

Dear Clients,

We are giving hereunder the amended Sections of Income Tax Act, 1961 along with illustrations and analysis for easier understanding of all the stakeholders.

Sections Added in Income Tax Act, 1961:

Following Sub-sections (1G) and (1H) have been inserted in Section 206C of Income Tax Act, 1961 by the Act No. 12 of 2020, w.e.f. **1-10-2020**.

Subsection (1G) – TCS on Remittances under Liberalized Foreign Remittance Scheme (LRS) and Remittance for Foreign Tour Packages:

Every person, —

- (a) being an authorised dealer (Bank), who receives an amount, **for remittance out of India from a buyer, being a person remitting such amount out of India under the Liberalised Remittance Scheme of the Reserve Bank of India;**

- (b) **being a seller of an overseas tour program package**, who receives any amount from a buyer, being the person who purchases such package,

shall, at the time of debiting the amount payable by the buyer or at the time of receipt of such amount from the said buyer, by any mode, whichever is earlier, collect from the buyer, a sum equal to 5% of such amount as income-tax:

Provided that the **authorised dealer shall not collect the sum, if the amount or aggregate of the amounts being remitted by a buyer is less than Rs. 7 Lakhs** in a financial year and is for a purpose other than purchase of overseas tour program package:

Provided further that the sum to be collected by an authorised dealer from the buyer shall be equal to five per cent of the amount or aggregate of the amounts in excess of seven lakh rupees remitted by the buyer in a financial year, where the amount being remitted is for a purpose other than purchase of overseas tour program package.

Illustration:

Following table will explain the above proviso in simple terms.

Particulars	Remittance under Liberalized Remittance Scheme	Remittance for Overseas Tour Package	
		Greater than 7 Lakhs	Less Than 7 Lakhs
Amount of Remittance	10,00,000/-	10,00,000/-	5,00,000/-
Threshold Exemption	7,00,000/-	NIL	NIL
Amount Liable to TCS	3,00,000/-	10,00,000/-	5,00,000/-
TCS @ 5%	15,000/-	50,000/-	25,000/-

Provided also that the authorised dealer shall collect a sum equal to **0.5%** of the amount or aggregate of the amounts in excess of seven lakh rupees remitted by the buyer in a financial year, if the amount being remitted out is a loan obtained from any financial institution as defined in [section 80E](#), for the purpose of pursuing any education (Education Loan).

Provided also that the authorised dealer shall not collect the sum on an amount in respect of which the sum has been collected by the seller.

Provided also that the provisions of this sub-section shall not apply, if the buyer is,

- i.) liable to deduct tax at source under any other provision of this Act and has deducted such amount.
- ii.) the Central Government, a State Government, an embassy, a High Commission, a legation, a commission, a consulate, the trade representation of a foreign State, a local authority as defined in the Explanation to clause (20) of [section 10](#) 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.

Explanation.—For the purposes of this sub-section,—

- i.) "authorised dealer" means a person authorised by the Reserve Bank of India under sub-section (1) of section 10 of the Foreign Exchange Management Act, 1999 (42 of 1999) to deal in foreign exchange or foreign security;
- ii.) "overseas tour programme package" means any tour package which offers visit to a country or countries or territory or territories outside India and includes expenses for travel or hotel stay or boarding or lodging or any other expenditure of similar nature or in relation thereto.

Poser: Whether 5% TCS on remittances under LRS applies to Indian residents/Non-residents or both?

According to the RBI, the LRS remittance scheme applies only to Indian residents. NRIs can remit money from India to abroad under the \$1 million remittance scheme, wherein remittance outside India up to \$1 million per financial year is allowed out of balances held in NRO account under a different Notification. (Remittance exceeding \$1 million will require special permission from the Reserve Bank of India.)

So, in our opinion, TCS of 5% not applicable to Non Residents, but rather only to the resident individuals of India.

Subsection (1H) – TCS on Sale of Goods

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 Rs. 50 Lakhs** 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 % of the sale consideration exceeding fifty lakh rupees as income-tax:**

Provided that if the buyer has not provided the Permanent Account Number or the Aadhaar 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 "five per cent", the words "one per cent" 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 under any other provision of this Act on the goods purchased by him from the seller and has deducted such amount.

