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TAXWEEKLY

A Weekly magazine on recent updates in Tax regime.

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TAXWEEKLY MAGAZINE

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Clarification on new TCS provisions under IT Act

Finance Act, 2020 amended provisions relating to TCS with effect from 1st October, 2020 to provide that seller of goods shall collect tax @ 0.1 per cent (0.075% up to 31.03.2021) if the receipt of sale consideration from a buyer exceeds Rs. 50 lakh in the financial year.

Further, to reduce the compliance burden, it has been provided that a seller would be required to collect tax only if his turnover exceeds Rs. 10 crore in the last financial year. Moreover, the export of goods has also been exempted from the applicability of these provisions.

It has been reported in the media that TCS has been made applicable to the amount received before 1st October, 2020.

It is clarified that this report is not correct. In this connection, it may be noted that this TCS shall be applicable only on the amount received on or after 1st October, 2020. For example, a seller who has received Rs. 1 crore before 1st October, 2020 from a particular buyer and receives Rs. 5 lakh after 1st October, 2020 would be required to collect tax on Rs. 5 lakh only and not on Rs. 55 lakh [i.e Rs.1.05 crore - Rs. 50 lakh (threshold)] by including the amount received before 1st October, 2020.

It has also been reported in certain section of the media that every transaction will attract this TCS. This report is not correct.

It may be noted that this TCS applies only in cases where receipt of sale consideration exceeds Rs. 50 lakh in a financial year. As the threshold is based on the yearly receipt, it may be noted that only for the purpose of calculation of this threshold of Rs. 50 lakh, the receipt from the beginning of the financial year i.e. from 1st April, 2020 shall be taken into account. For example, in the above illustration, the seller has to collect tax on receipt of Rs. 5 lakh after 1st October, 2020 because the receipts from 1st April, 2020 i.e. Rs. 1.05 crore exceeded the specified threshold of Rs. 50 lakh.

Further, 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 this TCS provision shall be applicable on the amount of all sale consideration received on or after 1st October, 2020 without making any adjustment for the amount received in respect of sales made before 1st October, 2020. Mandating the collector to identify and exclude the amount in respect of sales made up to 30th September, 2020 from the amount received on or after the 1st of October, 2020 would have resulted into undue compliance burden for the collector and also litigation.

It has been reported in certain section of the media that this TCS is an additional tax.

This is obviously not correct. In this regard, it may be noted that 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.

It may also be noted that this TCS shall be applicable only on the receipt exceeding Rs. 50 lakh by a seller from a particular buyer. Therefore, on payment of Rs. 1 crore made by a buyer to a particular seller only Rs.5,000 (Rs. 3,750 this year) i.e. [0.1% of (Rs. 1 crore - Rs. 50 lakh)] shall be collected. Hence, in case of a person making payment of Rs.1 crore each to 10 different sellers, the total tax collected shall be only Rs.50,000 (Rs. 37,500 this year) i.e 10 x [0.1% of (Rs. 1 crore- Rs. 50 lakh)] on the total payment made for purchase of Rs. 10 crore to ten different sellers.

Assuming a net profit of 8% on sales, his business income in respect of this payment of Rs. 10 crore made for purchase would be around Rs. 87 lakh. The incometax liability on the income of Rs. 87 lakh for an individual in the new taxation regime would be around Rs. 27 lakh. Hence, the amount of TCS collected i.e. Rs.50,000 (Rs. 37,500 this year) would be a miniscule part of his actual tax liability and would be easily adjusted against his tax liability. In a rare case, if his tax liability is less than even Rs.50,000 (Rs. 37,500 this year), he shall be entitled for refund of excess TCS with interest.

It has also been reported in certain section of media that every seller will have to collect TCS. This is also not correct. In this context, it may be noted that in order to reduce the compliance burden, this TCS is made applicable to only those sellers whose business turnover exceeds Rs. 10 crore. In other words, those having turnover of less than Rs. 10 crore will not be required to collect TCS. There are only around 3.5 lakh persons who have disclosed business turnover of more than Rs. 10 crore in FY 2018- 19. There are around 18 lakh entities which already deal with TDS/TCS. Therefore, this TCS collection under these new provisions would be required to be made by persons who, in most of the cases, would already be complying with the other provisions of TDS/TCS.

