

TCS ON SALE OF GOODS: THE SEVEN WHAMMIES!

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The twin concepts of Tax Deducted at Source ('TDS') and Tax Collected at Source ('TCS') have always been used by the government in shifting its own responsibility of tax collection and administration to the tax payers themselves. While in the commercial environment, an agent is always remunerated and rewarded for acting in the interest of the principal, for TDS and TCS, let alone there being a reward, there are onerous responsibilities cast upon the agent (read tax payer). To add on, the sword of penalties and prosecution is also kept dangling over the hapless tax payer here. And sometimes, to utter and complete dismay, this sword is also wielded by the tax authorities like an adept samurai.

The latest addition made to the plethora of woes is the TCS on sale of goods. Finding its way on the statute book vide the Finance Act, 2020 in section 206C(1H) of the Income Tax Act, 1961, this was made applicable from October 1, 2020. Yes, just round the corner now, so get ready for it. Simply put, this will now require the seller to collect from the buyer, an additional amount of 0.1% (for FY 2020-21, this would be 0.075% due to COVID related relaxation). Of course, there are conditions and relaxations too. Simple enough, would you say? Far from it, as my mind is riddled with questions. While answers may be conjectured or put forth based on experience, they would be prone to litigation and unnecessary litigation. Only the government can and should provide the answers, with finality, by way or a circular, and quickly at that.

1. **Threshold limit of Rs 50 lakhs:** While all the other TCS provisions provide for collection at

the time of invoice or receipt of money which ever is earlier, here it was thought fit to provide for collection only at the time of receipt of sale consideration. This raises quite a bit of confusion. Since there is a threshold of Rs 50 lakhs for this TCS to be applicable, and TCS is only on excess over Rs 50 lakhs, when should the responsibility kick in? Would the threshold be calculated for all collections starting from April 1 or only from October 1, 2020? Common sense would jump in and say, it should be April 1, 2020, but then, in tax matters, since when did common sense start applying! So, a lot of math and reconciliation is on the anvil.

2. **Old outstanding invoices:** As this TCS is applicable at the time of collection, the issue arises for invoices raised prior to April 1, 2020 but collected subsequently. It is justified to bring in TCS for past transactions of purchase? Simply read, it seems that TCS would apply on them too if they are paid after September 30, 2020. So, more accounting entries and chasing up the buyers for additional collection of TCS. All this, at a time when business continuity and liquidity demands full and complete attention of the management.
3. **Disclosure on invoices:** The earlier provisions of TCS were on specific goods but this one is like a residual entry on all other goods. Documentary challenges will be there as to how this TCS should be reflected on the invoices. The issue gets compounded due to the threshold limit as TCS will get activated only at a future date when the limit is breached. If the amount of TCS is

added on the invoice value, then that would pose accounting challenges too as technically, there is no liability to deposit TCS till such time the invoice value is paid by the buyer. A simple way would be to just disclose on the face of the invoice that “TCS would be applicable at _____ % when the total payments exceed Rs 50 lakhs and the buyer should pay the TCS amount of Rs _____ over and above the invoice value”.

4. **Part-payment by buyer:** What happens if the buyer pays only part of the invoice, maybe due to some dispute or any other reason ? How would TCS be calculated then ? The logical way out seems that the amount received will be deemed to be inclusive of TCS amount and grossing up will need to be done on a mathematical basis. But that also means that while the buyer has not paid the TCS, the seller has to pay from its own pocket and have the twin suffering of cash flow reduction and reconciliations with follow ups with buyer for collection of TCS amount.
5. **Advance payment:** As the law is worded, TCS is applicable on consideration for sale of goods. Can advance payment be considered as such ? Is it a consideration for sale of goods when sale has not yet taken place ? And what if the advance has to be returned due to cancellation of contract or otherwise ? Quite a mouthful of questions here, and frankly, I would not venture an opinion here for obvious reasons.
6. **Definition of Buyer:** This one sure is quite interesting. The provisions define “buyer” and go on to exclude certain categories. While the exclusion of Central and State Government,

Embassies and the like is straightforward, the exclusion of “a person importing goods into India” really tickled me pink. Did the lawmakers intend to exclude all importers from the mischief of this TCS ? If so, then what happens to a buyer who is importing goods as well as buying locally ? He does become a person importing goods, right ? So, no TCS here ? Well, I would say the intent should not be so. Maybe the lawmakers were trying to distinguish between an import transaction which would be outside the purview of TCS and a domestic transaction which would be subject to it. But then, my mind questions the need for this as for any import transaction, the seller is anyway outside India and outside the jurisdiction of this provision. So why word it like this ? Well, best to have it from the horse’s mouth!

7. **Value for TCS:** This is important to be clarified. While CBDT had clarified this for TDS that the value for TDS will not include GST, the same clarification would not apply automatically for TCS too. So, there is a possibility of tax on tax if GST amount is to be included for calculating TCS under this new provision.

While I understand that the government is strapped for funds and is becoming more and more creative in devising ways and manner of collections, it is also responsible for providing simple and unambiguous methodology for doing so. As it is, the tax payer is burdened with so many compliances, it surely does not need another one riddled with complexity, confusion and sufferance in the garb of litigation and enquiries. So please, do issue clarifications, and soon!