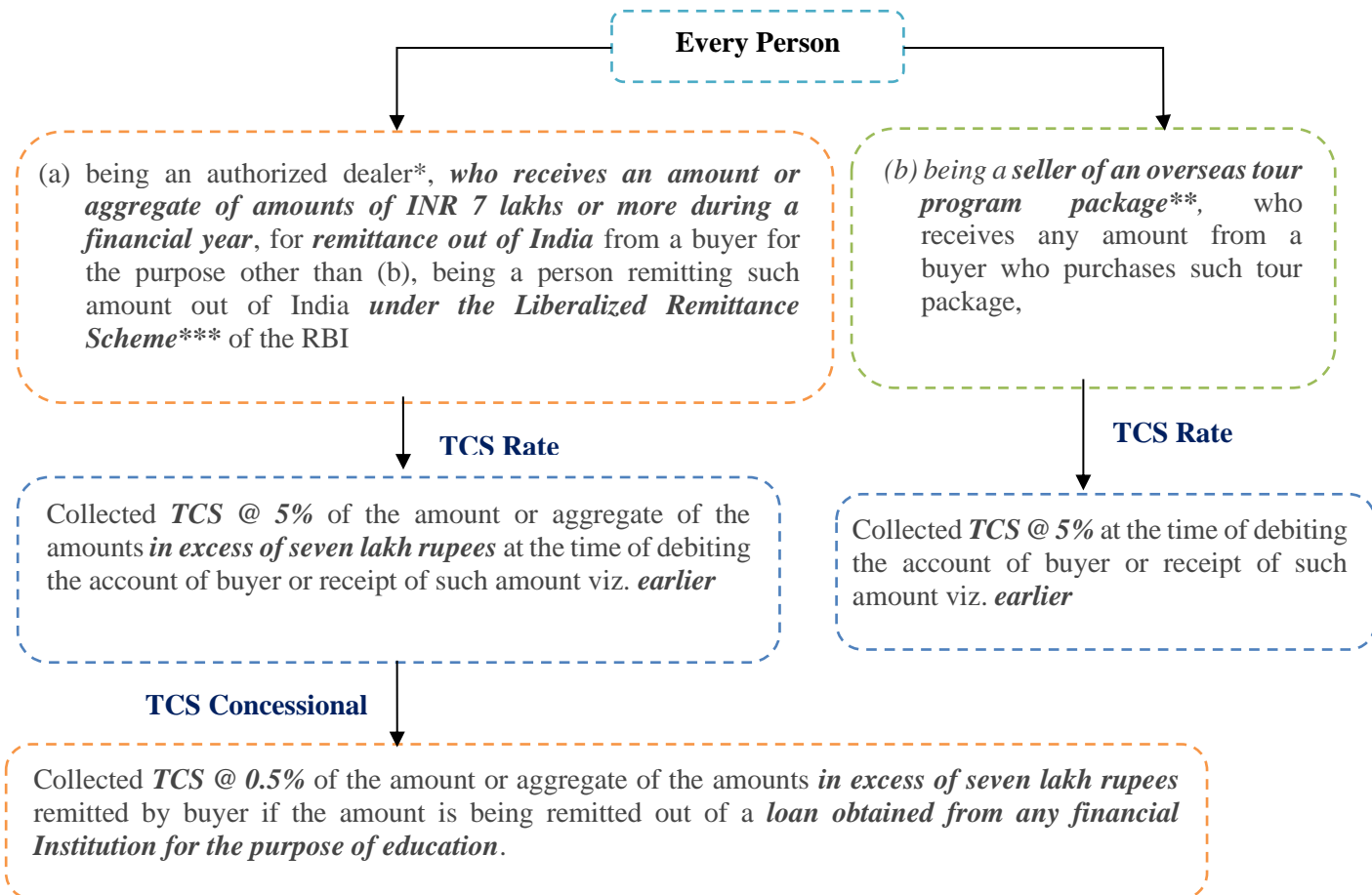




With effect from **October 01, 2020**, new sub-section 206C(IG) and 206C(IH) of the Income tax Act, have been introduced in regard with Tax collected at source (“TCS”) by seller of goods or authorised dealers receiving amounts for remitted amounts under the Liberalized Remittance Scheme of RBI and new section 194-O of the Income tax Act, has been introduced for Tax deducted at source (“TDS”) by an e-commerce Operator. This document provides you with an insight of the new provisions enacted in the Income Tax Act, 1961

Tax Collected at Source: Section 206C (1G)

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 issue of a cheque or draft or by any other mode, whichever is earlier, collect from the buyer of any good a sum equal to the percentage as specified below:



*Authorised Dealer means a person authorised by RBI under FEMA to deal in foreign exchange or foreign security

**Overseas tour programme package means any tour package which offers visit to a country or countries or territory or territories outside India and includes expenses for travel or hotel stay or boarding or lodging or any other expenditure of similar nature or in relation thereto.