Guidelines under section 194-O (4) and section 206C (1H) of the Income-tax Act, 1961

section 194-0

Finance Act, 2020 inserted a new section 194-0 in the Income-tax Act 1961 (hereinafter referred to as "the Act") which mandates that with effect from 1st day of October, 2020, an e-commerce operator shall deduct income-tax at the rate of one per cent (subject to the provisions of proposed section 197B of the Act) of the gross amount of sale of goods or provision of service or both, facilitated through its digital or electronic facility or platform. However, exemption from the said deduction has been provided in case of certain individuals or Hindu undivided family fulfilling specified conditions. This deduction is required to be made at the time of credit of amount of such sale or service or both to the account of an e-commerce participant or at the time of payment thereof to such e-commerce participant, whichever is earlier.

section 206C(1H)

Finance Act, 2020 also inserted sub-section (1H) in section 206C of the Act which mandates that with effect from 1st day of October, 2020 a seller receiving an amount as consideration for sale of any goods of the value or aggregate of such value exceeding fifty lakh rupees in any previous year to collect tax from the buyer a sum equal to 0.1 per cent (subject to the provisions of proposed sub-section (10A) of the section 206C of the Act) of the sale consideration exceeding fifty lakh rupees as income-tax. The collection is required to be made at the time of receipt of amount of sales consideration.

Sub-section (4) of section 194-O and sub-section (1H) of section 206C of the Act empowers the Board (with the approval of the Central Government) to issue guidelines for the purpose of removing difficulties. Various representations have been received by the Board for issuing guidelines for removing certain difficulties. In exercise of power contained under sub-section (4) of section 194-O of the Act and sub-section (1H) of section 206C of the Act, the Board, with the approval of the Central Government, hereby issues the following guidelines.

Applicability on transactions carried through various Exchanges:

It has been represented that there are practical difficulties in implementing the provisions of Tax Deduction at Source (TDS) and Tax Collection at Source (TCS) contained in section 194-O and subsection (1H) of section 206C of the Act in case of certain exchanges and clearing corporations. It has been stated that sometime in these transactions there is no one to one contract between the buyers and the sellers.

In order to remove such difficulties, it is provided that the provisions of secti0n 194-0, and subsection (I H) of section 206C, of the Act shall not be applicable in relation to,-

(i) 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;

(ii) transactions in electricity, renewable energy certificates and energy saving certificates traded through power exchanges registered in accordance with Regulation 21 of the CERC.

Applicability on payment gateway

In e-commerce transactions, the payments are generally facilitated by payment gateways. It is represented that in these transactions, there may be applicability of section 194-O 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.

To illustrate a buyer buys goods worth one lakh rupees on e-commerce website "XYZ" . He makes payment of one lakh rupees through digital platform of "ABC". On these facts liability to deduct tax under section 194-O may fall on both "XYZ" and "ABC".

In order to remove this difficulty, it is provided that the payment gateway will not be required to deduct tax under section 194-0 of the Act on a transaction, if the tax has been deducted by the ecommerce operator under section 194-0 of the Act, on the same transaction. Hence, in the above example, if "XYZ" has deducted tax under section 194-0 on one lakh rupees, "ABC" will not be required to deduct tax under section 194-0 of the Act on the same transaction. To facilitate proper implementation, "ABC" may take an undertaking from "XYZ" regarding deduction of tax.

Applicability of on insurance agent or insurance aggregator

It has been represented that insurance agents or insurance aggregators in many cases have no involvement in transactions between insurance company and the buyer for subsequent years. It has been represented that 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.

