

# FAQS on TCS

Tax collected at source (TCS) obligations on the sale of bullion and jewellery under the Income Tax Act, 1961 has, since long, been a matter of great debate. **Bhavin Sheth** analyses some critical aspects of the provisions.

## Regulatory provisions

Chapter XVIIIBB of the Income Tax Act, 1961 deals with the provisions of Tax Collected at Source (TCS). Under this chapter, section 206C stipulates cases where tax is required to be collected. Accordingly, every person, being a seller, who receives any amount in cash as consideration for sale of bullion or jewellery, shall, at the time of receipt of such amount in cash, collect from the buyer, a sum equal to one per cent of sale consideration as income tax, if such consideration exceeds ₹2,00,000 for bullion or ₹5,00,000 for jewellery.

TCS is chargeable at a flat rate of one per cent of sale consideration. Surcharge and cess is applicable only in case of a non-resident purchaser.

The above provisions of TCS apply to every seller receiving cash consideration for sale of jewellery. Hence, it is important to understand the meaning of “seller” and “jewellery”.

## Meaning of seller and jewellery

Here, seller means

- i) The central government, a state government or any local authority or corporation or authority established by or under a central, state or provincial Act; or

- ii) any company or firm or cooperative society; and
- iii) an individual or a Hindu undivided family whose total sales, gross receipts or turnover from the business or profession carried on by him exceeds ₹1 crore or ₹25 lakh respectively during the financial year immediately preceding the financial year in which the bullion exceeding ₹2,00,000 or jewellery exceeding ₹5,00,000 are sold. Jewellery has been defined to include ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stone and whether or not worked or sewn into any apparel. Jewellery also includes precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any apparel.

An exception was earlier provided in respect of bullion whereby TCS was not applicable on coins/articles weighing 10 grams or less. However, recently, in the Finance Act, 2013 (with effect from June 1, 2013), the provisions have been amended and this exclusion has been

deleted. As such, even on purchase of coins in excess of ₹2 lakh, tax will have to be collected.

## Certain issues relating to TCS

- **Is TCS applicable only when the entire sale consideration is in cash?**

Section 206C (1D) of the Act is applicable to “every person, being a seller, who receives any amount in cash as consideration for sale of bullion...”

From the wording above, it may be inferred that it is not necessary that the entire consideration is received in cash. Even if part of the amount is received in cash, it would appear that TCS is attracted — if the total sale consideration exceeds the threshold of ₹2,00,000 or ₹5,00,000. However, the Explanatory Memorandum says that “...the seller of bullion and jewellery shall collect tax at the rate of one per cent of sale consideration from every buyer of bullion and if sale consideration exceeds ₹2,00,000 and the sale is in cash”. Thus, the Explanatory Memorandum seems to suggest that only if entire sale consideration is in cash, the TCS provisions

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The provisions relating to the obligation of “tax collected at source” in the Income Tax Act, 1961 has been a matter of great debate and concern in the jewellery trade. Confusion regarding the provisions has, in many cases, also led to litigation. Nowadays, with changes in the law and the outcomes of various cases decided by adjudication authorities becoming regular news features, there is a need to clearly understand the provisions. For, it is only then that all those involved can comply with the regulations and, thereby, avoid defaults and penal consequences. The subject is quite vast but an effort has been made to ensure clarity by analysing the regulatory provisions in the form of an FAQ.





under sub-section (1D) are attracted. Since there is ambiguity in this regard, the Central Board of Direct Taxes (CBDT) needs to clarify this matter further.

- **Does receipt of bearer cheque or cheque which is crossed without the words “account payee” amount to receiving consideration in cash?**

Since Section 206 (1D) uses the words cash, and not “otherwise than by crossed account payee cheque or bank drafts” like in other provisions, it would appear that bearer cheque or cheques crossed without the words “account payee” would not be regarded as “cash”. This matter also needs CBDT's clarification.

- **Are TCS provisions applicable in case of barter exchange?**

There is no definition for ‘sale’ under the Act. However, according to the Transfer of Property Act, one of the essential ingredients of sale is money as consideration. Exchange is like a barter system where there is no involvement of monetary consideration. Since provisions of the said section uses the word ‘sale’, TCS provisions may not apply in case of exchange. However CBDT needs to clarify this matter further.

- **Is the threshold limit transaction-wise or in aggregate?**

Based on the reading of the provisions, it is inferred that the threshold limit for the

purpose of collection of tax of ₹ 2,00,000 in case of bullion and ₹ 5,00,000 in case of jewellery should be considered transaction-wise and not aggregate of all the transactions for the year.

### Compliance requirements for the seller

The concept and provisions of TCS are similar to TDS (tax deducted at source). So also are its compliance requirements. Hence, provisions such as obtaining TAN (tax deduction account number), depositing TCS within the prescribed time, issue of TCS certificate and so on are applicable to seller of bullion or jewellery to whom the provisions of TCS are applicable.

### Conclusion

The objective of the provisions of TCS appears to be to reduce the quantum of cash transaction in the bullion and jewellery sector and to curb the flow of unaccounted money in the trading system of bullion and jewellery. Compliance requirement for jewellers who receive cash consideration has thus increased substantially and has to be adhered to by the jewellery industry. Further, there are some issues and ambiguity in the application of the provisions of TCS which should be clarified by the CBDT to avoid non-compliance and penal provisions. ■

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