

Tax Collection at Source – Sale of Goods

Finance Act, 2020 with an intention to widen and deepen the tax net has expanded the scope of provisions of tax collection at source for sale of goods. The obligation to collect tax at source is applicable only for specified sellers when sales were made to specified buyers, which are dealt at more appropriate place. The new provisions are made effective from 01st Oct 2020. In this write up, we shall deal with the new provision and obligations under the same.

Applicability of Section 206C(1H):

Section 206C(1H) of Income Tax Act, 1961 (for brevity 'ITA') mandates that every person, who is a seller, who receives any amount as consideration for sale of any goods of value or aggregating of such value exceeding Rs 50 lakhs in any previous year shall at the time of receipt of such amount, collect from the buyer, a sum equal to 0.1% of the sale consideration exceeding Rs 50 lakhs as income tax.

The term 'seller' is defined to mean 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 sale of goods is carried out and not being a person whose is notified by Central Government in this connection. As on date, there is no notification issues exempting persons/class of persons from the current obligation. Hence, all sellers whose turnover/gross receipts/sales in Financial Year (FY) 2019-20 exceeds Rs 10 Crores, they have an obligation under this section.

However, the said obligation will come into play only if the seller who sells goods of value exceeding Rs 50 lakhs in the current year to a buyer. The term 'buyer' is defined to mean a person who purchase any goods and specifically excludes the central government, state government, an embassy, a high commission, legation, commission, consulate and the trade representation of foreign state or local authority or an importer or any other person as notified by Central Government. Further, the said obligation does not apply for sales made by the seller for goods which he has exported out of India or goods covered under Section 206C(1)¹ or (1F)² or (1G)³.

Hence, the obligation to collect tax arises only if the following conditions gets satisfied:

- Total sales/gross receipts/turnover of seller exceeds Rs 10 Crores in preceding FY
- Seller should be in receipt of sale consideration from a buyer exceeding Rs 50 lakhs in current FY
- Seller is not engaged in goods covered under other notified sub-sections of Section 206C
- The goods are not exported out of India by seller
- The buyer is not an importer
- The buyer is not a central government, state government and others⁴

Only if the seller satisfies all the above conditions, then the obligation to collect the tax from the buyer would arise. Now, let us proceed to examine, the rate of tax which the seller has to collect from the buyer.

Rate of Tax to be Collected:

Once the seller is obliged to collect the tax, the next aspect that would arise, what is the quantum of tax which has to be collected from the buyer. The section states that the seller who is in receipt of sale consideration, at the time of receipt of such amount, collect 0.1% of the sale consideration exceeding Rs 50 lakhs.

Hence, if the seller is selling goods to a buyer worth of Rs 60 lakhs, then at the time of collection of such amount from the buyer, the seller is obliged to collect an additional tax of Rs 1,000/- as tax collected at source. Let us say, sellers sells again to the same buyer goods worth of Rs 1 Crore, then the seller has to collect Rs 10,000/- as additional tax. In other words, once a buyer has exceeded threshold of Rs 50 lakhs, then all subsequent sales in the same year, would be subjected to tax collection at source at 0.1%.

It is important to note that the said obligation on seller would arise only if the transaction with a particular buyer exceeds Rs 50 lakhs in year. If the buyer does not buy goods of value exceeding Rs 50 lakhs from the seller, then the said obligation does not arise on the seller. Let us take some examples, to understand the obligation to collect:

MMM-YY	Seller	Buyer	Value	Applicable	TCS	Remarks
Nov-20	ABC Private Limited	DEF Limited	10,00,000	No	-	Total Sales exceeded Rs 50 lakhs. Hence, tax to be collected applicable for consideration exceeding Rs 50 lakhs.
Dec-20	ABC Private Limited	DEF Limited	25,00,000	No	-	
Jan-21	ABC Private Limited	DEF Limited	16,00,000	Yes	100	
Feb-21	ABC Private Limited	DEF Limited	50,00,000	Yes	5,000	
Total			1,01,00,000		5,100	
Nov-20	ABC Private Limited	XYZ Private Limited	15,00,000	No	-	Total Sales not exceeded Rs 50 lakhs, hence no tax to be collected
Dec-20	ABC Private Limited	XYZ Private Limited	10,00,000	No	-	
Jan-21	ABC Private Limited	XYZ Private Limited	20,00,000	No	-	
Feb-21	ABC Private Limited	XYZ Private Limited	2,00,000	No	-	
Total			47,00,000		-	
Nov-20	ABC Private Limited	XY Inc	1,00,00,000	No	-	Export, no tax collection is required
Dec-20	XY Inc	ABC Private Limited	5,00,00,000	No	-	Importer, no obligation on seller
Jan-21	ABC Private Limited	State Government	60,00,000	No	-	Buyer is State Government
Feb-21	Merc ABC Limited	Mr S	75,00,000	No	-	Car Dealer - covered under 206C(1F)
Feb-21	FE Private Limited	Mr U (Scrap Dealer)	75,00,000	No	-	Scrap covered under 206C(1)