In order to remove difficulty it is provided that in years subsequent to the first year, if the insurance agent or insurance aggregator has no involvement in transactions between insurance company and the buyer of insurance policy, he would not be liable to deduct tax under section 194-0 of the Act for those subsequent years. 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 under the relevant provision of the Act.

Calculation of threshold for FY 2020-21

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

it hereby clarified that,-

(i) Since the threshold of five lakh rupees for an individual/ Hindu undivided family (being ecommerce participant who has furnished his PAN/Aadhaar) is with respect to the previous year, calculation of amount of sale or services or both for triggering deduction under section 194-0 of the Act shall be counted from 1 st April, 2020. Hence, if the gross amount of sale or services or both facilitated during the previous year 2020-21 (including the period up to 30th Sept 2020) in relation to such an individual! Hindu undivided family exceeds five lakh rupees, the provision of section 194-0 shall apply on any sum credited or paid on or after 15t October, 2020.

(ii) Since sub-section (1H) of section 206C of the Act applies on receipt of sale consideration, the provision of this sub-section shall not apply on any sale consideration received before 1 5t October 2020. Consequently it would apply on all sale consideration (including advance received for sale) received on or after 1 5t October 2020 even if the sale was carried out before 1 5t October 2020.

(iii) Since the threshold of fifty lakh rupees is with respect to the previous year, calculation of receipt of sale consideration for triggering TCS under sub-section (1 H) of section 206C shall be computed from 1 5t April, 2020. Hence, if a person being seller has already received fifty lakh rupees or more up to 30th September 2020 from a buyer, the TCS under sub-section (1 H) of section 206C shall apply on all receipt of sale consideration during the previous year, on or after 15t October 2020, from such buyer

Applicability to sale of motor vehicle:

The provisions of sub-section (1F) of section 206C of the Act apply to sale of motor vehicle of the value exceeding ten lakh rupees. Sub-section (1H) of section 206C of the Act exclude from its applicability goods covered under sub-section (1F). It has been requested to clarify that whether all motor vehicles are excluded from the applicability of sub-section (1H) of section 206C of the Act.

It this regard it may be noted that the scope of sub-sections (1H) and (1F) are different. While sub-section (1F) is based on single sale of motor vehicle, sub-section (1H) is for receipt above 50 lakh rupee during the previous year against aggregate sale of good. While sub-section (1F) is for sale to consumer only and not to dealers, sub-section (1H) is for all sale above the threshold. Hence, in order to remove difficulty it is clarified that,-

(i) Receipt of sale consideration from a dealer would be subjected to TCS under sub-section (1H) of the Act, if such sales are not subjected to TCS under sub-section (1F) of section 206C of the Act.

(ii) In case of sale to consumer, receipt of sale consideration for sale of motor vehicle of the value of ten lakh rupees or less to a buyer would be subjected to TCS under sub-section (1H) of section 206C of the Act, if the receipt of sale consideration for such vehicles during the previous year exceeds fifty lakh rupees during the previous year.

(iii) In case of sale to consumer, receipt of sale consideration for sale of motor vehicle of the value exceeding ten lakh rupees would not be subjected to TCS under sub-section (1H) of section 206C of the Act if such sales are subjected to TCS under sub-section (1F) of section 206C of the Act,

Adjustment for sale return, discount or indirect taxes

It is requested to clarify that whether adjustment is required to be made for sales return, discount or indirect taxes including GST for the purpose of collection of tax under sub-section (lH) of section 206C of the Act. It is hereby 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 sub-section (IH) of section 206C of the Act since the collection is made with reference to receipt of amount of sale consideration.

Fuel supplied to non-resident airlines

It is requested to clarify if the provisions of sub-section (IH) of section 206C of the Act shall apply on fuel supplied to non-resident airlines at airports in India. To remove difficulties it is provided that the provisions of sub-section (1 H) of section 206C of the Act shall not apply on the sale consideration received for fuel supplied to non-resident airlines at airports in India.

Due dates under Company Law Extended

The MCA had introduced a new scheme known as the Companies Fresh Start Scheme, 2020, valid from 01.04.2020 to 30.09.2020 to enable companies to make good their previous defaults. This Scheme has now been extended till 31.12.2020.

