

# TCS ON SALE OF GOODS

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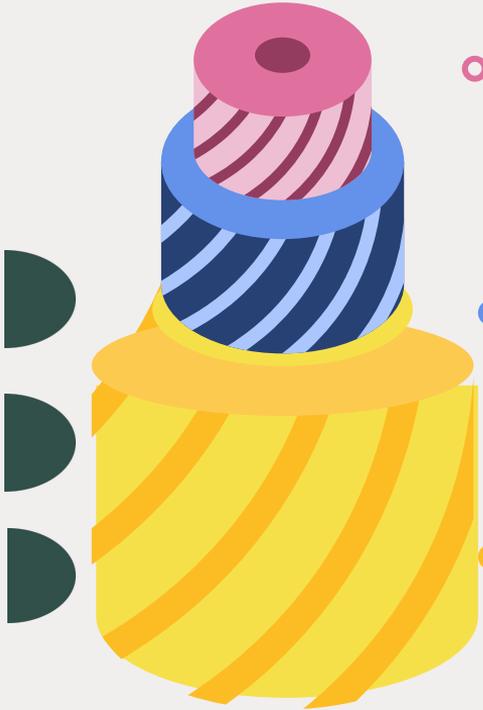




**What is TCS?**

**TCS (Tax Collected at Source)** is a tax that is:

- > **collected by** the seller
- > **from** the buyer and
- > **deposited to** the account of the government
- > **on behalf of** the buyer.



BARE ACT

ANALYSIS

EXAMPLES



BARE ACT

206C(1H) Every **person**, being a **seller**, “who receives any amount as consideration for sale of any goods of the value or aggregate of such value exceeding fifty lakh rupees” in any previous year, other than the goods being **exported out of India** or goods covered in sub-section (1) or sub-section (1F) or sub-section (1G) **shall**, at the **time of receipt** of such amount, **collect from** the **buyer**, **a sum equal to 0.1 per cent of the sale consideration exceeding fifty lakh** rupees as income-tax:

## Three Interpretations:

- (a) **Sale consideration received >Rs. 50 lakhs**
- (b) Value of goods sold >Rs.50 lakhs
- (c) Value of goods sold and consideration received >Rs. 50 lakhs

**Provided** that the provisions of this subsection shall not apply, if the **buyer is liable to deduct tax at source** under any other provision of this Act on the goods purchased by him from the seller **and has deducted such amount.**



(b) "seller" means a person whose total sales, gross receipts or turnover from the business carried on by him exceed ten crore rupees during the financial year immediately preceding the financial year in which the sale of goods is carried out,



(a) "**buyer**" means a person who purchases any goods, **but does not include**,—

(A) the Central **Government**, a State Government, an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State; or

(B) a **local authority** as defined in the Explanation to clause (20) of section 10; or

(C) a **person importing goods into India** or **any other person as the Central Government may, by notification in the Official Gazette, specify** for this purpose, subject to such conditions as may be specified therein;



ANALYSIS

# What is the definition of 'goods':

The term 'goods' is **not defined in the Income-tax Act.**

## **Sale of Goods Act, 1930:**

'Goods' means every kind of **movable property** other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale"

**FY:19-20:** Turnover > Rs. 10 cr

01

**FY: 20-21:**

**Sale Consideration 'RECEIVED'** for any **goods** above **Rs. 50 lakhs** from a **single buyer**

02

## TCS Rate:

<b>PAN / AADHAAR furnished</b>	<b>Up to 31st March 2021</b>	<b>From 1st April 2021</b>
YES	0.075%	0.1%
NO	0.75% / 1% ?	1%

<b>FY</b>	<b>T/O (in Crore)</b>	<b>Receipts (in Lakhs) per buyer</b>	<b>TCS Calculation</b>
2019-20	23	50	-
2020-21	8	75	25 lakhs * 0.075%= Rs.1,875
2021-22	20	80	NA
2022-23	10	45	NA

## Compliance requirements - 4 Responsibilities of the seller

**Due date for payment of TCS collected:** 7th of the succeeding month in which consideration is received

**Quarterly Statement:** Due date to file the TCS return and issue certificate:

Quarter ended	Quarterly statement	TCS certificate
30 June	15 July	30 July
30 September	15 October	30 October
31 December	15 January	30 January
31 March	15 May	30 May



# EXAMPLES

Focus on when are we receiving the  
consideration?

