



Date: 29th September, 2020 / 16254

To,
Shri Pramod Chandra Mody
Central Board of Direct Taxes,
North block
New Delhi – 110003

Sub: Request for granting relief and providing clarifications with regards to Tax Collection at Source (TCS) under section 206C (1H) of the Income Tax Act, 1961

Respected Sir,

At the outset, we would like to place on record our sincere appreciation to your good office and the government for comprehensive and robust response to the raging COVID-19 pandemic. The colossal efforts made towards prevention and containing the spread, including strengthening surveillance, laboratory capacity, contact tracing and isolation and risk communications are meritorious. For coming up with various initiatives to promote digitization and the robust online platform pertaining to Income Tax and TDS have eased the tax filing procedures and also reduced the use of paper. The laudable gesture to extend due dates, waiver of penalty for different regulatory and statutory aspects and providing the much-needed new faceless Taxation regime brought in by "The Taxation Amendment Bill 2020" has helped restore the faith of the citizens in its government. We are confident that slew of taxpayer friendly measures planned by the Government will address several intricate problems relating to taxation, synchronously fulfil its vision of faceless assessment, appeals and minimal interaction between tax payers and tax authorities.

Gujarat Chamber of Commerce and Industry ("GCCI") hereby takes the privilege to address the concern of its members, being members of trade and industry, Chartered Accountants, Advocates and Tax Practitioners, on Issues in Implementation and Compliance with Income Tax Laws, which needs to be addressed by your good office on utmost priority.

Role of Gujarat Chamber of Commerce and Industries through its Direct Tax Committee inter alia is to be a bridge between tax payers and tax administration:
The Gujarat Chamber of Commerce & Industry works to create and sustain an environment conducive to the growth of industry and trade in Gujarat, partnering both of them through advisory processes. Founded in 1949, the Chamber has created a niche with the government and other regulatory agencies. It is the one of the leading institution for making effective representation with respect to Income Tax and Allied laws.

With 4000 direct members which include over 200 Trade and Industry Associations and leading Chambers of Commerce of the State, GCCI is growing to serve and serving to grow. It is affiliated with apex bodies like Federation of Indian Chambers of Commerce & Industry [FICCI], Indian National Committee of International Chamber of Commerce [ICC], All India Organization of Employers [AIOE], and the Associated Chambers of Commerce & Industry [ASSOCHAM].

Natubhai Patel
President

Hemant N. Shah
Sr. Vice President

K. I. Patel
Vice President

Pathik S. Patwari
Hon. Secretary

V. P. Vaishnav
Hon. Secretary (R)

Sachin K. Patel
Hon. Treasurer



The primary objective of GCCI is not only to work for the cause of the trade but also to educate the public at large and to act as a catalyst between citizens and the government authorities. The Direct Tax Committee of GCCI is one of the most important committees of GCCI which is engaged in the matters related to direct taxes and makes representations to the Government, Central Board of Direct Taxes and at other appropriate forums from time to time on various legislative amendments and issues concerning direct taxes and endeavours to be a bridge between the tax payers and the tax administration.

We are writing this letter to your good self to request you to address certain issues pertaining to Tax collected at source u/s 206C (1H) that requires immediate consideration:

1. Clarifications with respect to applicability and interplay of TCS and GST:

With reference to the term “sales consideration” and “turnover”, there is a lot of ambiguity with regards to its interpretation amongst the tax payers and the professionals as to whether the same should be considered inclusive or exclusive of Goods & Services Tax (“GST”).

The word “consideration” has not been defined under this newly inserted Section 206C(1H) or under any other provisions of Income tax Act, 1961. In common parlance it may be understood as compensation, payment or reward for sale of goods. The provision makes use of the terms “consideration” for sale of goods. Hence, any consideration which is payable under the contractual arrangement between buyer and the seller, for sale of goods, should be subjected to TCS u/s 206C(1H). However, in the absence of clarification, it is not clear as to whether GST is to be included in the value of sale consideration on which TCS is to be collected.