The MCA had also introduced a new scheme known as the LLP Settlement Scheme, 2020 which was valid from 01.04.2020 to 13.06.2020 and was later extended till 30.09.2020. The Scheme has been further extended to 31.12.2020 to enable LLPs to make good their previous defaults.

The Ministry of Corporate Affairs has also extended the time within which Independent Directors of companies have to register themselves on the databank maintained by the IICA from 30.09.2020 to 31.12.2020.

The Scheme for relaxation of time for filing forms related to creation or modification of charges under the Companies Act, 2013 and the time for conducting EGMs through Video Conference or Other Audio Visual Means also stand extended till 31.12.2020.

In continuation of the extensions being given for compliance relaxations previously announced, MCA has extended the time period upto which companies can conduct their board meetings through VCs or Other Audio Visual Mechanism for all items of business to 31.12.2020.

The Ministry of Corporate Affairs has extended the duration of several schemes till 31.12.2020 in view of the continued disruption caused due to the COVID-19 pandemic in certain parts of the country and to provide greater Ease of Doing Business.

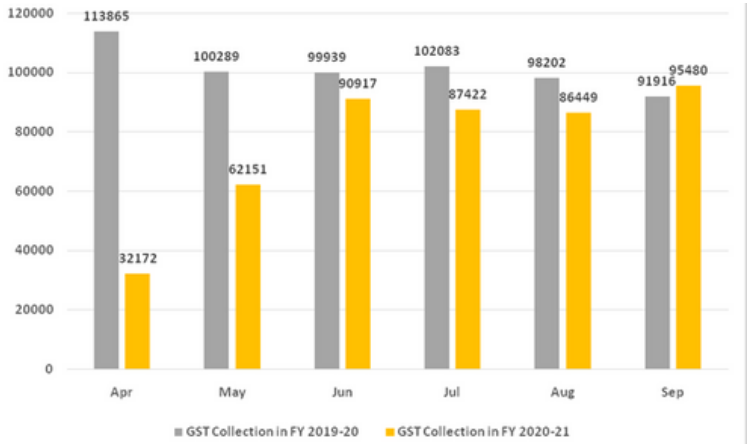
Due date for belated & revised ITRs for AY19-20 extended to 30/11/2020

On further consideration of genuine difficulties being faced by taxpayers due to the Covid-19 situation, CBDT further extends the due date for furnishing of belated & revised ITRs for Assessment Yr 2019-20 from 30th September, 2020 to 30th November, 2020.

Order u/s 119(2a) issued.

GST Revenue collection for September, 2020

₹ 95,480 crore gross GST revenue collected in September



Relief in implementation of e-invoice w.r.t. IRN

Source - Notification No. 73/2020 – Central Tax

The Government had in December 2019 prescribed that the GST Taxpayers having aggregate annual turnover more than Rs. 100 crore in any preceding Financial Year will be required to issue e-invoice for all the Business to Business (B2B) supplies, in the manner prescribed under rule 48(4) of the CGST Rules, 2017 w.e.f. 1st April 2020. Further, it was also mandated under rule 48 (5) of the CGST Rules, 2017 that a B2B invoice or an export invoice issued by such a taxpayer, in any other manner, shall not be treated as an invoice.

In March 2020, the date of implementation of e-invoice was extended to 1st October 2020. Keeping in view the hardships faced by the taxpayers due to COVID-19 lockdown, in July 2020, it was further prescribed that the taxpayers having aggregate turnover of Rs. 500 crore and above only would be required to issue e-invoice w.e.f. 1st October 2020.

It has been reported that even after more than 9 months of the first notification in this regard, some of these taxpayers having aggregate turnover of Rs. 500 crore and above are still not ready. Accordingly, as a last chance, in the initial phase of implementation of e-invoice, it has been decided that the invoices issued by such taxpayers during October 2020 without following the manner prescribed under rule 48(4), shall be deemed to be valid and the penalty leviable under section 122 of the CGST Act, 2017, for such non-adherence to provisions, shall stand waived if the Invoice Reference Number (IRN) for such invoices is obtained from the Invoice Reference Portal (IRP) within 30 days of date of invoice.