## Sale and Receipt - Before

1. Sales made before 1st October, 2020 and payment is also received before 1st October, 2020. Below 50 lakhs and more than 50 lakhs - No TCS implication

## Sale - Before; Receipt - After:

**2. Sales made before 1st October, 2020 and payment is received after 1st October, 2020.**

TCS is applicable.

## Sale and Receipt - After:

3. Sales made after 1st October, 2020 and payment is received after 1st October, 2020.

TCS is applicable

**4. Sales made before 1st October, 2020 and payment is received next year.**

TCS is applicable in next year

## Consideration in Kind:

5. What if the amount is received in kind?

**TCS is applicable**

**6. Will my supplier also collect TCS on my purchases? Will I get the credit while filing my ITR**

- yes it will be reflected in 26AS.



**7. Is 50 lakhs threshold for the entire financial year or from 1st Oct 2020.**

It is for the entire financial year



## 8. Receipt - Before; Sale - After:

Advance received before 1st  
oct

-No TCS

9. Advance received  
after 1st oct - TCS is  
applicable

10. Sale on approval - notices as it is on receipt of consideration.

Approval is not a sale

## 11. What are the different ways to collect TCS?

Option 1 - **Charge** the amount of TCS on the **invoice** itself.

Option 2 - Do not charge the amount of TCS on the invoice.

Instead, **indicate** the amount of TCS as a **Note** on the **invoice**

and raise a **debit note** on the receipt of the consideration and the amount of TCS from the buyer.

Option 3- Raise **debit note** on receipt of consideration

► Thumb Rule!!

**Step 1: Total Receipts** during the financial year

**Step 2:** Calculate receipts in **excess**

of Rs. 50 lakhs

**Step 3: TCS on :**

**Lower of excess** and amount received

**on or after** 1st Oct, 2020

S.NO	Buyer	Receipt from buyer upto 30.09.2020	Receipt from buyer from 01.10.2020 to 31.03.2021	Total	TCS requirement
1	ABC Pvt. Ltd.	Rs. 80 Lakhs	1 Lakh	81 Lakhs	TCS on Rs. 1 lakh

**Step 1: Total Receipts** during the financial year: Rs. 81 lakhs

**Step 2:** Calculate receipts in **excess**  
of Rs. 50 lakhs - **Rs. 31 lakhs**

**Step 3: TCS on :**

**Lower** of **excess** and amount received

**after** 1st Oct, 2020 ie., lower of 31 lakhs and Rs. 1 lakh => **1 lakh**

S.NO	Buyer	Receipt from buyer upto 30.09.2020	Receipt from buyer from 01.10.2020 to 31.03.2021	Total	TCS requirement
2	ABC Pvt. Ltd.	Rs.12 Lakhs	38 Lakhs	50 Lakhs	Not Applicable as within limit

**Step 1: Total Receipts** during the financial year: Rs. 50 lakhs

**Step 2:** Calculate receipts in **excess**  
of Rs. 50 lakhs - **NIL**

**Step 3: TCS on :**

**Lower** of **excess** and amount received

**after** 1st Oct, 2020 ie., lower of NIL and Rs. 38 lakhs => **NIL**

S.NO	Buyer	Receipt from buyer upto 30.09.2020	Receipt from buyer from 01.10.2020 to 31.03.2021	Total	TCS requirement
3	XYZ Pvt. Ltd.	Rs.30 Lakhs	Rs.75 Lakhs	105 lakhs	TCS on Rs.55 Lakhs

**Step 1: Total Receipts** during the financial year: Rs. 105 lakhs

**Step 2:** Calculate receipts in **excess**

of Rs. 50 lakhs - **Rs. 55 lakhs**

**Step 3: TCS on :**

**Lower** of **excess** and amount received

**after** 1st Oct, 2020 ie., lower of Rs. 55 lakhs and Rs. 75 lakhs =>

**Rs. 55 lakhs**

## Job work

S.NO	Buyer	Receipt from buyer upto 30.09.2020	Receipt from buyer from 01.10.2020 to 31.03.2021	Total
3	ABC Pvt. Ltd	Rs.40 Lakhs	Rs.55 Lakhs	95 lakhs

TCS is not applicable:

