

SKA

TAX FLASH NEWS

29 September, 2020



All about New Income Tax provision of TDS and TCS effective from 01-10-2020

The Finance Act 2020 has inserted three new provisions under TCS and one provision under TDS which will come into effect from 01-10-2020. The TDS provision is relevant on payment made by e-commerce operator to e-commerce participant whereas TCS provisions are on foreign remittance under LRS scheme, on selling of overseas tour packages and on selling of any goods.

There is ambiguity on certain practical aspects of these provisions which we have tried to address by way of Frequently Asked Questions (FAQs) hereunder:

FAQs related to TCS on Sale of goods under section 206(IH):-



1) What is the scope of this provision?

Ans: 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 50 Lacs 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% of the sale consideration exceeding fifty lakh rupees as income-tax. This provision shall effect from 1st day of October 2020.

2) What is the meaning of the term Buyer for the purpose of this section?

Ans: "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 from India.

Hence, on amount received from person covered in point (a), point (b) and point (c), TCS shall not require to be collected.

3) What is the meaning of the term Seller for the purpose of this section?

Ans: “Seller” means a person whose total sales, gross receipts or turnover from the business carried on by him exceed Rs. 10 crore during the financial year immediately preceding, the financial year in which the sale of goods is carried out.

4) What would be the point of collection of tax?

Ans: The Section provides trigger point at the time of receiving any amounts as consideration for sale of any goods.

5) What is the rate of TCS under this provision?

Ans: Rate of TCS shall be 0.10 % of the sale consideration exceeding 50 Lacs. However, in terms of press release dated 13th May 2020, the rate of TDS/TCS except on salary has been reduced to 75% of its current rate. Thus in this case, TCS shall be collected at the rate of 0.075%. It is also to be noted that In case of non-availability of PAN or Aadhaar of the buyer, the TCS shall be collected at the rate of 1%.

6) What is the threshold limit for the purpose of this section?

Ans: TCS shall be collected on consideration received from a buyer in a previous year in excess of fifty lakh rupees.

7) Whether TCS is required to be collected on trade receivables of goods standing in books as on 30th September 2020?

Ans: The section seems to indicate that only sales made after 01-10-2020 will be covered. However, some person has raised query regarding TCS on sale made before 01-10-2020. A clarification from CBDT would be beneficial.

8) Whether the consideration will include the amount collected towards GST?

Ans: In terms of Section 145A irrespective of the treatment in books of accounts, the value of sales will include the amount of any tax recovered. Hence the consideration amount will be inclusive of GST for the purpose of collection of TCS unless otherwise clarified.

9) Whether TCS will be applicable on Export Sales?

Ans: TCS would not be applicable in respect of Export Sales as the consideration for sale of goods excludes consideration towards goods exported out of India and accordingly, the definition of buyer excludes a person importing goods from India.

10) What if the buyer is liable to deduct TDS on the consideration?

Ans: It has been clarified in the section that 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, the TCS shall not be collected on such sum. For example, if there is a combined sale of goods and service, then buyer shall deduct TDS on the service portion if it is specifically segregated in the Bill or on the total bill if the same is not segregated. In such case, TCS shall not be collected on the amount on which TDS has been deducted by buyer.

FAQs related to TCS on foreign remittance under LRS Scheme under section 206(IG)(a):-

1) Who is the person responsible to collect TCS under this section?

Ans: Under this section, the Authorized Dealer is responsible to collect TCS.



2) What is the threshold limit for TCS under this section?

Ans: When authorised dealer remits an amount or an aggregate of amounts other than amount received for purchase of overseas tour programme package exceeding 7 lacs, then TCS shall be required to be collected.

3) What is the point of collection under this section?

Ans: TCS shall be collected 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.

4) What is the rate of TCS under this section?

Ans: Rate of TCS shall be 5% of the amount or aggregate of amounts in excess of seven lacs rupees remitted by buyer in a financial year. However, 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, then TCS shall be collected at the rate of 0.5% of amount in excess of seven lacs.

5) What is LRS scheme of RBI?