Further, vide Press Release dated 13th May 2020, the Central Board of Direct Taxes in light of economic situation arising out of COVID-19, for facilitating more funds at disposal of taxpayers has reduced the rate of tax deduction at source and tax collection at source by 25% during the period from 14th May 2020 to 31st March 2021. Hence, in light of the above press release, the rate of tax collected at source from 0.1% shall stand reduced by 25% making effective rate of tax to be collected at 0.075%. Hence, the sellers can collect tax at the rate of 0.075% instead of 0.1% on the payments received till 31st March 2021.

Further, it is important to note that in case where the PAN or Aadhaar of the buyer is not available, then in terms of Section 206CC(1)(ii), the rate of tax to be collected is 1%. Hence, if buyer does not furnishes his PAN or Aadhaar, then seller has to collect tax at the rate of 1% instead of 0.1% or 0.075%. Further, the Press Release (supra) clarified that the reduced rate is not applicable to cases where PAN/Aadhaar is not furnished by the buyer. Hence, the rate of tax will be as follows:

Date of Receipt	PAN/Aadhaar	Rate of Tax	Remarks
13 th Feb 21	Yes	0.075%	Reduced Rate for payments received till 31 st March 21
18 th March 21	No	1%	No PAN/Aadhaar of Buyer
1 st April 21	Yes	0.1%	Reduced Rate expires on 31 st March 21

Issues:

There are certain issues arising from the language used in the above section and its implementation from the mid of the year. We shall discuss the same hereunder.

Issue #1: Whether the payments received post 1st Oct 20, for the sales made for the period prior to 1st Oct 20 is also to be subjected to tax collection at source?

As stated earlier, the sub-section is made effective from 1st Oct 20. Hence, there would be instances where the sale consideration would be realised from the buyer post 1st Oct 20 for the sales made prior to the said period. Now, the issue, which arises, is whether tax collection has to be made on such payments which are realised post 1st Oct 20 for the sales made prior to the said date? This issue arises because the obligation to payment of tax is linked with receipt of the sale consideration.

Since the sale consideration is being received post 1st Oct 20, the tax authorities may take a view that the obligation to collect tax on such amounts too. However, since the payments pertain to the period prior to 1st Oct 20, where the sub-section is not made effective, a strong view may be put forward by tax payers stating that such payments would not be subjected to this obligation.

Further, since the sub-section states that the additional amount is to be collected from buyer, it is evident that there should be a charge when the invoice was raised, though the payment of tax is linked with receipt of consideration. Hence, in our view, the payment for the sales made for the period prior to 1st Oct 20 should not be subjected to additional tax burden. However, a clarification from CBDT is welcome.

Issue #2: Whether the threshold of Rs 50 lakhs is to be considered only from the sales made from 1st Oct 20 or for the period prior also?

The obligation arises on seller if the sales exceeds Rs 50 lakhs qua a buyer. However, for determining, whether the sales qua a buyer exceeds Rs 50 lakhs, should sales only for the period post 1st Oct should be considered or sales for the period 1st April to 30th September should also be considered? Let us say, a seller has made sales to a buyer for period 1st April to 30th September amounting to Rs 40 lakhs. For the same buyer, sales made post 1st Oct was amounting to Rs 20 lakhs.

If only sales post 1st Oct are considered, then there exists no obligation under Section 206C (1H). On the other hand, if the sales made for the period prior to 1st Oct are also considered, then the obligation exists on the seller to collect tax.

In our view, since the sub-section is uses the term 'value exceeding fifty lakh rupees in any previous year', it is safe to consider the sales made prior to 1st Oct 20 also for the purposes of determining the meeting of threshold. However, as stated in the earlier issue, the collection will only be limited to sales made post 1st Oct 20.