1. Service
2. TDS is applicable on job work service



# ▶ Advances

S.NO	Buyer	Advance Received from buyer up to 30.09.2020	Advance Received from buyer during 1st Oct to 31st March	TCS requirement
1	ABC Pvt. Ltd.	Rs. 80 Lakhs	-	No TCS
2	XYZ Pvt. Ltd.	-	Rs. 80 lakhs	TCS is applicable on Rs. 30 lakhs
3	PQR Pvt. Ltd.	Rs. 30 Lakhs	Rs. 40 Lakhs	Follow steps

**Step 1: Total Receipts** during the financial year: Rs. 70 lakhs

**Step 2:** Calculate receipts in **excess**

of Rs. 50 lakhs - **Rs. 20 lakhs**

**Step 3: TCS on :**

**Lower** of **excess** and amount received

**after** 1st Oct, 2020 ie., lower of Rs. 20 lakhs and Rs. 40 lakhs => **Rs. 20 lakhs**



ISSUES

# 1. Whether the consideration will include the amount collected towards GST?

Yes!

Example:

Taxable Value Rs. 100

GST @ 18% = Rs. 18

Invoice Value Rs. 118

**TCS@0.075% on Rs. 118**

## 2. Whether the GST is to be charged on TCS amount?

No!

TCS is to be collected on the GST amount but  
GST is not required to be charged on the TCS amount

### 3. How the impact of sales return, credit note, debit note would be considered in collecting TCS?

#### Sales Return before the receipt of consideration:

If sales return/credit note/debit note is before receipt of any consideration, then the impact thereof will be included in the amount of consideration and accordingly on receipt of the revised consideration, the provisions of TCS would be applicable.

#### Sales Return after receipt of consideration:

As anyways the buyer will get the credit. TCS paid can be ignored

Sale to

&

Purchase from same party -

Payment by adjustment in books

4. If the amount of sale consideration is adjusted against the amounts payable for purchases from the said party, whether provisions of TCS would be applicable?

TCS is to be collected at the time of receipt of amount of consideration. As in the instant case, though the amount is not received in cash / cheque / electronic mode but a genuine debt (receivable and payable is adjusted) it is received by any other mode and hence, the provisions for TCS will be applicable.

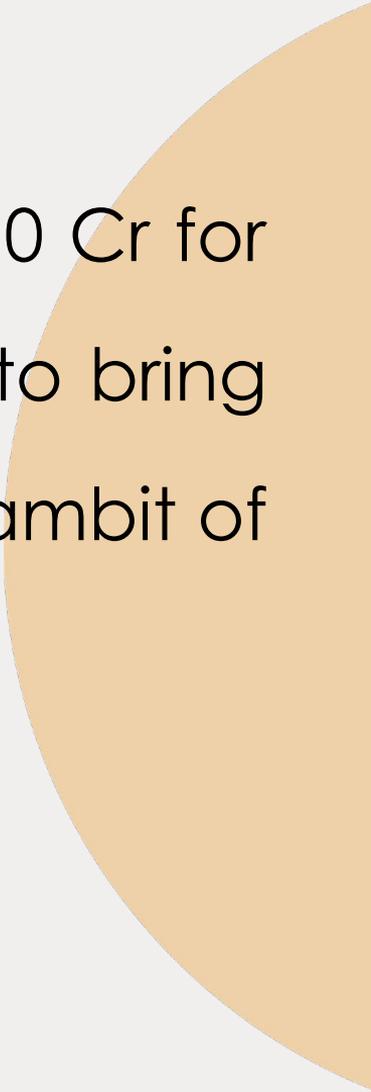
5

Whether **transportation charges** to be recovered from buyer through the invoice raised for sale of goods will be subject to TCS.

**Debatable issue.** However, **since** the element of TCS will be **very small** with reference to transportation charges, **TCS may be collected** and deposited on total value of the invoice.



**6. Low Thresholds** – The threshold of Rs. 10 Cr for sellers and Rs.50 lakhs for buyers is likely to bring a major number of transactions into the ambit of this section.



## 7. Separate bill for sale of goods and service:

Now, people will have to make **separate invoice** for **sale of goods and services** for one buyer, as this TCS is only applicable on sale of goods or find a way to differentiate between both sales. Further, at the time of receipt there needs to be a bifurcation for amount received against goods and services for proper collection of TCS.



Is a non-resident, selling goods from outside India to India, required to collect tax at source under this section?

