

TCS PROVISIONS – GOODS
RELATED
W.E.F OCTOBER 1,2020
UNDER INCOME TAX ACT 1961

PRESENTED BY CA NITIN BHUTA MUMBAI

DISCLAIMER

All views stated are my personal views, they are not binding on WIRC/ICAI. My personal views may be correct/incorrect as they are expressed based on my understanding of the subject.

All members/listeners are requested to go through tax law provisions on their own and advise their clients accordingly as each situation is peculiar in itself.

All Illustrations provided are imaginary and any resemblance to any situation/s is purely co-incidental and without any intentions to disclose private and confidential information.



H - Happy

COMPILED AND PRESENTED BY CA NITIN BHUTA

ECG
E- Enjoy
C- Celebration
G - Goodness



OUTLINE

1. Why it was introduced?
2. Legal Provisions
3. Definitions
4. To whom it is applicable?
5. To whom it is not applicable?
6. Rate of TCS?
7. Legal Implications under Income Tax Law
8. Legal Implications under GST Law
9. Other TCS provisions as applicable
10. FAQs
11. Conclusions

Objective

OBJECTIVE

- ✓ To expand the scope of provisions relating to Tax collection at source;
- ✓ To monitor disclosure of transactions in the ITR filed by the person;
- ✓ To investigate the leakages of Direct Tax Revenues as well as Indirect Tax Revenues;
- ✓ To Increase Tax collections by the Sovereign;
- ✓ To improve tax compliance and disclosure processes prevalent in the Country;

OBJECTIVE

- ✓ To curb/check on fraudulent , fake and bogus transactions;
- ✓ To prosecute law evaders;
- ✓ To minimize undesirable personal linkages/connects between the Assessee and Dept. Officials - by building technology platforms using AI and VR for monitoring, reporting and faceless assessment under tax laws.

LEGAL TCS PROVISIONS SECTION 206 (1H)

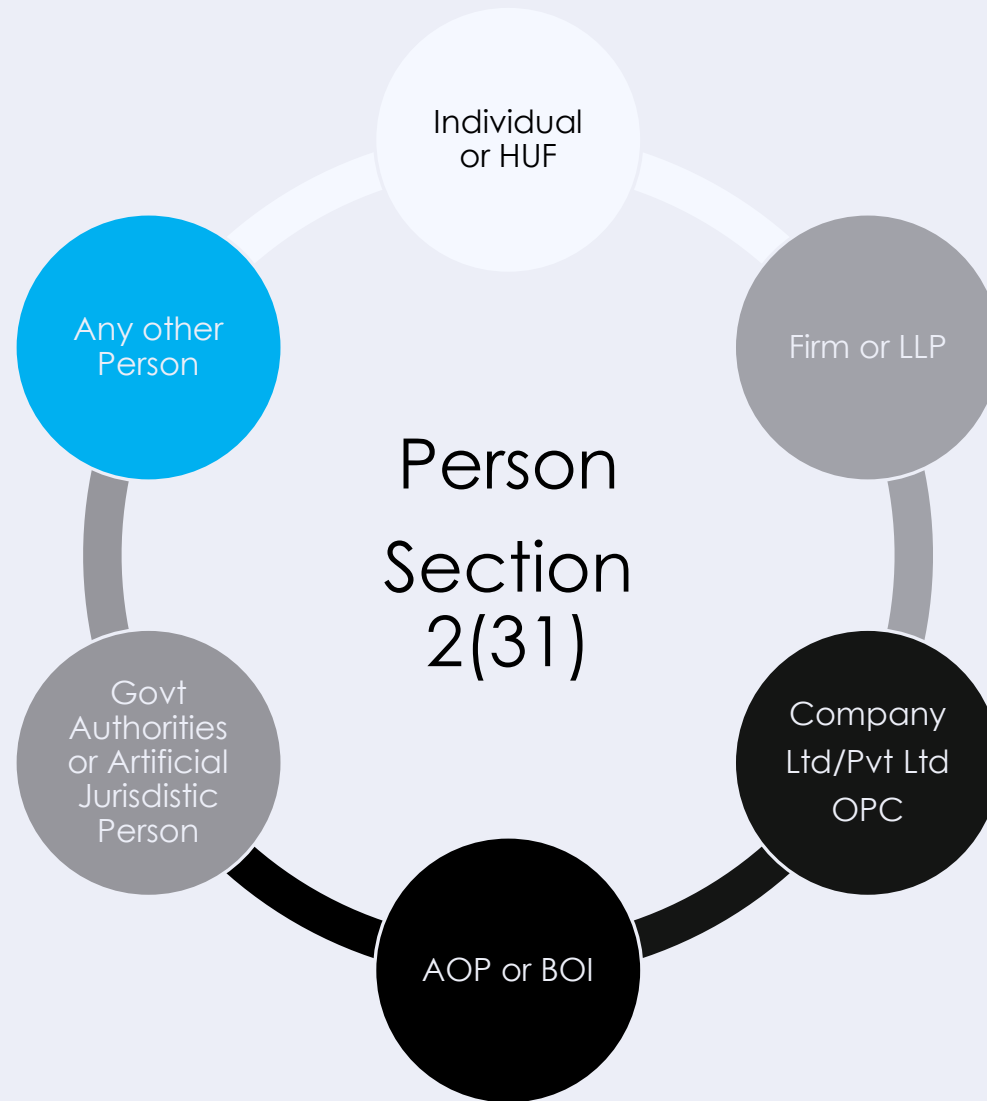
“Every person, being a seller, who receives any amount as consideration for sale of any goods of the value or aggregate of such value exceeding fifty lakh rupees in any previous year, other than the goods being exported out of India or goods covered in sub-section (1) or sub-section (1F) or sub-section (1G) shall, at the time of receipt of such amount, collect from the buyer, a sum equal to 0.1 per cent of the sale consideration exceeding fifty lakh rupees as income-tax:

LEGAL TCS PROVISIONS

SECTION 2 (31)

"person" includes—

1. (i) an individual,
2. (ii) a Hindu undivided family,
3. (iii) a company,
4. (iv) a firm,
5. (v) an association of persons or a body of individuals, whether incorporated or not,
6. (vi) a local authority, and
7. (vii) every artificial juridical person, not falling within any of the preceding sub-clauses.
8. *Explanation.*—For the purposes of this clause, an association of persons or a body of individuals or a local authority or an artificial juridical person shall be deemed to be a person, whether or not such person or body or authority or juridical person was formed or established or incorporated with the object of deriving income, profits or gains;



Explanation.—For the purposes of this clause, an association of persons or a body of individuals or a local authority or an artificial juridical person shall be deemed to be a person, whether or not such person or body or authority or juridical person was formed or established or incorporated with the object of deriving income, profits or gains;

LEGAL TCS PROVISIONS CONSIDERATIONS

1. Not defined under Income Tax Act 1961
2. Contextual reference – Capital Gains u/s 45 and Section 50C of the Income Tax Act 1961 and Chapter XX-A – Section 269A - ACQUISITION OF IMMOVABLE PROPERTIES IN CERTAIN CASES OF TRANSFER TO COUNTERACT EVASION OF TAX
3. consideration
 - n. 1) payment or money. 2) a vital element in the law of contracts, consideration is a benefit which must be bargained for between the parties, and is the essential reason for a party entering into a contract. Consideration must be of value (at least to the parties), and is exchanged for the performance or promise of performance by the other party (such performance itself is consideration).