***The Liberalized Remittance Scheme (LRS) of the Reserve Bank of India (RBI) allows resident individuals to remit a certain amount of money during a financial year to another country for investment and expenditure. According to the prevailing regulations, resident individuals may remit up to \$250,000 per financial year. This money can be used to pay expenses related to travelling (private or for business), medical treatment, studying, gifts and donations, maintenance of close relatives and so on. Apart from this, the remitted amount can also be invested in shares, debt instruments, and be used to buy immovable properties in overseas market. Individuals can also open, maintain and hold foreign currency accounts with banks outside India for carrying out transactions permitted under the scheme. However, LRS restricts buying and selling of foreign exchange abroad, or purchase of lottery tickets or sweep stakes, proscribed magazines and so on, or any items that are restricted under Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000. Also, remittances can't be made directly or indirectly to countries identified by the Financial Action Task Force as "non co-operative countries and territories"

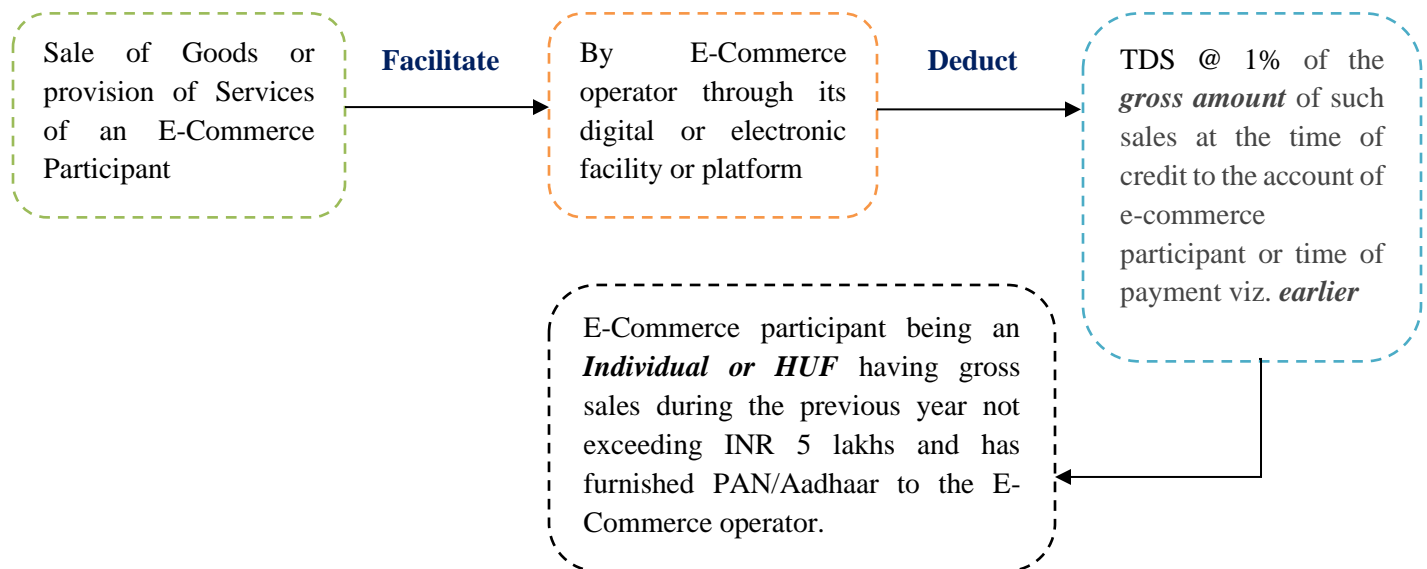
Note:

1. In case **PAN/Aadhaar** of Buyer is **not available** – TCS @ 10% will be applicable (5% in case of remittance on account of education pursuant to a loan from a financial Institution) in accordance with Section 206CC.
2. The above section is **not applicable**, if the buyer is:

- a. liable to deduct TDS under any other provision of this Act and has deducted such amount;
- b. The Central Government, a State Government, an embassy, a High Commission, and other authorities.