The definition of a buyer in *Explanation* to Section 206C(1H) specifically excludes 'any person importing goods into India' from its ambit. Hence, the obligation to collect tax at source is **not triggered** in the hands of the non-resident seller.

# Whether TCS to be collected on the sale of immovable property by a developer?

As referred to above, **'goods'** means every kind of **movable property**.

Thus, the **immovable property** shall **not** be treated as **'goods'**.

**NO TCS**

# TCS on sale of listed shares - NA

Shares are defined as '**goods**' under the Sale of Goods Act, 1930. Hence, **TCS** provisions **shall apply** to the sale of goods, being shares and securities, if the conditions specified in section 206(1H) are satisfied.

However, CBDT has clarified that provisions of section 206C(1H) **shall not be applicable in relation to transactions** in securities and commodities which are traded **through recognized stock exchanges** or cleared and settled by the recognized clearing corporation, including recognized stock exchanges or recognized clearing corporation located in International Financial Service Centre.

If the listed shares are transferred through **off-market transactions** then the provisions of **TCS** under section 206C(1H) **shall apply** subject to threshold limit.

# TCS on sale of unlisted shares

■ - TCS APPLICABLE



# Whether TCS shall be collected on the sale of a motor vehicle?

Manufacturers ---> Dealers ---> Customers

1F - Yes, 1H - No

1F - No, 1H - Yes

**B2B: Manufacturers to Dealers** - 1F - NA => 1H applicable

**B2C: Dealers to customers** - 1F is applicable when the value of transaction exceeds Rs. 10 lakhs.

Transactions below 10 lakhs but aggregate more than Rs. 50 lakhs -  
1H is applicable

# **Whether TCS shall be collected on the sale of a motor vehicle?**

specific provision in **Section 206C(1F)** for the **collection of tax on the sale of a motor vehicle.**

Tax shall be collected from every **buyer who pays any amount as consideration** for the purchase of motor vehicle of value **exceeding Rs. 10 lakhs.**

The Finance Act 2020 has introduced a **general provision** for collection of TCS on sale of goods under section **206C(1H)**. This provision specifically **excludes TCS on motor vehicle, which is covered under section 206C(1F), from its ambit.**

..... contd.

# ..... Whether TCS shall be collected on the sale of a motor vehicle?

Vide Circular No. 22/2016, dated 8-6-2016,

the CBDT has clarified that the provisions of Section **206C(1F)** will **not apply** on **sale of motor vehicles by manufacturers to dealers/distributors.**

Circular No. 17, dated 29-09-2020

Clarifies that the tax shall be collected under Section **206C(1F)** in the case of sale of a motor vehicle to a consumer (B2C), and sub-section (1H) shall apply for the sale of motor vehicle to the dealers or distributors (B2B). Hence, the sale of Motor vehicles to dealers which is **not covered in section 1(F)** shall be subject to TCS under this **new provision**. Further, **sales to consumer** where the consideration for a **single vehicle is less than Rs. 10 lakhs but the aggregate** value of which **exceeds Rs. 50 Lakhs** during a previous year, it shall be subject to TCS under this **new provision**.

# Whether TCS is required to be collected on transaction in electricity?

The **Apex Court** in the case of State of **Andhra Pradesh v. National Thermal Power Corporation (NTPC)** (2002) 5 SCC 203, held that **electricity** is a movable property though it is not tangible. It is a '**good**'.

**Custom Tariff Act** has covered 'Electricity' under heading 2716 00 00, which also clarifies that **Electricity is a goods**. Thus, it is clear that electricity is a good.

CBDT has clarified that Transaction in electricity through **power exchanges** - **TCS is not applicable**

# Whether Fuel supplied to non-resident airlines be subject to TCS under this provision?

The CBDT vide Circular No. 17, dated 29-09-2020 has clarified that the provisions of this section shall **not** apply on the sale consideration received from the **fuel supplied to non-resident airlines at airports in India.**



**NO TCS**



# Whether TCS is liable to be collected on sale of goods by customer?

## Seller:

> Must be engaged in **business**

if a person, re-selling the goods, is **not engaged** in carrying on of any **business, no tax** shall be collected under this provision.

## Turnover limit of seller-including or excluding GST

In case of computing the turnover limit of the seller, whether it should be inclusive of GST or exclusive of GST.

The CBDT Circular did not clarify it.

