

# TAX FLASH NEWS

30 September 2020



## **CBDT issues guidelines on applicability of certain TDS provisions on e-commerce operators and on TCS provisions on certain payments**

The Finance Act, 2020 introduced a new provision i.e. Section 194-O in the Income-tax Act 1961 with effect from 1 October 2020 which provides that an e-commerce operator shall deduct tax at the rate of 1 per cent of the gross amount of sale of goods or provision of service or both, facilitated through its digital or electronic facility or platform. Further, Section 206C(1H) was also introduced with effect from 1 October 2020, where a seller receiving an amount as consideration for sale of any goods of the value or aggregate of such value exceeding INR50 lakh in any previous year shall collect tax from the buyer a sum equal to 0.1 per cent.

Various representations were made before the Central Board of Direct Taxes (CBDT) to address various issues and provide appropriate guidelines on the same.

Recently, CBDT has issued guidelines<sup>1</sup> to provide clarity on the applicability of TDS provisions on e-commerce operators under Section 194-O and TCS provisions on sale of goods under Section 206C(1H). Key clarifications are as follows:

### ***Transactions carried out through various Exchanges***

There were practical difficulties in implementing the provisions of TDS and TCS contained in Section 194-O and Section 206C(1H) in the cases of certain exchanges and clearing corporations.

CBDT clarified that TDS under Section 194-O and TCS under Section 206C(1H) shall not be applicable to the following transactions:

- Transaction in securities and commodities which are traded through recognized stock exchanges or cleared and settled by the recognized clearing

corporation or recognized clearing corporation located in International Finance Service Centre (IFSC).

- Transactions in electricity, renewable energy certificates and energy saving certificates traded through power exchanges.

### ***Payment gateway and insurance agent or insurance aggregator***

In e-commerce transactions, the payments are generally facilitated by payment gateways. In these transactions, Section 194-O may apply twice i.e. once on main e-commerce operator who is facilitating sell of goods or provision of services or both and once on payment gateway who also happen to qualify as e-commerce operator for facilitating service.

Further, insurance agents or insurance aggregators in many cases have no involvement in transactions between insurance company and the buyer for subsequent years to the first year. In subsequent years, the liability to deduct tax may arise on the insurance agents or insurance aggregators even if the transactions have been completed directly with the insurance company. This may result into hardship for the insurance agents/aggregators.

CBDT has clarified that TDS under Section 194-O shall not be applicable -

- To the payment gateway, if the tax has been deducted by the e-commerce operator.
- To the insurance agent or insurance aggregator if it has no involvement in transactions between insurance company and the buyer of insurance policy for subsequent years to the first year. However, the insurance company shall be required to deduct tax on commission payment, if any, made to the insurance agent or insurance aggregator for those subsequent years.

<sup>1</sup> Circular No. 17 of 2020, 29 September 2020, Income Tax Website

## **Threshold for the financial year 2020-21**

Since both Section 194-O, and Section 206C(1H) would come into effect from 1 October 2020, it was requested to clarify how the various thresholds specified under these provisions shall be computed and whether the tax is required to be deducted/collected in respect of amounts received before 1 October 2020.

CBDT clarified that

- The threshold of INR 5 lakh under Section 194-O and INR 50 lakh for triggering TCS under Section 206C(1H) shall be counted from 1 April 2020.
- The provision of Section 206C(1H) shall not apply on any sale consideration received before 1 October 2020. Consequently, it would apply on all sale consideration (including advance received for sale) received on or after 1 October 2020 even if the sale was carried out before 1 October 2020.

CBDT press release<sup>2</sup> further clarified that the seller in most of the cases maintains running account of the buyer in which payments are generally not linked with a particular sale invoice, therefore, in order to simplify and ease the compliance of the collector, it may be noted that TCS provision shall be applicable on the amount of all sale consideration received on or after 1 October 2020 without making any adjustment for the amount received in respect of sales made before 1 October 2020. Mandating the collector to identify and exclude the amount in respect of sales made up to 30 September 2020 from the amount received on or after 1 October 2020 would have resulted into undue compliance burden for the collector and also litigation.

## **Sale of motor vehicle**

The provisions of Section 206C(1F) is applicable to sale of motor vehicle of the value exceeding INR10 lakh. Section 206C(1H) exclude goods covered under Section 206C(1F). Therefore, clarification was sought whether all motor vehicles are excluded from the applicability of Section 206C(1H).

While Section 206C(1F) is dealing with single sale of motor vehicle, Section 206C(1H) is for receipt above INR50 lakh during the previous year against the aggregate sale of goods. While Section 206C(1F) is for sale to consumer only and not to dealers, Section 206C(1H) is for all sale above the threshold.

CBDT clarified that -

- Receipt of sale consideration from a dealer would be liable for TCS under Section 206C(1H), if such sales are not subjected to TCS under Section 206C(1F).

- In case of sale to consumer, receipt of sale consideration for sale of motor vehicle of the value of INR 10 lakh or less to a buyer would be subjected to TCS under Section 206C(1H), if the receipt of sale consideration for such vehicles during the previous year exceeds INR50 lakh.
- In case of sale to consumer, receipt of sale consideration for sale of motor vehicle of the value exceeding INR 10 lakh would not be subjected to TCS under Section 206C(1H) if such sales are subjected to TCS under Section 206C(1F).

## **Adjustment for sale return, discount or indirect taxes**

A clarification was sought whether adjustment is required to be made for sales return, discount or indirect taxes including GST for the purpose of collection of tax under Section 206C(1H).

CBDT clarified that no adjustment on account of sale return or discount or indirect taxes including GST is required to be made for collection of tax under Section 206C(1H) since the collection is to be made with reference to receipt of amount of sale consideration.

## **Fuel supplied to non-resident airlines**

Clarification was sought whether the provisions of Section 206C(1H) shall apply on fuel supplied to non-resident airlines at airports in India.

CBDT clarified that the provision of Section 206C(1H) shall not apply on the sale consideration received for fuel supplied to non-resident airlines at airports in India.

## **Our comments**

TDS under Section 194-O on e-commerce sale of goods or provision of services along with TCS under Section 206C(1H) on aggregate sale of goods above INR50 lakh in a year were introduced under the Finance Act, 2020. These provisions are applicable from 1 October 2020. However, taxpayers were facing various issues relating to implementation of these provisions. CBDT through these guidelines clarified on various issues for example calculation of threshold, applicability of provisions to payment gateways and exchanges, no adjustment for sale return, discounts or indirect taxes, etc.

However, there are a few more issues which also need clarity such as the applicability of TCS provisions on deemed exports within India to SEZ and EOU units, on free of cost sales and warranty replacements, etc. On e-commerce TDS, there is a significant uncertainty with respect to the treatment of subsequent returns of goods by customers and consideration of discount codes and gift vouchers. It would be apt for CBDT to provide clarity on these aspects.

<sup>2</sup> CBDT Press Release dated 30 September 2020

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