Issue #3: Whether while calculating the turnover/gross receipts/sales for the preceding financial year in order to determine, whether the same exceeds Rs 10 Crores or not, should indirect taxes be included?

The obligation to collected tax from the buyer arises only if the turnover/gross receipts/sales exceeds Rs 10 Crores in the preceding financial year. In other words, if the turnover/gross receipts/sales for FY 19-20 does not exceeds Rs 10 Crores, then the provisions of Section 206C (1H) would not apply. However, the question is whether for calculation of Rs 10 Crores, should the goods and services tax (for brevity 'GST') collected should also be included in the above? For example, if the turnover/gross receipts/sales is Rs 8 Crores and GST collected on such sales is Rs 2.24 Cores, then if GST is added to sales, the obligation arises under Section 206C (1H), if not, there does not exist obligation.

In our view, if GST is not included in the sale price, then the same may not be added to the turnover/gross receipts/sales for determining the threshold of Rs 10 Crores. The seller if he indicates that the price is excluding GST and the same is recovered separately from the buyer, the same need not be included to determine the turnover/gross receipts/sales.

Hence, applying above to the instant case, since turnover/gross receipts/sales is Rs 8 Crores and taxes are being collected separately, the obligation under Section 206C (1H) for FY 20-21 would not apply. Reference can also be made to Para 5.9 of 'Guidance Note on Tax Audit under Section 44AB of the Income Tax Act, 1961⁵' issued by Institute of Chartered Accountants of India.

Issue #4: Whether tax has to be collected on the GST amounts collected from the buyer or only on the value of goods?

The said sub-section states that seller has to collect an amount as income tax on the sale consideration exceeding Rs 50 lakhs. In such case, a question arises, whether the 'sale consideration' should be interpreted to mean only the value of goods or entire invoice value including GST. Let us say, a seller issues an invoice for Rs 1 Crore and charges GST @ 18% on said goods. Now, the question that arises, is whether tax has to be collected on Rs 1 Crore¹ or Rs 1.18 Crore. In our view, the GST should not be included because the sub-section states that tax has to be collected on 'sale consideration' and GST cannot be said to be 'sale consideration'. Hence, in our view, tax has to be collected on Rs 1 Crore instead of Rs 1.18 Crore.

However, the FAQs available on income tax website⁶, while dealing with tax collection at source in terms of Section 206C (1) state that the tax collected at source should be inclusive of GST. Hence, there is a great chance that tax authorities may ask for tax collection inclusive of GST. Hence, a clarification from CBDT on this would be of great help!

In a snapshot:

S No	Particulars	Comments
1	Section under ITA	Section 206C (1H)
2	Effective From	01 st October 2020
3	Obligation to collect tax	Seller
4	Obligation to pay tax	Buyer
5	Which Seller?	Those sellers whose sales/turnover/gross receipts during preceding FY > INR 10 Cr.
6	Which Buyer?	Only those buyers who have purchased more than 50 lakhs from the seller.
7	Excluded Buyers	CG,SG, local authority, embassy, High Commission, legation, consulate and importer
8	Excluded Goods	Those covered under Section 206C (1), (1F) and (1G).
9	Rate of Tax	0.1% on consideration exceeding Rs 50 lakhs.
10	Reduced Rate of Tax	0.075% for payments received till 31.03.21.
11	Rate of Tax	1% (if no PAN/Aadhaar is not available).
12	Liability to Pay	On Receipt of sale consideration from the buyer
13	Due Date for Payment	7 th of next month in which sale consideration is received
14	Challan for Payment	ITNS Challan No 281
15	Form of Returns	Form 27EQ
16	Due Date for Returns	For Q3 of FY 20-21 – 15 th Jan 21, For Q4 of FY 20-21 – 15 th May 21
17	Interest on delayed payment	1% per month or part thereof from due date to actual date of payment
18	Interest on non-collection	1% per month or part thereof
19	Penalty for non-filing of Returns	Rs 200/- per each day of default subject to maximum of TCS payable under Section 234E
20	Other Penalties	Rs 10,000 to Rs 1,00,000/- under Section 271H. Waiver subject to certain conditions.
21	TCS Certificate	In Form 27D
22	Time Limit for Issuance	Within 15 days from due date of filing of return.