GST portion should not be included in the value of “sales consideration” on which TCS is to be collected due to the following reasons:

- ❖ Along with the sales value of the goods, the GST levied on the sales value is also received as a part of consideration by the sellers. The GST component so received is accounted for separately as it is to be paid by the seller (acting as collection agent) to the government. Collecting TCS on the GST portion of sales consideration would tantamount to double taxation.
- ❖ There is a departmental FAQ pertaining to TCS u/s 206C(1) which mentions that TCS is to be collected on value inclusive of GST. However, there is striking difference in the wordings of section 206C(1) and section 206C(1H). Under section 206C(1), the TCS is to be collected from the **amount payable by the buyer** at the time of debiting this account or on its receipt from the buyer. Whereas under section 206C(1H) the TCS is **to be collected from receipt of “sale consideration” which phrase has not been defined anywhere** and should normally be meant to include only the sales value of goods exclusive of GST.

- ❖ As per Circular No. 76/50/2018-GST dt. 31.12.2018, CBIC had issued certain clarifications on issues pertaining to GST and point no. 5 dealt with the valuation methodology of considering TCS as part of valuation for levy of GST. The reply is reproduced below:

*“Section 15(2) of CGST Act specifies that the value of supply shall include any taxes, duties cesses, fees and charges levied under any law for the time being in force other than this Act, the SGST Act, the UTGST Act and the GST (Compensation to States) Act, if charged separately by the supplier. For the purpose of determination of value of supply under GST, Tax collected at source (TCS) under the provisions of the Income Tax Act, 1961 **would not be includible as it is an interim levy not having the character of tax.**”*

As such the intention of the Government is not to levy Indirect tax (GST) on TCS portion, so the premise that the reciprocal should also be true, i.e. the Government ought not to levy TCS on Indirect tax (GST), stands correct.

Further, following clarification can be issued with regards to the meaning of the term “turnover”:

“Turnover’ for the purposes of this clause may be interpreted to mean the aggregate amount for which sales are effected or services rendered by an enterprise. If sales tax and indirect taxes are included in the sale price, no adjustment in respect thereof should be made for considering the quantum of turnover. If, however, the Indirect Taxes recovered are credited separately to Indirect tax account (being separate accounts) and payments to the authority are debited in the same account, they would not be included in the turnover”.

It is hereby requested that CBDT may kindly issue a suitable clarification so that TCS is collected only on the sales consideration pertaining to sales value of goods exclusive of GST component. Further the clarification regarding the term “Turnover” for this section, as mentioned above, should also be issued.

- 2. Whether tax is to be collected in respect of consideration received on or after 1st October, 2020 in respect of sale of goods made during April-September 2020?**

Section 206C(1H) of the Act provides for collection of TCS at the time of receipt of sale consideration. Consequently, provisions of section 206C(1H) is triggered on actual receipt of sales consideration and on normal reading of the provisions, any recovery of amounts outstanding as on 30.09.2020 would also come within the ambit of section 206C(1H) of the Act even though such sale, as per mercantile system of accounting followed by the seller, would have taken place before 01.10.2020.

The aforesaid interpretation has caused a lot of confusion among the taxpayers specially when similar provisions in sub-section (1) of section 206C envisages the seller to collect tax at source at the time of debiting the amount payable to the account of the buyer or at the time of receipt of such amount from the said buyer, whichever is earlier.

It is imperative to clarify whether the TCS provisions would apply to amount received pertaining to sales effected before 1st October, 2020. Receipt of sale consideration against sales made till 30.09.2020 would not attract provisions of section 206C(1H) of the Act, in view of the following:

- ❖ **Article 265 of the Constitution of India** provides that "no tax shall be levied or collected except by the authority of law". The seller acts as agent of the government and accordingly reading law applicable on receipt of outstanding would tantamount to collection of tax when law was not in existence.
- ❖ **CIT v Vatika Township (P.) Ltd [2014] 367 ITR 466 (SC) [5 Judge Bench]**
"It is also mandated that there cannot be imposition of any tax without the authority of law. Such a law has to be unambiguous and should prescribe the liability to pay taxes in clear terms. If the concerned provision of the taxing statute is ambiguous and vague and is susceptible to two interpretations, the interpretation which favours the subjects, as against there the revenue, has to be preferred"

"Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. **The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past.** One principle of law is known as *lex prospicit non respicit*: law looks forward not backward. As was observed in *Philips v. Eyre* [1870] LR 6 QB 1 a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law"

It is hereby requested that CBDT may kindly issue a suitable clarification so that TCS provisions would not apply to amount received pertaining to sales effected before 1st October, 2020.