The same is illustrated with an example: In case a registered person has issued an invoice dated 3rd October, 2020 without obtaining IRN but reports the details of such invoice to IRP and obtains the IRN of the invoice on or before 2nd November, 2020, then it shall be deemed that the provisions of rule 48 (5) of the CGST Rules, 2017 are complied with and the penalty imposable under section 122 of the CGST Act, 2017 shall also stand waived. Relevant notifications would follow.

It may be noted that no such relaxation would be available for the invoices issued from 1st November 2020 and such invoices issued in violation of rule 48(4) of the CGST Rules 2017 would not be valid and all the applicable provisions of CGST Act and Rules would apply for the said violation.

Certain GST compliances due dates extended and other updates

Implementation of requirement of Dynamic QR Code on B2C invoices deferred to 1st December 2020. Notification 71/2020-Central Tax dated 30.09.2020 issued.

GSTR9 & GSTR9C due date for FY 2018-19 extended to 31/10/2020

One time relaxation in implementation of E-Invoice Provisions for the month of October, 2020.
relaxation for 30 days to generate IRN for Oct invoices

Extension of CGST exemption on services by way of transportation of goods by air or by sea from customs station of clearance in India to a place outside India, by one year i.e. upto 30.09.2021.

Vide notifications (Central Tax) 70/2020 and 72/2020 dated 30-9-2020, certain amendments and additions were made in respect of e-invoicing. Below is the summary of amendments:

- Regarding aggregate turnover threshold, it was specified that those who crossed Rs. 500 Cr. in any preceding financial year from 2017-18 onwards, will be covered.
- Supplies for 'exports' are also specifically included under e-invoicing.
- QR code, having the Invoice Reference Number (IRN) to be part of invoice copy issued to buyer.
- In case of any contingency, Commissioner can exempt a person or a class of registered persons from e-invoicing for a specified period.
- Where e-invoicing is applicable, physical copy of invoice need not be carried (during movement of goods) and it is sufficient if the QR code having IRN is produced electronically, for verification by proper officer.

Recommendations of the 42nd GST Council Meeting

The 42nd GST Council met under the Chairmanship of Union Finance & Corporate Affairs Minister Smt Nirmala Sitharaman through video conferencing here today. The meeting was also attended by Union Minister of State for Finance & Corporate Affairs Shri Anurag Thakur besides Finance Ministers of States & UTs and senior officers of the Ministry of Finance& States/ UTs.

The GST Council has made the following recommendations:

1. Levy of Compensation Cess to be extended beyond the transition period of five years i.e. beyond June, 2022, for such period as may be required to meet the revenue gap. Further details to be worked out.

2. Centre is releasing compensation of ₹ 20,000 crore to States today towards loss of revenue during 2020-21 and an amount of about ₹ 25,000 crore towards IGST of 2017-18 by next week.

3. Enhancement in features of return filing: In its 39th Meeting held in March 2020, the Council had recommendation incremental approach to incorporate features of the new return system in the present familiar GSTR-1/3B scheme. Various enhancements have since been made available on the GST Common Portal. With a view to further enhance Ease of Doing Business and improve the compliance experience, the Council has approved the future roadmap for return filing under GST. The approved framework aims to simplify return filing and further reduce the taxpayer's compliance burden in this regard significantly, such that the timely furnishing of details of outward supplies (GSTR-1) by a taxpayer and his suppliers would –(i) allow him to view the ITC available in his electronic credit ledger from all sources

i.e. domestic supplies, imports and payments on reverse charge etc. prior to the due date for payment of tax, and (ii) enable the system to auto-populate return (GSTR-3B)through the data filed by the taxpayer and all his suppliers. In other words, the timely filing of GSTR-1 statement alone would be sufficient as the return in FORM GSTR-3B would get auto prepared on the common portal.