Ans: Under the Liberalised Remittance Scheme, all resident individuals, including minors, are allowed to freely remit up to USD 2,50,000 per financial year (April – March) for any permissible current or capital account transaction or a combination of both. Further, resident individuals can avail of foreign exchange facility for the purposes mentioned in Para 1 of Schedule III of FEM (CAT) Amendment Rules 2015, dated May 26, 2015, within the limit of USD 2,50,000 only.

FAQs related to TCS on sale of overseas tour program package under section 206(IG)(b):-

1) What is overseas tour program package?

Ans: It has been clarified in the section that "overseas tour program 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.



2) Who is the person responsible to collect TCS under this section?

Ans: Under this section, the seller of a tour program package who receives any amount from a buyer being the person who purchases overseas such package, responsible to collect TCS.

3) **What is the threshold limit for TCS under this section?**

Ans: There is no threshold limit for collecting TCS under this section with respect to sale of overseas tour program package. Hence, TCS shall be required to be collected at any amount.

4) **What is the point of collection under this section?**

Ans: TCS shall be collected 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.

5) **What is the rate of TCS under this section?**

Ans: Rate of TCS shall be 5% of the amount receives from the buyer.

6) **Whether Authorized dealer and seller, both will collect TCS?**

Ans: It has been clarified in the section that if the seller of overseas tour program package has collected the TCS, the authorized dealer shall not collect the TCS on an amount in respect of which the sum has been collected by the seller.

FAQs related to TDS on payment made by e-commerce operator to e-commerce participant under section 194-O:

1) **What is the scope of TDS on E Commerce Transactions under Section 194-O?**

Ans: Insertion of new section 194-O is to bring the e-commerce participant within the tax ambit i.e. there will be transparency on the income earned by seller of goods/provider of service through digital platforms provided by the E-commerce operator. The section states that TDS is to be deducted and paid by e-commerce operators for facilitation of service of selling of goods/provision of service provided by it through its digital or electronic facility or platform.



2) **What is the meaning of the term “E-Commerce Operator”?**

Ans: Section 194-O defines the term “e-commerce operator” means a person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

3) **What is the meaning of the term “electronic commerce”?**

Ans: Section 194-O defines the term “electronic commerce” means the supply of goods or services or both, including digital products, over digital or electronic networks. Further, for the purpose of this section, services include fees for technical services and fees for professional services, as defined in the Explanation to section 194J.

4) What is the meaning of the term “ E-Commerce participant”?

Ans: Section 194-O defines the term “e-commerce participant” means a person resident in India selling goods or providing services or both, including digital products, through digital or electronic facility or platform for electronic commerce.

5) What is applicability of TDS on E Commerce Transactions under Section 194-O?

Ans: The provision of this section will be applicable from 1st day of October 2020 on every E-Commerce operator making payment to E-Commerce Participants.

6) When the TDS is required to be deducted?

Ans: E-commerce operator is required to deduct TDS at the time of credit or payment, whichever is earlier. Credit means credit to the account of e-commerce participant and payment means payment through any mode.

7) What is the rate of TDS under this section?

Ans: TDS under this section shall be deducted at the rate of 1 % of the gross amount of sale or services provided by the E-Commerce Participants.

However, in view of the press release dated 13.05.2020 amid COVID pandemic, the rate of TDS only for the financial year ended 31.03.2021 shall be 0.75 %.

In case the E-commerce participant does not furnish PAN or Aadhar Number to the e-commerce operator, TDS shall be deducted at the rate of 5%.

8) What is the monetary threshold limit for deducting TDS?

Ans: E-commerce operator is not required to deduct TDS, if the amount paid or credited to Individual or HUF during the previous year does not exceed Rs. 5 Lakhs. However, to take the benefit of threshold limit of Rs. 5 Lakhs, such individual or HUF must furnish his PAN or Aadhaar to e-commerce operator.

Further this section also provides that if a buyer of goods or service has made payment directly to e-commerce participant it shall be deemed that payment has been made by e-commerce operator or account has been credited by e-commerce operator and same shall be added in gross amount for the purpose of threshold limit and TDS shall also require to be deducted on such amount by the E-commerce operator.

9) Shall other provisions of TDS be Applicable?

Ans: A Transaction in respect of which TDS has been deducted by the e-commerce operator under this section or TDS is not deducted due to the limit of monetary threshold provided under this section, then other provisions of the TDS shall not be applicable.

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