LEGAL TCS PROVISIONS VALUE

- ✓ *value or aggregate of such value exceeding fifty lakh rupees in any previous year,*
- ❖ *Exclusions*
- ❖ *other than the goods being exported out of India or*
- ❖ *or goods covered in sub-section (1) – alcoholic liquor, tendu leaves, timber, forest produce , Scrap or minerals , being local or lignite or iron ore or*
- ❖ *or sub-section (1F) - TCS on motor vehicle or*
- ❖ *sub-section (1G) - overseas tour operator TCS or TCS on remittances out of India*

Trigger Point of levy

- ✓ *shall, at the time of receipt of such amount, collect from the buyer, a sum equal to 0.1 per cent of the sale consideration exceeding fifty lakh rupees as income-tax:*
- ✓ *In the cases of business transactions where PAN and/or Aadhaar Number is notified to Seller of the goods*

DEFINITIONS SELLER

Explanation- for the purpose of this subsection

(b) "seller" means a person [section 2(31)] whose total sales, gross receipts or turnover from the business carried on by him exceed ten crore rupees (for current financial year – turnover as per previous financial year audited financial statements should exceed Rs.10 Crores then only otherwise Not Applicable) during the financial year immediately preceding the financial year in which the sale of goods is carried out,

❖ *Exclusions*

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.

DEFINITIONS

BUYER

Explanation- for the purpose of this sub-section

a) "buyer" means a person who purchases any goods, but

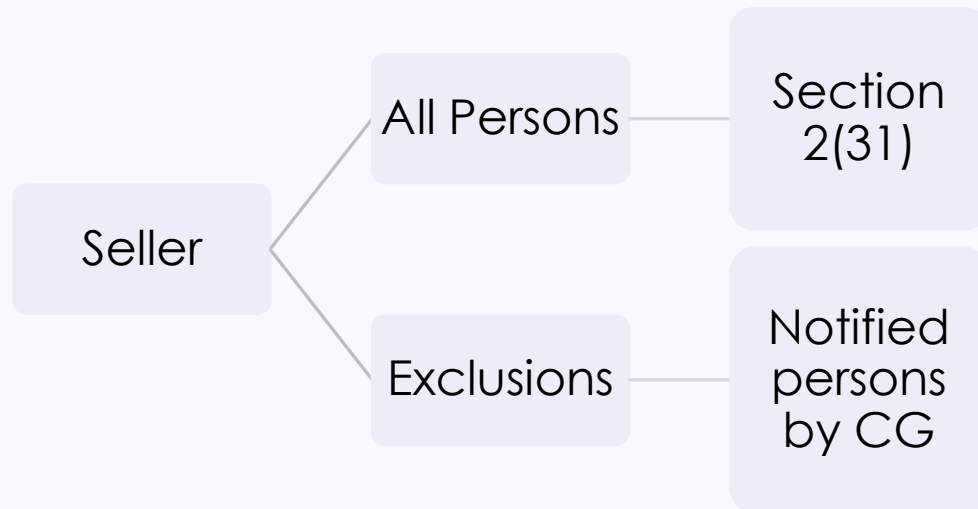
❖ Exclusions

does not include,—

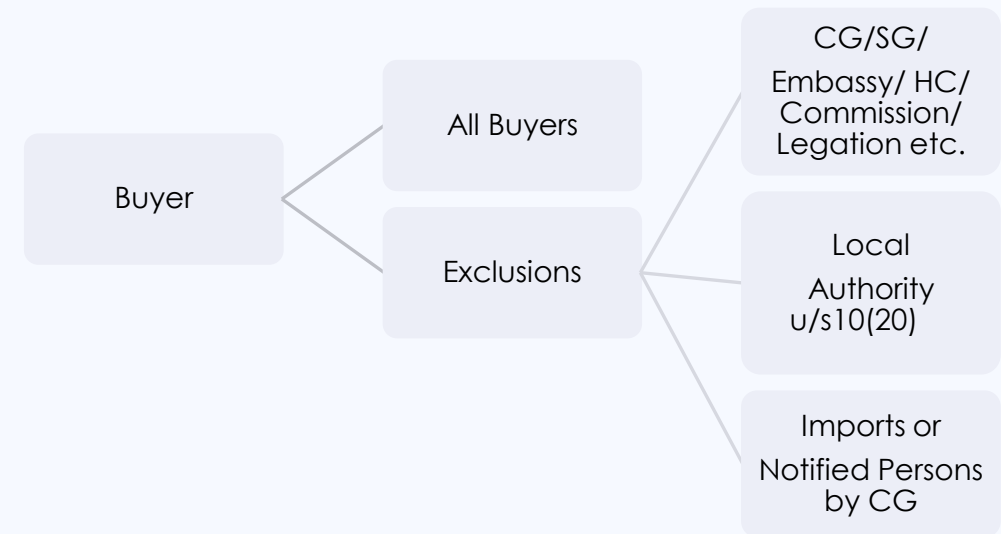
- 1. (A) the Central Government, a State Government, an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State; or*
- 2. (B) a local authority as defined in the Explanation to clause (20) of [section 10](#); or*
- 3. (C) a person importing goods into India 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;*