To this end the Council recommended / decided the following:

a. Due date of furnishing quarterly GSTR-1 by quarterly taxpayers to be revised to 13th of the month succeeding the quarter w.e.f. 01.1.2021;

b. Roadmap for auto-generation of GSTR-3B from GSTR-1s by:

i. Auto-population of liability from own GSTR-1 w.e.f. 01.01.2021; and

ii. Auto-population of input tax credit from suppliers' GSTR-1s through the newly developed facility in FORM GSTR-2B for monthly filers w.e.f. 01.01.2021 and for quarterly filers w.e.f. 01.04.2021;

c. In order to ensure auto population of ITC and liability in GSTR 3B as detailed above, FORM GSTR 1would be mandatorily required to be filed before FORM GSTR3Bw.e.f. 01.04.2021.

d. The present GSTR-1/3B return filing system to be extended till 31.03.2021 and the GST laws to be amended to make the GSTR-1/3B return filing system as the default return filing system.

4. As a further step towards reducing the compliance burden particularly on the small taxpayers having aggregate annual turnover < Rs. 5 cr., the Council's earlier recommendation of allowing filing of returns on a quarterly basis with monthly payments by such taxpayers to be implemented w.e.f. 01.01.2021. Such quarterly taxpayers would, for the first two months of the quarter, have an option to pay 35% of the net cash tax liability of the last quarter using an auto generated challan.

5. Revised Requirement of declaring HSN for goods and SAC for services in invoices and in FORM GSTR-1w.e.f. 01.04.2021 as under:

a. HSN/SAC at 6 digits for supplies of both goods and services for taxpayers with aggregate annual turnover above Rs. 5 crores;

b. HSN/SAC at 4 digits for B2B supplies of both goods and services for taxpayers with aggregate annual turnover upto Rs. 5 crores;

c. Government to have power to notify 8 digit HSN on notified class of supplies by all taxpayers.

6. Amendment to the CGST Rules: Various amendments in the CGST Rules and FORMS have been recommended which includes provision for furnishing of Nil FORM CMP-08 through SMS.

7. Refund to be paid/disbursed in a validated bank account linked with the PAN & Aadhaar of the registrant w.e.f. 01.01.2021.

8. To encourage domestic launching of satellites particularly by young start-ups, the satellite launch services supplied by ISRO, Antrix Corporation Ltd. and NSIL would be exempted.

Other Updates

- Form 35 is re-enabled to file appeal in accordance with the Faceless Appeal Scheme, 'Save draft' will be enabled shortly.
- Tax Audit Form Amended by CBDT, ITR6 amended & New Forms Inserted notification_82_2020
- from 1.10.2020 any audit report or certificate (including 3CA/3CB, 15CB, etc) uploaded by a CA on Income Tax portal would become INVALID if UDIN is not uploaded along with Form or within 15 days of uploading the Form

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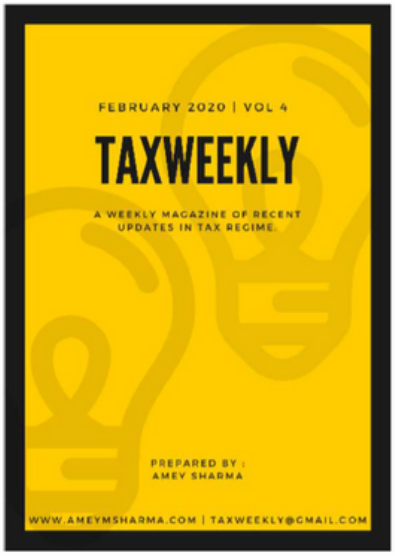

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I am a student pursuing chartered accountancy course and currently undergoing Articleship at M. Sharma S. Agrawal & Co. Nagpur. I have interests in field of direct and indirect taxation. I have presented papers on the same at the ICAI student conferences and also written various articles on GST and income tax at various platforms.