2017, sale of jewellery was covered under TCS under section 206C(1D). This section is now omitted.

- Provisions of TCS under section 206C(1H) shall also apply to goods sold on approval basis. However, the TCS liability shall arise only when the buyer pays the consideration. Obviously, the buyer will pay the consideration only after he approves the goods. If the goods are returned unapproved, there will be no payment of consideration and thus section 206C(1H) cannot apply.

- The provisions of section 206C(1H) does not apply to export of goods out of India. Remember this exclusion is given only when goods are exported out of India. If the goods are not exported out of India, TCS may apply. If the goods are sold to SEZ units or EOU units, since in these cases goods are not exported out of India, TCS provisions shall apply.

- Development rights, leaseholds rights or any other rights related to immovable properties are also held as immovable properties. Thus, TCS provisions shall not apply to transfer of TDRs and leasehold rights.

- sale of goods and installation charges are independent activity, then the provisions of section 206C(1H) shall apply only on the sale of goods. The receipt from installation charges will amount to sale of services.

- Shares are defined as ‘goods’ under the Sale of Goods Act, 1930. Hence, TCs provisions shall apply to the sale of goods, being shares and securities, if the conditions specified in section 206(1H) are satisfied.

- TCS on sale of motor cars are already covered under section 206C(1F). However, where the provisions of section 206C(1F) does not apply, provisions of section 206C(1H) shall apply on sale of motor cars. Value less than 10 Lakh will get added to bulk purchaser of vehicle than this section apply

- Slump sale is the transfer of a business undertaking or some division of a company or entity to another entity as a going concern basis on an as-is-where-is basis for a lump sum amount as consideration. A going concern basis basically means that an entity will remain in business in the near future. This basically means that when a slump sale happens, all the moveable and immovable assets, debtors, creditors, stock-in-trade, investments, liabilities, contracts, licenses, obligations, rights, intellectual properties, employees, etc concerned with the business undertaking will be transferred to the purchaser. Thus, it is a transfer of ‘business’ and not ‘goods’ *per se*. Since slum sale is not a sale of goods there cannot be any TCS under this provision.

- **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 (1H) of section 206C of the Act since the collection is made with reference to receipt of amount of sale consideration.**