Explanation — For the purposes of this sub-section,—

- a) "buyer" means a person who purchases any goods, but does not include,—
- (A.) the Central Government, a State Government, an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State; or
 - (B.) a local authority as defined in the Explanation to clause (20) of [section 10](#); or
 - (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.
- b) "seller" means a person whose total sales, gross receipts or turnover from the **business carried on by him exceed Rs. 10 Crores 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.

Section 206CC:

Notwithstanding anything contained in any other provisions of this Act, any person paying any sum or amount, on which tax is collectible at source under Chapter XVII-BB (herein referred to as collectee) shall furnish his Permanent Account Number to the person responsible for collecting such tax (herein referred to as collector), failing which tax shall be collected at the higher of the following rates, namely:

- (i) at twice the rate specified in the relevant provision of this Act; or
- (ii) at the rate of five per cent.

Clarifications made by CBDT vide Press Note Dated 30th September, 2020:

- 1) Seller shall collect **0.075% of Sale Consideration for receipts between 1st October, 2020 to 31st March, 2021** (This is due to COVID-19 induced concession of 25% on all TDS-TCS Rates).
- 2) Sale Consideration for Export of Goods are exempt from provisions of newly introduced Section 206-C(1H).
- 3) TCS is applicable only for amounts received on or after 1st October, 2020 (even for old invoices). Any payment received prior to 1st October, 2020 is not subject to TCS provisions.
- 4) TCS provisions are applicable only where receipt of sale consideration from a customer exceeds Rs. 50 Lakhs in a financial year. As threshold is based on yearly receipts, the receipt from beginning of financial year is to be considered only for the purpose of calculating as to whether threshold limit has been exceeded. TCS has to be done only on amount exceeding Rs. 50 Lakhs. (Table on next page will better explain this provision with illustration),

TCS is not “Additional Tax”. It is in the nature of Advance Income Tax/TDS for which the Buyer would get credit against his actual income tax liability and if the amount of TCS is more than the actual Income Tax liability, the buyer would be entitled for refund of the excess amount along with interest.

Illustrations explaining TCS on Sale of Goods:

Following table will easily explain certain transitional questions to the above regime.

Sec.206C(1H): TCS on Sale of Goods

Applicable on Sellers having turnover above 10 crore during preceding Financial Year

Date of Invoice	Receipt Details	TCS Applicability
1st October 2020	Full payment of INR 55 Lakhs received on 2nd October 2020	TCS is liable to be collected on INR 5 lakhs as received after 1st October 2020
2nd October 2020	Full payment received on 10th September 2020 (in advance)	TCS not applicable since the consideration is received before 1st October 2020
2nd March 2020	Full payment of INR 55 lakhs received on 10th October 2020	Arguably TCS applies (on INR 5 lakhs) even where sale pertains to FY 2019-20
2nd March 2020	Part payment of INR 10 lakhs received on 10th September 2020 and final payment of INR 45 lakhs received on 10th November 2020	TCS not applicable on INR 10 lakhs as received before 1st October. However, the same would be considered for threshold even if invoice raised before 1st October and hence TCS to be done on INR 5 lakhs
2nd September 2020	Full payment of INR 55 lakhs received on 10th October 2020	TCS is liable to be collected on INR 5 lakhs as received after 1st October 2020
2nd September 2020	Part payment of INR 10 lakhs received on 5th October 2020 and final payment of INR 45 lakhs received on 10th November 2020	TCS obligation will arise once the threshold amount is exceeded, i.e. on INR 5 lakhs on 10th November 2020
2nd March 2020	Part payment of INR 10 lakhs received on 31st March 2020 and final payment of INR 45 lakhs received on 10th November 2020	TCS not applicable on INR 10 lakhs as received before 1st October. Further, since this amount has been received in FY 2019-20, the same should not be reckoned for considering threshold amount. Accordingly, since receipt of INR 45 lakhs on 10th November is less than the threshold applicable for FY 2020-21, no TCS may apply
2nd March 2020	Full payment received on 10th April 2021	TCS liable (over and above threshold) @ 0.1% and not 0.075% as the sales consideration received post 31 March 2021

Note: In all the above scenarios, the invoice value has been assumed as INR 55 lakhs and no other subsequent sales. The conclusion has been drawn considering TCS provisions are applicable on receipt basis.

We hope that above analysis and illustrations will help all the stakeholders in compliance cycle for better understanding and compliance of the new sections made applicable from 1st October, 2020.

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