¹ Assuming that the threshold of Rs 50 lakhs is exhausted by the time this invoice is raised.

FAQs:

#	FAQ	Response
1	Is every seller obliged to collect tax?	No, only sellers whose turnover/sales/gross receipts exceed Rs 10 lakhs during the preceding previous year are obliged to collect tax.
2	A Limited is incorporated on 13 th Oct 20. After incorporation, it has sold goods to PQR Limited worth Rs 1 Crore? Will A Limited required to collect tax?	No, since A Limited has incorporated during FY 20-21 and the turnover/sales/gross receipt during FY 19-20 does not exceed Rs 10 lakhs, the obligation to collect tax does not arise for FY 20-21 on A Limited.
3	Is seller required to collect tax from every buyer?	No, only such buyers who have purchased more than Rs 50 lakhs in a year are required to pay such additional amount as indicated by the seller.
4	For determining the threshold of Rs 50 lakhs, should sales made for the period 1 st April to 30 th Sept should be considered?	Yes, for determining, whether the buyer has made purchases more than Rs 50 lakhs or not, the purchases for the period 1 st April to 30 th Sept has to be taken into account. For more on this, please read Issue #2.
5	Whether tax has to be paid on payments realised post 1 st Oct, for sales made for the period 01 st April to 30 th Sept?	No, the transactions for the period 01 st April to 30 th Sept is only relevant for determination of threshold but not for payment. Since, the tax obligation is made effective from 01 st Oct, the past transactions cannot be subjected to this new obligation for the sole reason that they are received post 01 st Oct. For more on this, please read Issue #1.
6	Whether the threshold is for all buyers or for each buyer?	The threshold of Rs 50 lakhs is applicable for each buyer. Hence, the same has to be examined with respect to each buyer and not all buyers.
7	Whether the sales made by one branch to another branch exceeding Rs 50 lakhs falls under this obligation?	No, the sales made by one branch to another branch are not treated as sales to another person, hence such sales even they exceed Rs 50 lakhs, are not subjected to this obligation.
8	Does seller require to collect for export transactions?	No, the export of goods outside India are not covered under the obligation. Hence, seller is not required to collect additional tax for export transactions.
9	Under GST, each branch in a state is treated as different person. In such a case, if seller making sale to A Limited (Telangana GSTIN) and to A Limited (Andhra Pradesh GSTIN) should aggregate for determining threshold or will it be seen qua GSTIN?	The treatment of branch of a same entity in different state as distinct establishment applies only for the purposes of GST law and not for the purposes of ITA. Hence, while making sales to A Limited, the total sales has to be considered for determining, whether A Limited has met the threshold or not. Hence, the test is for the entity as a whole and not GSTIN wise.
10	Seller raises invoice on ABC Limited for Rs 60 lakhs. On what amount is the tax to be collected? Assume this is the first invoice on ABC Limited during the year.	Since this is the first invoice, Seller has to collect tax on amount of Rs 10 lakhs, since the sub-section states that tax has to be collected on amounts exceeding Rs 50 lakhs.