**Better to consider including.**

**Whether the amount received as loan from buyer shall come within the ambit of this provision?**

**Not a consideration towards the sale of goods.**

**⇒ NO TCS**

**Future - loan settled against sales:**

**⇒ TCS Applicable**

# Whether tax to be collected on the transfer of goods from one branch to another?

Existence of two distinct parties as '**seller**' and '**buyer**' is a pre-requisite. Inter-branch transfers, stock transfers are **not** '**sale of goods**', hence not liable for TCS.

=> **NO TCS**

# TCS on debts written-off

In this case there is **no receipt of consideration** from the buyer, hence the same **does not attract** the provisions of section **206C(1H)**.

# If the buyer has multiple units, whether sales made to different units need to be aggregated?

Limit of Rs. 50 lakhs is PAN based

If the multiple units are registered under the same PAN then it has to be aggregated

## Government or Government Entities:

If a seller even if preceding year turnover exceeds Rs. 10 crore and sale consideration received is more than Rs. 50 Lakh from Central Government, State Government or other excluded persons as mentioned above, he shall not collect TCS on such sale of goods.

Further, it may be noted that **Government entities or corporations** , **PSUs are not exempt** from the TCS provisions. They will be considered as buyers for the purpose of section 206C(1H).

## **Multiple Financial years:**

If the seller (liable for TCS under this provision) sold goods worth Rs. 60 Lakh to a buyer in the FY 2020-21 and collected Rs. 20 Lakh in the FY 2020-21.

In the next FY 2021-22, he sold goods worth Rs. 50 Lakh to the same buyer. In the FY 2021-22, the buyer paid all the due amount of Rs. 90 Lakh. The liability to collect tax under section 206C(1H) shall arise in FY 2021-22 since the amount collected is more than Rs. 50 Lakh in the FY 2021-22.

# Works Contract:

In the case of works contract, both the goods and services are involved. However, such a transaction is covered under section 194C and is subject to TDS thereunder. Hence, there shall not be any TCS on works contract only if the buyer has deducted the tax.

If **single invoice** is raised for the supply of material or services: TDS under Section 194C

**Separate invoices:** For material and services:

- > Services: TDS u/s 194C
- > Material: TCS u/s 206C(1H)

## Combined consideration for sale of goods and services:

Consideration paid for Sale of Goods	Rs. 45 Lakh
Consideration paid for services	Rs. 20 Lakh
Total Consideration paid to the seller	Rs. 65 Lakh

In case a buyer pays the seller both for services and sale of goods, only the consideration paid towards the sale of goods shall be liable for TCS if it exceeds Rs. 50 Lakh.

For example, a buyer pays for the followings to his seller during FY 2020-21-

In this case, the buyer is not liable to pay TCS to the seller since the consideration paid to the seller does not exceed Rs. 50 Lakh though total consideration exceeds Rs. 50 Lakh. This is because the consideration paid other than towards sale of goods are **out of the scope of TCS provisions.**

Consideration paid for Sale of Goods

Rs. 80 Lakh

Consideration paid for services

Rs. 15 Lakh

Total Consideration paid to the seller

Rs. 95 Lakh

In an another example, a buyer pays for the followings to his seller during FY 2020-21-

In this case, the buyer is liable to pay TCS to the seller since the consideration paid to the seller towards the sale of goods exceeds Rs. 50 Lakh. However, the buyer should pay TCS only on Rs. 30 Lakh (Rs. 80 Lakh - Rs. 50 Lakh) which is paid as consideration towards the sale of goods since any consideration paid other than towards the sale of goods are out of the scope of TCS provisions.

## TCS ON DELAYED PAYMENT OF INVOICE:

If the buyer makes a delay in payment of invoice, seller charges interest for delay in the payment of the invoice.

No specific clarification from CBIC.

However conservative view to charge TCS on the same.

## TCS on SALE OF JEWELLERY:

Jewellery are **goods** and hence comes within the purview of section **206C(1H)**.

Prior to 01.04.2017, sale of jewellery was covered under TCS under section 206C(1D).

This section is now omitted.

# Personal consumption?

The seller must sell the goods to the buyer. Thus if the seller draws the goods for personal consumption, it will not come under the purview of TCS since **one cannot sell to himself.**

**TCS not applicable**



## SALE OF SOFTWARE:

If treated as **Service** - **TDS** provisions would apply

If treated as **Goods** - **TCS** provisions would apply



Can a buyer apply for the certificate for lower collection of TCS?