TO WHOM APPLICABLE/TO WHOM NOT APPLICABLE

SELLER



BUYER



TCS RATE

Applicable Date	1.10.2020
TCS Rate where PAN and/or Aadhaar Number Provided	0.1% of value exceeding 50 Lakhs of Receipts
TCS Period 1.10.2020 to 31.03.2021	0.075% of value exceeding 50 Lakhs of Receipts (concessional rate)
TCS Period 1.04.2021 onwards	0.1% of value exceeding 50 Lakhs of Receipts
TCS Rate where no PAN and/or Aadhaar Number Provided	1% of value exceeding 50 Lakhs of Receipts (10 times normal rate of TCS)

IMPLICATIONS UNDER INCOME TAX ACT 1961

- Mandatory compliance for Specified persons as per section 206(1H)
- Compulsory TCS to be collected or to be paid out of pocket vide ITNS 281 and if not complied, then Demand and Recovery proceedings as applicable could be attracted under the provisions of the Income Tax Act 1961
- Compulsory payment of TCS as per due dates prescribed for the filing of TCS Returns in Form 27EQ on quarterly basis
- Transactions reporting by Buyer in his personal ITR. TCS would be reported in Form 26AS - which would result in easier detection of leakage of revenue.
- If provisions not complied with, then all demand, recovery and prosecution proceedings as per the provisions of the Act can be initiated.

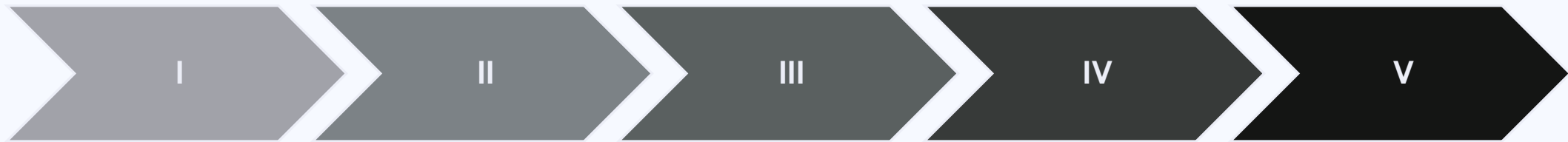
IMPLICATIONS UNDER GST ACT 2017

- Sharing of Data from ITD can help to detect the cases where TCS is deducted but buyer has not registered under the provisions of GST Act 2017.
- Detection of GST leakages due to non- registration of such persons
- Expansion of GST Registered database
- Data sharing between GST and Income Tax will help to detect nuisance of Fake and Bogus Billing which would be mapped with E-Way Bill as well as E Invoicing etc.
- Levies of Penalties and Prosecution under GST Laws as well as Income Tax Law based on facts of the matter.