#	FAQ	Response
11	Continuing with above, if subsequently seller raises another invoice on ABC Limited for Rs 1 Crore, on what amount should be the tax has to be collected?	Since the threshold has exhausted in the previous invoice, the tax has to be collected on the entire Rs 1 Crores.
12	In some industries, there is a practice that the buyer pays an adhoc amount and sales made to such buyer will be adjusted over a period of time. In such cases, when is the seller obliged to collect tax?	Section 206C (1H) states that tax is to be collected at the time of receipt of amount from the buyer. On the other hand, it states that such amount should be consideration of goods. On receipt of advance, seller would not normally know, whether the probable sale would exceed Rs 50 lakhs or not and accordingly he may not be in a position to collect tax on such amounts. Hence, we are of the view, that even though advance is received, only when it is appropriated against sale invoice, the obligation would trigger.
13	Are they any buyers who are exempted?	Yes, central/state government, embassy, high commission, legation, commission, consulate and trade representation of foreign state or local authority or importer is exempted from payment of such additional tax.
14	Can seller exempt buyer, if buyer files a declaration that such goods are used for manufacturing, processing or producing articles or things or for purposes of generation of power?	No, the said exemption is applicable only for sellers who are engaged in dealing the goods specified in Section 206C (1) and not for goods under Section 206C (1H). Hence, the obligation exists on seller if other conditions are met.
15	Are there any goods which are not covered under 206C (1H)?	Yes, the goods which are already covered under Section 206C (1), (1F) and (1G) are not covered under Section 206C (1H).
16	In certain industries, it is mandated by the law that the goods have to be sold through a government department to the buyers. The buyers would be paying the sale consideration to said government department and thereafter payment reaches to seller. In such cases, can seller take a stand that the said sales are made to government and hence they do not fall under the obligation to collect tax?	No, even though the sale is being made through department, since the ultimate buyer is not the state/central government, seller has to collect tax on such amounts.
17	Whether sales made to SEZ Unit can be treated as exports?	No, the sub-section excludes exports out of India. Since sales to SEZ unit are not exports outside India, the seller is required to collect tax.
18	ABC Limited has sold goods worth Rs 1 Crore to PQR. The said amounts are outstanding for long time and ABC Limited decided that the same cannot be realised and accordingly written off. In such case, is ABC Limited require to collect and pay tax?	No, since the obligation to pay arises on receipt of consideration, ABC Limited is not obliged to collect and pay any tax since the consideration has not been received.
19	Whether the amounts collected by the seller can be taken as credit by the buyer?	Yes, the tax collected by the seller will be available for the buyer in his Form 26AS and accordingly the same can be taken as credit.
20	Whether the buyer can take the tax paid to seller and set-off against his advance tax?	Yes, in terms of Section 209(1)(d), the amounts paid to seller as tax can be set-off against his advance tax.

#	FAQ	Response
21	Whether the tax has be collected on the invoice amounts including GST?	No, the tax has to be collected on invoice value excluding GST. Since the said section talks about sale consideration, the GST which is collected by the seller cannot be taken into for arriving tax to be collected. For more on this, read Issue #4. Since there is no clarity on this aspect, decision has to be taken judiciously.
22	Whether contract involving both supply of goods and services is also covered under this obligation?	On a bare reading of the provisions of Section 206C (1H), it appears that the said obligation arises only in case of pure trading or manufacturing instances but not in case of works contract services, where goods and services are supplied together. Since there is no clarity on this aspect, decision has to be taken judiciously.
23	What is the rate of tax that has to be applied by the seller?	The rate of tax is 0.1%. The said rate has to be applied on the sale consideration exceeding Rs 50 lakhs and collected as tax.
24	I have heard the rate of tax is 0.075%. Whether the same is correct?	Yes, in light of Press Release dated 13 th May 2020, the CBDT has reduced the rate applicable for payments made during 14 th May 20 to 31 st Mar 21 by 25%. Hence, payments received during such period, the reduced rate of tax at 0.075% can be collected by the sellers.
25	I also heard that the rate of tax is 1%. Whether the same is correct?	The rate of tax of 1% is applicable only when the buyer does not furnish PAN/Aadhaar. In such cases, the seller is obliged to collect tax at 1%.
26	I also heard that the rate of tax is 0.75%. Whether the same is correct?	The Press Release dated 13 th May 2020 clarified that the reduction of 25% shall not applicable in case of no PAN/Aadhaar. Hence, in case buyer does not furnish PAN/Aadhaar and receipt is between 14 th May 20 and 31 st March 21, the rate of tax shall be 1% and not 0.75%.
27	Can the buyer apply for lower rate of collection?	Section 206C (9) only allows certain assessee to apply for lower rate of collection. The said section does not cover (1H) and accordingly the buyers cannot apply for lower rate of collection. This would be a big set- back for buyers who are incurring huge losses or trading in thin margins.

¹ Section 206C (1) covers alcoholic liquor for human consumption, tendu leaves, timber, other forest produce, scrap, certain minerals.

² Section 206C (1F) covers sale of motor vehicles.

³ Section 206C (1G) covers payments made by Authorised Dealer under Liberalised Remittance Scheme and seller of an overseas tour programme package.

⁴ legation, commission, consulate and the trade representation of foreign state or local authority

⁵ <https://resource.cdn.icai.org/34728gn-taxaudit-dtcicai.pdf>

⁶ <https://www.incometaxindia.gov.in/Pages/faqs.aspx> [under FAQs on Tax Deducted at Source (TDS)]