**Section 206C(9) does not extend** the benefit to apply for lower tax collection at source for the section **206C(1H)**.

## OUT OF POCKET EXPENSES:

**May or may not** form part of the sale consideration

If **reflected** in the invoice - **Should form part** of the

sale consideration

If **not reflected** in the invoice - may or may not form

part of the sale consideration.

**SUPPLIES TO SEZ**

**'EXPORTS OUT OF INDIA'**



# Sale consideration received for goods need not be the same as business:

## **Eg 1:** Seller is in **business of Steel**

Selling his **personal jewellery** valuing more than Rs. 50 lakhs. TCS is required to be collected.

## **Eg 2:** Seller is **not in business**

Selling his **personal jewellery** valuing more than Rs. 50 lakhs. TCS is **not** required to be collected.

**TURNOVER OF 10 CR**

**'SALE OF SERVICES'**

**D - YES**

**D**

**D**



# What shall be consequences for failure to collect or pay TCS?

Shall be deemed to be **assessee-in-default**.

## Collected but not deposited:

**Interest @ 1.5%** per month or part from the date of collection till the date of deposit.

## Not collected:

**Interest @1%** per month or part

The interest shall be calculated for the **period** starting from the **date on which tax was required to be collected and ending on the date on which tax is deposited**. The interest is required to be paid **before furnishing the TCS return**.

What is the penalty for non collection of TCS?

Section 271CA:

Penalty = TCS amount

# What shall be consequences of non-filing of TCS return?

If there is a delay in filing of TCS return, the **late filing fee shall be payable under Section 234E**. The fee for default in furnishing the TDS/TCS Statement shall be levied at the rate of **Rs. 200 per day** during which such failure continues. However, the amount of fee shall not exceed the total amount deductible or collectable, as the case may be. The **fee shall be payable before submission of the belated TCS Statement**.

If a person fails to file the TCS return or does not file it by the due dates, he shall be liable to pay **penalty under Section 271H**. The penalty under Section 271H is also levied in case of furnishing of inaccurate information under TCS return. The **minimum amount of penalty** for failure to furnish TCS return or providing inaccurate information therein is **Rs. 10,000 which can go up to Rs. 100,000**.



# CHANGES IN BUSINESS

# EFFECT OF AMENDMENT ON BUSINESS

1. You need to collect TCS from Customers and they will get the Credit in Form 26AS



2. Suppliers will collect TCS from you and you will get the Credit in Form 26AS



3. Billing may change.



4. Additional compliance of making TCS **payment** on a **monthly basis** and filing TCS **returns** on a **quarterly basis**.

## Circular No. 17 dated 29.09.2020

Section applies on **receipt of sale consideration** :

1. Sale consideration **received before 1st Oct, 2020** - no TCS
2. Sale consideration **received on or after 1st Oct, 2020** - TCS even if sale made before 1st October, 2020.
3. **50 lakhs limit** will be computed from **01.04.2020** itself
4. If a seller has **already received Rs. 50 lakhs or more upto 30th Sept, 2020** then **TCS** shall apply **on every receipt of sale consideration on or after 01.10.2020**.

**PRESS RELEASE** dated: 30th Sept. 2020

## Clarification on doubts arising on account of new TCS provisions

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 and if the amount of TCS is more than his tax liability, the buyer would be entitled for refund of the excess amount along with interest.

Non - Applicability

- 
- In case goods being sold are covered by
    - Sec 206C (1) which covers – alcoholic liquor, tendu leaves, timber, forest produce other than timber and tendu leaves, scrap, minerals like coal or iron ore OR
    - Sec 206C(1F) which covers – motor vehicles exceeding Rs. 10 lakhs in value OR
    - Sec 206(1G) wherein remittance is being made outside India and TCS is being collected by Authorised Dealer for the same.

# Summary

## CONDITIONS FOR APPLICABILITY

**Condition 1:** Whether the sale is falling within the definition of goods

**Condition 2:** Whether seller is in the **business**

**Condition 3:** Turnover of **preceding FY** > 10 cr

**Condition 4:** Buyer doesn't fall in the **exclusion**

**Condition 5:** Sale consideration received per buyer should be more than Rs. 50 lakhs

**Condition 6:** Existing TDS/TCS - NA

▶ Thank You

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