3. Application for lower/non-collection certificate from tax authorities

As per Section 206C(9), where the Assessing Officer is satisfied that the total income of the buyer justifies the collection of the tax at any lower rate than the relevant rate specified in sub-section (1) or sub-section (1C) the Assessing Officer shall, on an application made by the buyer, give to him a certificate for collection of tax at such lower rate than the relevant rate specified in sub-section (1) or sub-section (1C)].

The provisions of section 206C (9) empowers the assessing officer to grant certificate to the buyer for non-collection / collection at a rate lower than specified rate of TCS in respect of transactions covered by sub-section (1) or (1C) of section 206C of the Act. **However, such provision is yet not made applicable to TCS on sale of goods under section 206C(1H).**

Tax payers does not have the option to approach the assessing officer to issue Nil/ lower tax collection at source certificate. In view of the above, tax payer who are incurring huge losses cannot apply to the assessing officer for Nil/lower tax collection at source certificate under sub-section (9) of section 206C of the Act. **Tax collection at source in such cases results in unnecessary blockage of funds which are subsequently required to be claimed as refund by the tax payer from the Income Tax Department.** In tough times of COVID-19, such working capital issues can create huge cash flow mis-matches for the taxpayers.

Hence, the persons covered under sub-section (1H) of section 206C may also be covered under section 206C(9) of the Act.

It is hereby requested that CBDT may kindly amend the provisions of section 206C (9) of the Act to allow persons covered under section 206C(1H) of the Act to apply to the assessing officer for Nil/ Lower Tax collection at source certificate.

4. Other Clarifications / suggestions:

a) **Clarification on TCS if Nil / Lower TDS certificate has been obtained by the buyer required to deduct TDS:**

There is no need to collect TCS under section 206(H) if both of the following conditions are satisfied-

- Buyer is liable to deducted TDS under any other provisions, **AND**
- Such amount has been deducted.

If either of the above conditions are not satisfied, TCS is required to be collected on under section 206(H). Now a question arises weather requirement to collect TCS will be applicable in case Buyer has not deducted TDS on the basis of Nil / Lower TDS certificate of seller. In this case, buyer is not liable to deduct TDS under the TDS provisions. Hence 1st condition is not satisfied and, consequently, TCS is required to be collected in the instant case.

It is hereby requested that CBDT may kindly issue a suitable clarification so as to clarify whether the above-mentioned situation the seller would be required to collect TCS under the provision of the said section.

b) Ambiguity regarding the definition of "Goods"

TCS is required to be collected in respect of consideration received for sale of goods. Now the question arise that what will be considered as goods as the definition is not provided in section 206(1H). Further any other section of the Income Tax Act also does not provide the definition of goods. Sale of Goods Act 1930 and Goods & Service Tax Law 2017 provides the definition of goods. In absence of definition under the Income Tax Act, definitions under either of the act will be considered. **In view of the above, there is a need to provide a more specific meaning to the term.**

It is hereby requested that CBDT may kindly issue a suitable clarification regarding the term "Goods" for this section, as mentioned above.

c) **Other suggestions with regards to TCS on sale of goods:**

- Business-to-Business (B2B) transactions may be carved out from the applicability of TCS provision under section 206C(1H) of the Act as it would lead to multiple level of tax collection.
- Suitable clarification be provided that the section 206C(1H) would have no application in the instances where receipt of sale consideration is not in the form of actual receipt of payment but it is merely a receipt through book adjustment / set off.

5. **Extension of applicability of the said section**

Since TCS is to be collected on consideration received by the seller, there are organizations which are planning to collect TCS at the time on "Billing of Invoices" to avoid unnecessary burden of keeping record of every sales consideration form every recipient. **This will create unnecessary hardships instead of ease of doing business.**

Further when the transactions of value more than Rs. 50 lakhs are already getting reported under the GST law through GST returns, requirement of having a separate TCS compliance for the same would only add to the compliance burden of the taxpayers.

Also, in view of present unprecedented situation arising out of Covid-19 and the necessity of relaxations as mentioned above, **it is respectfully prayed that the applicability of provisions of sections 206C (1H) may be extended and made applicable w.e.f. 1st April, 2021.**

We would be very grateful if your good self would take an early action in this regard and have a positive consideration of our requests. This will be very useful for the taxation fraternity and also for the trade and industry. In conclusion, we request that a suitable orders / clarification may be issued to this effect at the earliest.

With warm regards,

Yours sincerely,


Natubhai Patel
President