

10th September 2020

To,

1. Smt. Nirmala Sitharaman,
Hon'ble Finance Minister,
Government of India,
North Block,
Delhi 110001.
2. Shri Ajay Bhushan Prasad Pandey
Hon'ble Revenue Secretary,
Central Board of Direct Taxes (CBDT)
North Block,
Delhi 110001.
3. Shri Pramod Chandra Mody
Chairman CBDT
Central Board of Direct Taxes (CBDT)
North Block,
Delhi 110001.

Respected Madam/ Sirs,

**Ref: Deferment / Clarifications on Tax Collection at Source on sale of goods
u/s 206C**

1. The Chamber of Tax Consultants (CTC), Mumbai was established in 1926. CTC is one of the oldest (about 94 years) voluntary non-profit making organizations in Mumbai formed with the object of educating and updating its members on Tax and other laws.



It has a robust membership strength of about 4000 professionals comprising of Advocates, Chartered Accountants and Tax Practitioners. It has from time to time made various representations to different Government Authorities drawing their attention to pressing issues.

Section 206C (1H) and its Rationale introduced in Finance Act 2020.

2. The Government has introduced a new provision relating to tax collection at source (TCS) in the Finance Act 2020. Section 206C(1H) provides for TCS on sale of goods at the rate of 0.1%. As per the memorandum on the finance bill, the provision has been introduced to "*widen and deepen the tax net*".

3. Repeal of the provisions relating to the TCS on sale of goods

Based on the feedback received from our members, the new TCS levy is going to result in a significant compliance burden. We believe that TCS @ 0.1% is not likely to result in significant increase in revenue base (offset by lower payment of advance tax) but would only result in increasing compliance burden by reporting of sale of goods above Rs. 50 lakhs and there by increase in cost of such compliances. Considering the high threshold of Rs 50 lakhs sales per buyer, the relevant sales data is already reflected in the GST return filed by the seller, infact the exemption threshold is lower i.e. Rs 40 lakhs in aggregate in case of Goods and Service Act. Thus, the data relating to the sale of goods is already available with the Government through the GST administration and the construct of GST Number is such that sales data can be easily collated for each PAN. As gathered from the media reports¹, we understand that recently CBDT and CBIC have signed a Memorandum of Understanding (MOU) for the data exchange including the data from GSTN. Accordingly, the objective of

¹ <https://www.livemint.com/politics/policy/cbdt-cbic-ink-pact-for-sharing-taxpayer-s-data-11595331144876.html> and <https://www.financialexpress.com/economy/cbdt-cbic-sign-pact-for-data-sharing/2031016/>

the newly introduced provision of TCS which is to “*widen and deepen the tax net*” is already achieved by the Government. Therefore, the new levy of TCS would only increase the compliance burden on the industry without commensurate benefit or revenue to the tax administration.

We therefore sincerely request the Government to reconsider its decision to enact the new TCS levy as it results in increase in compliance burden without increase in significant increase in Tax base. It would be a great relief to the assessee’s if the operation of this new levy is suspended or atleast restricted to goods on which GST is not levied (exempt supplies).

4. Without Prejudice to above in case the said provision can not be removed then we request the deferment of the provisions relating to the TCS on sale of goods by 12 months

The recent statistical data released² by the Government has reported a contraction of 23.9% in the Q1 of 2020-21. The Covid-19 pandemic has impacted the overall economy and the businesses.

The introduction of TCS on sale of goods requires a significant change in the IT systems and business processes. Further, the levy also requires various changes in the commercial contracts. These are going to increase the burden of the businesses which are still recovering from the effects of Covid-19 pandemic.

Government has already announced several measures to provide relief to the taxpayers. Considering this background and the objective of TCS levy, without prejudice to our comment in para 3 above, alternatively, it is suggested to defer the levy of TCS on sale of goods by at least 12 (twelve) months. This deferment will allow the businesses to have adequate time to understand and carry out the

² Government of India Press Release dated 31 August 2020 - http://www.mospi.gov.in/sites/default/files/press_release/PRESS_NOTE-Q1_2020-21.pdf

changes in the systems and business processes which have been disrupted since March 2020 due to Covid-19.

5. Specific clarifications for smooth implementation of TCS on sale of goods

Without prejudice to our suggestions in paras 3 and 4 above, we would like to highlight certain issues relating to the levy of TCS on sale of goods. An early clarification from the CBDT on these issues will greatly facilitate smooth implementation of this new TCS levy.

We would like to highlight that the CBDT has been bestowed with the power to remove the difficulties under sub-section (1-I) of Section 206C.

5.1. Levy of TCS on invoice value including GST or excluding GST

5.1.1. TCS shall apply on "consideration for sale of any goods". Sale of goods attract GST and the total value of invoice includes the consideration for sale of goods and the GST amount. Currently, it is not clear on whether TCS should be charged on the invoice value including GST or excluding GST.

5.1.2. In the context of applicability of Tax Deduction at Source (TDS) on GST, the Government has issued a clarification³ and as per the clarification, TDS shall be applicable on the value of the transaction excluding GST. This clarification has removed the hardships faced by taxpayers of paying "tax on tax".

5.1.3. It is sincerely suggested to issue a similar clarification that TCS on sale of goods under Section 206C(1H) applies on the value of goods excluding GST. This shall remove the hardships on the taxpayers.

