

# TAX COLLECTION AT SOURCE & 194-O – ELP NEWS ALERT

## Supplementary alert to our [news alert dated September 29, 2020](#)

With an intention to widen and deepen the tax net, Finance Act, 2020, expanded the scope of provisions pertaining to tax deducted at source (TDS) and tax collection at source (TCS) in the Income-tax Act, 1961 (IT Act) to introduce the following:

- Section 206C(1H) of the IT Act – TCS on sale of goods;
- Section 194-O of the IT Act – TDS on payment of certain sums by e-commerce operators to e-commerce participant.

In this regard, Central Board of Direct Taxes (CBDT) has issued guidelines under the relevant provisions on September 29, 2020 vide Circular No. 17 of 2020 to provide clarifications on issues highlighted in response to various representations received by it.

Set out below are the guidelines provided in the circular:

Transaction	Clarifications
Transactions carried out through stock exchange	<ul style="list-style-type: none"> <li>▪ Section 194-O and Section 206C(1H) of the IT Act would not apply to the following:               <ul style="list-style-type: none"> <li>– Transactions in Securities and commodities which are traded through:                   <ul style="list-style-type: none"> <li>○ Recognized stock exchange (including those located in IFSC); or</li> <li>○ Cleared and settled through recognized clearing corporation (including those located in IFSC).</li> </ul> </li> <li>– Transactions in electricity, renewable energy certificates, energy saving certificates traded through power exchanges registered in accordance with Regulation 21 of CREC.</li> </ul> </li> </ul>
Payment gateway	<ul style="list-style-type: none"> <li>▪ It has been clarified that the payment gateway would not be liable to deduct tax under Section 194-O of the IT Act, if the e-commerce operator has deducted tax on the same transaction.</li> <li>▪ To facilitate proper implementation, the payment gateway may take a written undertaking from e-commerce operator in this regard.</li> </ul>
Insurance agent and aggregator	<ul style="list-style-type: none"> <li>▪ It has been clarified that in years subsequent to the first year, if the insurance agent or aggregator has no involvement in transactions between the insurance company and the buyer of insurance policy, the insurance agent or aggregator would not be required to deduct tax under Section 194-O of the IT Act for subsequent years.</li> <li>▪ The Insurance company would be required to deduct tax on insurance commission, if any, paid to the insurance agent or insurance aggregator.</li> </ul>
Calculation of threshold for FY 2020-21	<ul style="list-style-type: none"> <li>▪ It has been clarified that the provisions of Section 206C(1H) of the IT Act would apply to any sale consideration received after October 1, 2020. Additionally,</li> </ul>

	<p>206C(1H) will apply on all sales consideration received on or after October 1, 2020 even if the sale was carried out before October 1, 2020.</p> <ul style="list-style-type: none"> <li>▪ Threshold of INR 50 lakhs is applicable for ‘previous year’ and accordingly shall be computed from April 1, 2020. Thus, if a seller has already received INR 50 lakhs from a buyer before September 30, 2020, TCS under Section 206C(1H) of the IT Act shall apply on all receipt of sale consideration on or after October 1, 2020 from such buyer.</li> <li>▪ Similarly, from a 194-O perspective, if the gross amount of sales or services or both facilitated through during the previous year 2020-21 (including the period up to September 30, 2020) in relation to an individual or HUF exceeds INR 5 lakhs, the provision of Section 194-O shall apply on any sum credited or paid on or after October 1, 2020.</li> </ul>
<p><b>Sale of motor vehicle</b></p>	<ul style="list-style-type: none"> <li>▪ It has been clarified that Section 206C(1H) of the IT Act would apply to the following: <ul style="list-style-type: none"> <li>– Receipt of consideration from a dealer for sale of motor vehicles which have not been subjected to TCS under Section 206C(1F) of the IT Act.</li> <li>– In case of sale to consumer, receipt of consideration for sale of motor vehicles is less than INR 10 lakhs, provided that the sale consideration during the previous year exceeds INR 50 lakh.</li> </ul> </li> <li>▪ It has been clarified that Section 206C(1H) of the IT Act would not apply to sale to consumer on receipt of consideration exceeding INR 10 lakhs, if such sales are subject to TCS under Section 206C(1F).</li> </ul>
<p><b>Adjustment to sale return, discount or indirect taxes</b></p>	<ul style="list-style-type: none"> <li>▪ Considering that Section 206C(1H) of the IT Act requires collection of TCS to be made with reference to receipt of consideration for sale of goods, no adjustment is required to be made on account of the following: <ul style="list-style-type: none"> <li>– Sales return</li> <li>– Discount</li> <li>– Indirect taxes including GST</li> </ul> </li> </ul>
<p><b>Fuel supplied to non-resident airlines</b></p>	<ul style="list-style-type: none"> <li>▪ TCS under Section 206C(1H) of the IT Act shall not apply to sale consideration received for fuel supplied to non-resident airlines at airports in India.</li> </ul>

Additionally, the CBDT issued another clarification on September 30, 2020 clarifying certain doubts regarding the applicability of the new levy of TCS. While the press release seeks to provide clarification on various issues, we have listed below the key aspects which have been clarified by the CBDT:

**Requirement to map receipts with the invoice:** In the press release, the CBDT has clarified a key aspect in cases where sellers maintain running account of the buyer, in which payments are generally not linked with a particular sale invoice. The CBDT has clarified that TCS provision will be applicable on the amount of all sale consideration received on or after October 1, 2020 without making any adjustment for the amount received in respect of sales made before October 1, 2020. The intention behind this clarification is for the collector to identify and exclude the amount in respect of sales made up to September 30, 2020 from the amount received on or after the October 1, 2020 - which would have resulted in an unnecessary compliance burden.

**TCS forms part of advance tax:** The CBDT has clarified the new levy of TCS is not an additional tax but is in the nature of advance income-tax/TDS for which the buyer would get the credit against his actual income tax liability. Further, it has been clarified that if the amount of TCS is more than the tax liability, the buyer would be entitled for refund of the excess amount along with interest

**ELP Comments**

- **Interplay between GST and TCS:** The ambiguity with respect to applicability of TCS on GST amount stands resolved with the above clarification that TCS should be calculated on the amount inclusive of GST.
- **Return of goods:** Issues may arise in cases where TCS is already collected by the seller in a particular FY and the buyer returns certain goods in the subsequent FY.
- **Transitional provisions for threshold:** Tabulated below are few illustrations on applicability of TCS under Section 206C(1H) of the IT Act.

Consideration received till September 2020	Consideration received on or after October 1, 2020	Applicability of TCS provisions
INR 60 lakhs	INR 10 lakhs	Yes (applicable on INR 10 lakhs)
INR 30 lakhs	INR 10 lakhs	Not applicable as consideration received during the FY is less than INR 50 lakhs
INR 35 lakhs	INR 20 lakhs	Yes. TCS to be collected on INR 5 lakhs (in excess of the threshold i.e. INR 50 lakhs)

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