Other TCS Provisions u/s 206C(1)

Nature of Goods	Rate of TCS	Nature of Goods	Rate of TCS	Remarks
Alcoholic Liquor for human consumption	1%	Scrap	1%	If PAN Number is not furnished by the Buyer, the rate of TCS shall be twice the rate specified in the relevant provisions of the Act or at the rate of 5% as per section 206CC (1) .
Tendu leaves (Bidi)	5%	Minerals, being coal or lignite or iron ore	1%	
Timber obtained under a forest lease	2.5%	Parking Lot	2%	
Timber obtained by any mode other	2.5%	Toll Plaza	2%	
Any other forest produce not being	2.5%	Mining and Quarrying	2%	
Motor Car where value exceeds Rs.10 lakhs	1%	Overseas Tour Operators & Specified Foreign Remittances where it exceeds Rs.7 Lakhs – Loan specified u/s 80E	5% , Loans specified u/s 80E @ 1.5%	

TCS ROADMAP FIVE POINT PROGRAM



Verify if TCS is applicable by the seller

Collect TCS from the Buyer if applicable

Deposit TCS collected from the Buyer every month

File Quarterly TCS Return in 27EQ and if not applicable, file NA declaration too

Both Seller and Buyer to maintain records for disclosure and compliances under Income Tax Act 1961.



Frequently Asked Questions?

TCS on Sale of Goods

TCS ON SALE OF GOODS U/S 206C (1H) W.E.F 1.10.2020

QUESTIONS

Q. Are TCS provisions applicable only to Persons engaged in sale of goods involved in business or it applies also to sale of services/professional income ?

Q. If Seller has deducted TDS under any other provisions of the Income Tax Act 1961, then whether TCS provisions would still apply ?

Q. Can TCS be charged in the Invoices raised by Supplier ?

SUGGESTED ANSWERS

A. TCS provisions are applicable only to Sale of Goods involved in business **and not to a Person engaged in Profession and/or Services.**

A. In the cases where TDS is deducted by the seller, then TCS provisions shall not apply. Thus such transactions shall be excluded from TCS provisions applicability.

A. No TCS should be collected in invoice as it is payable on collections from the Buyer and there is no supply involved.

TCS ON SALE OF GOODS U/S 206C (1H) W.E.F 1.10.2020

QUESTIONS

Q. In determining the value of sales, turnover and gross receipts from business - for determining the limit of 50 Lakhs, do taxes levied on such transactions like GST or Cess or any other statutory levies to be considered?

Q. For determining the limit of 50 Lakhs. from which date do we consider the value of sales, turnover and gross receipts from business?

SUGGESTED ANSWERS

A. In my understanding , for determining the limit of 50 Lakhs, taxes levied on such transactions in the form of GST, cess or any other statutory levies shall be excluded **but for administrative convenience seller may deduct the TCS on values including levies but legally it is incorrect.**

A. Value of such sales, turnover and gross receipts for business should be considered from April 1,2020 for each buyer individually but TCS provisions shall apply only from October 1,2020.

TCS ON SALE OF GOODS U/S 206C (1H) W.E.F 1.10.2020

QUESTIONS

Q. What is impact on Debit and Credit Notes issued in connection with value of aggregate sales, turnover or gross receipts in case of supplies? What happens if they are issued for Trade Discounts or Cash Discounts?

Q. What is the impact of Financial Debit and Credit Notes in connection with applicability of TCS provisions?

SUGGESTED ANSWERS

A. No Impact on TCS provisions as such debit and credit notes are issued for the short deliveries or excess deliveries of goods or for variation in values as well as tax rates. Similarly, Trade Discounts as well as Cash Discounts do not involve receipt of consideration - thus TCS provisions won't apply.

A. Financial Debit and Credit Notes involve settlement of consideration payable in connection with sale of goods, thus it would attract TCS provisions.

