



23rd September, 2020

Smt. Nirmala Sitharaman
Hon'ble Minister of Finance
Government of India
New Delhi – 110001

Respected Madam,

Subject: Request for granting relief from provisions of Tax Collection at Source (TCS) under section 206C(1H) of the Income Tax Act, 1961

1. The Finance Act, 2020 has made an amendment by insertion of sub-section (1H) in section 206C of the Income Tax Act, 1961 (hereinafter referred to as "the Act") which is effective from 01.10.2020. As a result of the said amendment, 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 shall at the time of receipt of such amount collect from the buyer, a sum equal to 0.1 percent of the sale consideration exceeding fifty lakhs as income tax.
2. In this respect, we have to submit that the scheme of section 206C of the Act does not extend the benefit of sub-section (9) of section 206C of the Act which allows the assessee to apply to the assessing officer for Nil/lower tax collection at source, to sub-section (1H) of section 206C of the Act. Consequently, for transactions covered under section 206C(1H), the assessee does not have the option to approach the assessing officer to issue Nil/ lower tax collection at source certificate.

In view of the above, assesseees 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 blockage of funds which is subsequently required to be claimed as refund by the assesseees from the Income Tax Department.

3. It is further submitted that sub-section (1H) of section 206C 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 which gives



an impression that w.e.f. 01.10.2020 i.e. the date from which the provisions of section 206C(1H) becomes applicable, 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 assesseees specially when similar provisions in sub-section (1) of section 206C envisages the seller to collect tax at source at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the said buyer, whichever is earlier.

4. As per Memorandum explaining the Finance Bill, 2020, the provisions of sections 206C(1H) have been inserted to widen and deepen the tax net. Whereas collection of tax at source from ultimate consumers (i.e. B2C transactions) would be significantly effective to widen the tax base, however, collection of income tax at source in B2B (i.e. business to business transactions for selling goods to other businesses) transactions would lead to multilevel tax collection from persons already covered in the tax net.
5. Further, sellers also receive from buyers the GST levied on sale of goods. It is submitted that GST, and Cess thereon, if any is imposed, ought not to be included in "Sale Consideration" as (i) the same is accounted for separately to be paid to the Governments with Seller is acting as their collecting agent, and (ii) it would amount to dual taxation, first on value of goods sold and second on GST levied. It is requested that CBDT may kindly issue a suitable clarification to exclude the GST from such "sale consideration".

The FAQ mentioned on the site of incometaxindia@gov.in says as under:

As per section 206C (1) every person, being a seller shall, at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the buyer. Hence, amount



debited to the account of buyer or payment shall be received by seller inclusive of VAT/excise/GST. TCS to be collected on inclusive of GST.

But the above FAQ pertains to TCS u/s 206C(1) which is markedly different than that u/s 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 206(1H) the TCS is to be collected from receipt of "Sale Consideration" which phrase has not been defined anywhere. If one goes to Sale of Goods Act, the Sale Consideration is simpliciter restricted to the consideration for the goods sold and will not include any taxes on sale. Hence it submitted a fresh look at the matter is required.

The GST authorities vide their letter F.No. 20/16/04/2018 –GST dated 7th Mar, 2019 have already replied that no GST is to be collected on TCS –

What is the correct valuation methodology for ascertainment of GST on Tax collected at source (TCS) under the provisions of the Income Tax Act, 1961?

1. 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."

2. 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 Government of India is not to levy Indirect tax on a Direct tax and it is submitted that the reciprocal should also be true i.e. Government ought not to levy a Direct Tax on an Indirect Tax.

6. In view of the above, we humbly pray for relief from the rigors of section 206C(1H) of the Act by way of following means:



- (a) The provisions of section 206C(9) of the Act may be suitably amended 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. It would be only judicious to request that persons covered under sub-sections (1F) and (1G) of section 206C may also be covered under section 206C(9) of the Act. As an alternative, suitable amendments may also be made in section 206C to provide that, no collection of tax shall be made in case of buyers who furnish necessary declaration form similar to the form as referred in sub-section (1A) to the seller.
- (b) B2B transactions may be carved out from the ambit of TCS provision under section 206C(1H) of the Act as it would lead to multiple level of tax collection.
- (c) As a one-point measure, it may be clarified that TCS obligation under section 206C(1H) of the Act would apply only for sales made after 30.09.2020. Receipt of sale consideration against sales made till 30.09.2020 would not attract provisions of section 206C(1H) of the Act.
- (d) Suitable clarification be provided that the sweep of section of 206C(1H) would have no application on the transactions of sale involving integrated supply of both goods and service to the buyer. This is typically works contract service involving supply of both goods and services as singly transaction of sale.
- (e) Suitable clarification be provided that the sweep of 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.
- (f) 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(1F) and (1H) may be extended and made applicable w.e.f. 01.04.2021.
- (g) A suitable clarification may be issued to the effect that for the purpose of TCS, the GST should not be included in the sale consideration.



7. In view the above submissions, it is respectfully prayed that suitable relief may be extended to the assesseees at the earliest to enable the assesseees to ensure effective compliance with the provisions of sections 206C(1H) of the Act.

Thanking you,

Yours sincerely,

Anshul Agarwal
President,
Lucknow Chartered Accountants Society

Suhas Paranjpe
President,
Bombay Chartered Accountants' Society

Ketan Mistry
President,
**Chartered Accountants Association,
Ahmedabad**

Rasesh Shah
President,
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Kumar S. Jigajinni
President,
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- cc. 1. Hon. Shri Anurag Thakur, Minister of State, Finance
2. Shri P C Mody, Chairman, CBDT