



CBDT issues FAQs on newly introduced TCS provisions

Background

The current provisions of Tax Collection at Source (TCS) as per Section 206C of the Income-tax Act, 1961 (the Act) cast an obligation upon the seller of specified goods to collect TCS at the specified rates from the buyer of goods mentioned in the said section.

The Finance Act, 2016 has expanded the scope of Section 206C(1D)¹ With intent to reduce the cash transactions in the sale of goods and services. The amended sub-section (1D) provides that seller who receives an amount in cash exceeding INR2 lakh from:

- sale of any goods (other than bullion or jewellery²) or
- providing of any services.

shall collect from the buyer TCS at the rate of one per cent at the time of receipt of such consideration. Provisions of TCS on the sale of bullion and jewellery shall continue to apply. TCS shall not be collected from payments on which tax is deducted at source.

Further, with intent to bring high-value transactions within the tax net, a new sub-section (1F) has also been inserted by Finance Act, 2016. The newly inserted sub-section (1F) provides that the seller who receives any amount as consideration for the sale of a motor vehicle of value exceeding INR10 lakh shall collect TCS at the rate of one per cent at the time of receipt of such amount.

CBDT clarification

In view of the amendments in section 206C by Finance Act, 2016 (effective from 1 June 2016), the Central Board of Direct Taxes (CBDT) received queries from the stakeholders about the scope of the provisions and the procedure to be followed. The CBDT has considered the same and has clarified the following issues by way of a Circular³:

Sr. No.	Issue	Clarification
1	Applicability of TCS on sale of motor vehicles by manufacturers to dealers/distributors	The amendment is brought with intent to cover all retail sales and accordingly will not be applicable on sale of motor vehicles by manufacturers to dealers/distributors.
2	Applicability of provisions only on the sale of luxury cars or all motor vehicles?	It is clarified that TCS under section 206C (1F) is not limited to the sale of luxury cars and are applicable on sale of any motor vehicle of the value exceeding INR10 lakh.

¹ Existing Section 206C(1D) of the Act provides TCS shall be applicable on sale of bullion exceeding two lakh rupees and jewellery exceeding five lakh rupees.

² The applicability of TCS on the sale of bullion and jewellery as per the existing provisions shall continue to apply.

³ Circular No 22/2016 dated 8 June 2016

3	Applicability of TCS provisions on sale to certain class of buyers	CBDT has clarified that TCS under Section 206C(1D) and 206C(1F) shall not be applicable in the case of sale to Government, institutions notified under United Nations (Privileges and Immunities) Act 1947, and Embassies, Consulates, High Commission, Legation, Commission, and trade representation of a foreign state.
4	Whether TCS is applicable on aggregate sale value or each sale transaction?	<p>TCS is to be collected at the rate of one per cent of sale consideration of a motor vehicle exceeding INR10 lakh. It is clarified that applicability of TCS is with respect to each sale and not with reference to the aggregate value of sale during the year.</p> <p>For instance, a motor vehicle worth INR20 lakh is sold for which payment is made in installments of INR5 lakh at the time of booking and INR15 lakh at the time of delivery. In such a case tax shall be collected at the rate of one per cent on INR5 lakh at the time of booking and on remaining INR15 lakh at the time of delivery.</p> <p>It is further clarified that such position will also hold good with regard to the collection of TCS under Section 206C(1D) of the Act.</p>
5	Applicability of TCS on individuals	The CBDT has clarified that the definition of the seller as per Explanation (c) below Section 206C(11) of the Act is applicable to the sale of motor vehicles also. Accordingly, an individual who is subject to tax audit as per Section 44AB of the Act during the financial year immediately preceding the sale of motor vehicles shall be liable to collect tax at source on sale of the motor vehicle by him.

6	Applicability of TCS in case of part payment in cash	Applicability of TCS provisions on sale of motor vehicles is not dependent upon the mode of payment. TCS provisions would be attracted on any sale of the motor vehicle exceeding INR10 lakh.
7	Overlapping between Section 206C(1D) and 206C(1F)	<p>TCS obligation under Section 206C(1F) is irrespective of the mode of payment. For instance, where the value of the motor vehicle is INR20 lakh, out of which INR5 lakh has been paid in cash and remaining by cheque, TCS shall be applicable on the entire amount of INR20 lakh under Section 206C(1F) at the rate of one per cent.</p> <p>However, if the motor vehicle is sold for INR8 lakh for which the consideration is paid in cash, TCS shall be applicable on INR8 lakh under Section 206C(1D) of the Act at the rate of one per cent.</p>

Our comments

CBDT Circular clarifying certain concerns of the stakeholders is a welcome move.

While the CBDT clarification confining the applicability of sub-section (1F) to retail sales is a big relief, some of the other concerns remain unaddressed. For instance:

- Applicability of TCS in the case of part payment in cash for goods and services, the scope of the services under Section 206C(1D) of the Act.
- As per the amended provisions, TCS is applicable on sale of the motor vehicle, the 'value' of which exceeds INR10 lakh. Whereas in the circular, the terms 'value' and 'sales consideration' have been used interchangeably, a clarification to this effect would have been useful.

For the purposes of TCS on motor vehicles, the circular has sought to include in the scope of the term 'seller' by clarifying that 'seller' would include the certain category of individuals as well. It, however, needs to be examined whether circulars, which only supplement the existing law, can actually have the effect of enlarging the scope of the law.

While CBDT has come out with the FAQ's, Notification for the purpose of sub-section (1E)⁴ may also be issued in due course of time.



⁴ Newly inserted sub-section (1E) provides that certain class of buyers may be exempted from TCS compliance under amended provisions of sub-section (1D) subject to fulfilment of certain conditions.

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