TCS ON SALE OF GOODS U/S 206C (1H) W.E.F 1.10.2020

QUESTIONS

Q. When TCS should be collected?

Q. When TCS should be deposited by the Seller? Which TCS Return to be filed by the seller?

Q. Whether TCS collected by the seller should be claimed by the Buyer in his ITR?

SUGGESTED ANSWERS

A. TCS should be collected only when receipts from business exceed Rs.50 Lakhs from the buyer w.e.f 1.10.2020.

A. TCS should be deposited by 7th of succeeding month on or before due dates stipulated for ITNS 281 and Quarterly Return to be filed in Form 27EQ.

A. TCS collected by the Seller is on receipt basis so buyer should claim as TCS in the previous year in which such TCS is collected by the seller.

TCS ON SALE OF GOODS U/S 206C (1H) W.E.F 1.10.2020

QUESTIONS

Q. Whether TCS collected by the seller would be considered as prepaid tax for the buyer for the purpose of advance tax working or will buyer can get the refund of such TCS?

Q. Does Seller need to obtain separate TCS Number even though it has TAN Number ?

SUGGESTED ANSWERS

A. Yes, it would be considered as prepaid taxes for the purpose of Advance Tax and if refund is due as per the provisions of the Income Tax then Buyer can obtain refund by filing Income Tax Returns with appropriate disclosures.

A. If Seller has TAN, then such number also acts as TCS Number.

TCS ON SALE OF GOODS U/S 206C (1H) W.E.F 1.10.2020

QUESTIONS

Q. Whether TCS deducted under Income Tax Act 1961 and TDS/TCS under GST Act 2017 are one and the same?

Q. TCS collected by Seller - where it would be reflected in Income Tax records?

Q. If TCS collected by Seller but not deposited with tax authorities, can the buyer get credit of such TCS ?

SUGGESTED ANSWERS

A. No, both are compliances under different laws. Accordingly, compliances need to be effected separately by the respective responsible persons.

A. TCS collected by Seller would be reflected in Form 26AS of the Buyer if the seller has filed TCS returns after paying such TCS.

A. No, if Seller has not deposited TCS then Buyer can't claim credit for such TCS as it won't be reflected in Form 26AS.

TCS ON SALE OF GOODS U/S 206C (1H) W.E.F 1.10.2020

QUESTIONS

Q. If TCS collected by Seller is not deposited with Tax Authorities, will it amount to a loss to the buyer?

Q. If TCS is not deposited by the Seller and Buyer has filed its ROI u/s 139 and after that seller files TCS Returns, can Buyer revise his ROI ?

SUGGESTED ANSWERS

A. Yes, it will amount to a loss to the buyer if the same is not deposited by the Seller.

A. If filing of revised return is permissible, then Buyer can file Revised Return u/s 139 and claim the credit of such TCS and if filing of Revised Return is not possible then it would result into losses.

TCS ON SALE OF GOODS U/S 206C (1H) W.E.F 1.10.2020

QUESTIONS

Q. If Seller as well as Buyer have the transaction of buying and selling of goods with each other and they offset Accounts Receivable against Accounts Payable will it require TCS collection at source u/s 206C(1H) w.e.f 1.10.2020 ?

Q. Do you feel that TDS and TCS provisions are similar ?

SUGGESTED ANSWERS

A. Yes TCS provisions shall apply to such mutual netting arrangements also.

A. Yes, they are more or less similar, but TDS provisions are applicable in the cases of expenses incurred by business enterprises whereas TCS provisions are applicable in the cases of Sale of Specified Transactions only as per section 206C.

CONCLUSIONS

As I understand, Sovereign will persist and continue to introduce new provisions under tax laws in the form of Direct Taxes and/or Indirect Taxes. It is therefore highly desirable that every person organizes his affairs in a transparent and systematic manner which is above board – this will minimize future chances of any of kind of litigation. The future will be one of systematic monitoring of compliances by the active and advanced deployment of AI, VI and MR. All stakeholders need to be cognizant of this and should strive to improve the processes and documentation for proper revenue reporting to the tax authorities.

SURROUND YOURSELF WITH PEOPLE WHO TALK ABOUT VISION AND IDEAS NOT PEOPLE

Appreciated all of You.



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