

GST Alert 12/2018-19
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GST on TCS (Income Tax)

Government vide circular 76/50/2018-GST dated 31.12.2018 has clarified that taxable value for the purposes of GST shall include TCS amount collected under the provisions of the Income Tax Act since the value to be paid to the supplier by the buyer is inclusive of the said TCS.

Said clarification reads as under:

Question:

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?

Clarification:

- 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. It is clarified that as per the above provisions, taxable value for the purposes of GST shall include the TCS amount collected under the provisions of the Income Tax Act since the value to be paid to the supplier by the buyer is inclusive of the said TCS.*

We do not agree with above clarification for reasons enumerated below:

1. Section 206C of the Income Tax Act

Tax Collected at Source is regulated vide Section 206C of the Income tax Act, relevant part of it reads as under

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* of any goods of the nature specified

in column (2) of the Table below, a sum equal to the percentage, specified in the corresponding entry in column (3) of the said Table, of such amount as income-tax:

*(1F) Every person, being a seller, who receives **any amount as consideration for sale of a motor** vehicle of the value exceeding ten lakh rupees, shall, at the time of receipt of such amount, **collect from the buyer**, a sum equal to one per cent of the sale consideration as income-tax.*

*(4) Any amount collected in accordance with the provisions of this section and paid to the credit of the Central Government **shall be deemed to be a payment of tax on behalf of the person from whom the amount has been collected** and credit shall be given to such person for the amount so collected in a particular assessment year in accordance with the rules²⁴ as may be prescribed by the Board from time to time.*

TCS under Income Tax Act is to be collected by Seller from the buyer at a specified rate on the amount payable by the buyer. Further as per section 206C (1F) seller of a motor vehicle is liable to collect TCS @ 1% from the buyer on the 'Sale Consideration' if the value of the vehicle exceeds Rs. 10 lakhs. Amount payable by the buyer or sale consideration of the motor vehicle includes the value of the car as well as GST thereon. Accordingly, TCS is collected by the seller on the value including GST as well.

Further, TCS is just a medium of collection of a tax on certain specified transactions so that high value or cash transactions can be tracked, it is not a levy as such on any of the specified transactions including that of a Sale of Motor Vehicle.

TCS so collected and deposited by the buyer will deemed to be a payment of tax on behalf of the buyer, in case a tax is levied on a supplier than the payment thereof to the government is always payment on his own behalf, it can be seen that it is not so in case of TCS.

2. Section 15 (2) (a) of the CGST Act includes only taxes which are levied

Section 15 of the CGST Act provides for the valuation mechanism for all Supplies. Sub-section 2 (a) of the Act provides for including taxes (other than GST) levied under any law to be included in the taxable value, it reads as under:

(2) The value of supply shall include—

*(a) any taxes, duties, cesses, fees and charges **levied under any law** for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, **if charged separately by the supplier;***

Above provision asks for inclusion of those taxes, duties, cesses, fees and charges which are levied under any law and which are charged separately by the supplier. TCS as discussed above is not a levy on a transaction but only collected from the Sale Consideration of a transaction and deposited with the Central Government. It is merely a medium of collection of tax and not a levy in itself.

Further Supplier doesn't charge TCS from the buyer, he merely collects the same under the authority of Income Tax Act and deposits it on behalf of the buyer.

3. TCS on GST or GST on TCS

As discussed above, Section 206C mandates collection of TCS on the 'amount payable' by the buyer for a transaction and in case of a motor vehicle on the 'Sale Consideration'. Amount Payable or Sale Consideration irrefutably includes Value as well as GST thereon because that the amount which a buyer will have to pay to the seller for getting delivery of the goods and without which the transaction shall not conclude. Hence TCS is collected on the entire value. Lets presume value of car is Rs. 10,00,000 and GST thereon @ 29% is Rs. 2,90,000. Total Sale Consideration is 12,90,000. TCS @ 1% on the Sale Consideration would be Rs. 12,900. If one is to agree with the clarification given by the board, then how would one calculate it.

Particulars	As per Income tax Law	As per GST Law
Basic Value	10,00,000	10,00,000
Add: TCS @ 1%	-	10,000
Add: GST @ 29%	2,90,000	2,92,900
Sub-Total	12,90,000	13,02,900
Add: TCS @ 1%	12,900	-
Total	13,02,900	13,02,900

From the above working it is evident that after this clarification by the board one will have to violate one of the tax laws to comply with the other, be it Income Tax Act or the GST Act. Gross Tax outflow from the hands of the buyer remains same at Rs. 2,92,900/-.

It's a classic chicken and egg story, but in this case taxes and money are involved.

4. Judicial background

In the case of **Vinod Rathore Versus Union of India and Others 2005 (1) TMI 78 - MADHYA PRADESH HIGH COURT**, question arose whether collection of tax at source under section

206C of the Income-tax Act on the price of liquor shall include excise duty paid for purchase of liquor. Honourable high court held as under:

In the present case, the purchaser is required to pay the cost of liquor price which includes excise duty. Under the law, the purchaser is not in a position to get liquor without payment of excise duty. Since the purchase price is inclusive of excise duty, therefore, tax will be recoverable on the actual price paid by the buyer inclusive of tax and excise duty. As per intent of section 206C of the Act, tax is liable to be recovered on the actual amount paid by the buyer, therefore, as and when the return is submitted by the buyer and after assessment, if it is found that some excess payment has been made towards the tax, it may be ordered to be returned by the competent authority. Recovery of tax on the price of liquor with all taxes and excise duty is not bad in law, and recovery of tax by the authorities is just and proper.

5. Conclusion

We strongly believe that TCS cannot be included for calculating taxable value under GST and we earnestly request both the Central Board of Direct Taxes which regulates Income Tax and Central Board of Indirect Tax and Customs which regulates Central GST to sit together and give a final and prospective solution to this.

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