³ Circular No 23 dated 19 July 2017

https://www.incometaxindia.gov.in/communications/circular/circular_23_2017.pdf

5.1.4. Further, it is suggested that while calculating the threshold of Rs 50 lakhs or Rs 10 crores u/s 206C(1H), the value of indirect taxes such as GST should be excluded.

5.2. TCS on advance amounts received

TCS is applicable on consideration for sale of goods and is levied at the "time of receipt of the amount." Thus, it is not very clear that whether TCS should be applicable on the advance amount received from the customer, since the sale of goods has not yet taken place. Further in case where the entire consideration was received by way of advance prior to applicability of provisions but invoice will be raised subsequently after the applicability upon sale of goods then whether the provisions of TCS will apply or not .

Thus, It is suggested to clarify that in case where the advance amount is received, TCS should be applicable at the time of actual "sale of goods".

5.3. Relief to specific categories of buyers and sellers

5.3.1. The definition of buyer and seller as provided u/s 206C(1H), provides for the Government to notify other persons subject to the conditions.

5.3.2. Exclusions from the definition of buyer –

- a) It is suggested that Government may notify entities covered under The United Nations (Privileges and Immunities) Act, 1947 as excluded persons from the definition of the buyer. The list of specialized agencies of the United Nations and Other International Organizations is available on the IT Department website⁴.
- b) It is suggested that charitable institutions registered under Section 12AA /12AB and entities notified u/s 10(23C) of the Act should be excluded from the

⁴ <https://www.incometaxindia.gov.in/Booklets%20%20Pamphlets/Tax-Treatment-of-Foreign-Income-of-Persons-Resident-in-India-2018.pdf>

definition of the buyer. TCS (even though a small amount) would result in cash-flow blockage for such non-tax-paying entities. Keeping a track of TCS and claiming a credit for the same would result into an administrative burden for such entities especially since many of these entities do not have sufficient resources.

c) Based on the jurisprudence "electricity" is considered as goods. Many private companies generate power which is further supplied to the distribution companies which are state run entities or Boards. It is suggested that such entities should be excluded from the definition of buyer.

5.3.3. Exclusions from the definition of Seller –

a) It is suggested that charitable institutions registered under Section 12AA /12AB and entities notified u/s 10(23C) of the Act should be excluded from the definition of the seller. The TCS levy would result into an administrative burden for such entities especially since many of these entities do not have sufficient resources.

b) Based on the jurisprudence⁵ "electricity" is considered as goods. The TCS would therefore be applicable on the value of electricity bill if it exceeds the prescribed thresholds. It is suggested that power generation companies (especially the state electricity boards) should be excluded from the definition of seller.

5.4. Tracking of buyers – PAN / TAN

a) It may be clarified if a new Tax Identification Number (TAN) is necessary for the TCS compliance.

b) Further, it may be clarified if the threshold of Rs 50 lakhs is to be determined qua per PAN or TAN.

⁵ State of Andhra Pradesh v. National Thermal Power Corporation (2002) 127 STC 280 (SC) and CST v. Madhya Pradesh Electricity Board (1969) 2 SCR 939 (SC)

5.5. Transition Provisions – sales / collections before 1 October 2020

5.5.1. TCS levy shall be applicable from financial year 2020-21 and with effect from 1 October 2020. Being the first year and effective date being in the middle of the financial year, certain transition issues would be relevant.

5.5.2. TCS is applicable if the aggregate value of sales per buyer exceeds Rs 50 lakhs. While computing the threshold of Rs 50 lakhs for FY 2020-21, it is not clear whether the sales made, or collection received before 1 October 2020 should be considered.

5.5.3. It is suggested to clarify that collections received before 1 October 2020 should be excluded from the threshold of Rs 50 lakhs for FY 2020-21.

5.5.4. Further, it is suggested to clarify that sales made before 1 October 2020 and where collection is made after 1 October 2020 should not be subject to levy of TCS.

5.5.5. Further, it is suggested to clarify that sales made after 1 October 2020 and where advance is received before 1 October 2020 should not be subject to levy of TCS.

5.6. Transition Provisions – change in TCS rate for FY 2020-21 and FY 2021-22

5.6.1. As per the Covid -19 relief provided for FY 2020-21, the rate of TCS has been reduced from 0.1% to 0.075% for the FY 2020-21.

5.6.2. In case where sales are effected during the FY 2020-21, the sales invoice would cover TCS @ 0.075%. However, if the customer makes the payment in FY 2021-22, the TCS at the higher rate of 0.1% would apply.

5.6.3. Accordingly, it is suggested to clarify that for sales effected during the FY 2020-21, the TCS @ 0.075% should apply even if the actual payment is made in FY 2021-22 or later years.

5.7. Application for the lower rate of TCS

Section 206C(9) of the Act provides for the lower rate of TCS based on an application made before the assessing officer (AO). The lower TCS rate could be



applied only for the purpose of sub-section (1) and (1C). The option of applying for lower TCS rate is not available in respect of TCS on sale of goods u/s 206C(1H). Considering the current economic situation due to Covid-19 pandemic, an option of applying to the AO for the lower TCS on sale of goods may be provided.

6. In light of the above discussion, considering the overall economic environment, we request your learned self to kindly look into this issue and take appropriate measures in this regard.

We request your learned self to kindly consider the above issue on a priority basis. We look forward to your kind intervention and taking up our request for kind consideration.

Thanking you,
Sincerely,

For The Chamber of Tax Consultants

Sd/-
Anish Thacker
President

Sd/-
Mahendra Sanghvi
Chairman

Sd/-
Apurva Shah
Co-Chairman

Law and Representation Committee