Section 194-O: TDS on E-commerce transactions-

Any payment made by a purchaser of goods or recipient of services directly to an e-commerce participant for the sale of goods or provision of services or both, facilitated by an e-commerce operator, shall be deemed to be the amount credited or paid by the e-commerce operator to the e-commerce participant and shall be included in the gross amount of such sale or services for the purpose of deduction of income-tax as below:

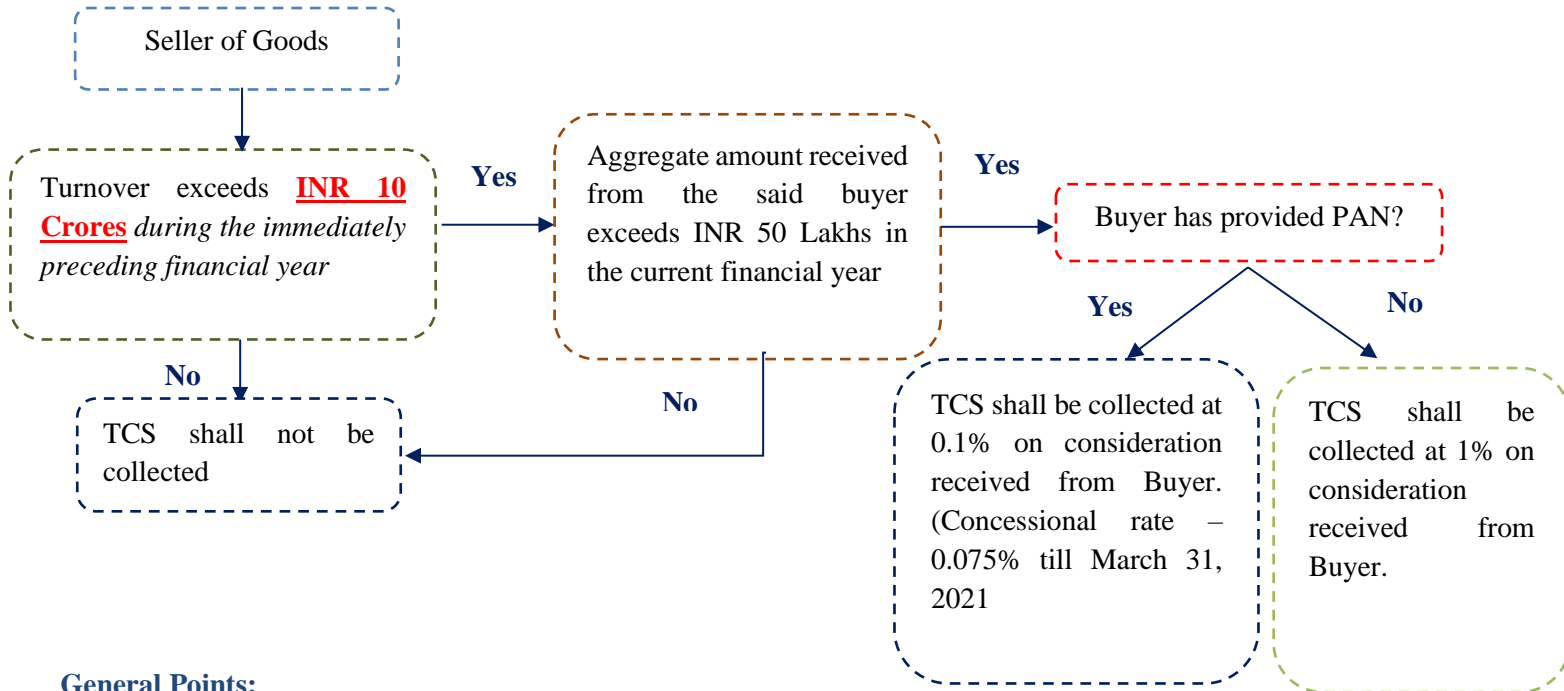


Note:

1. Amount received or receivable by an E-Commerce operator for *hosting advertisements or providing any other services* which are not in connection with the sale are outside purview of this section.
2. “**E-Commerce Participant**” - means a *person resident in India* selling goods or providing services or both, including digital products, through digital or electronic facility or platform for electronic commerce.
3. “**E-Commerce transaction**”- Where sale of goods/ services of an e-commerce participant is facilitated by an e-commerce operator through its digital or electronic facility or platform (by whatever name called), such e-commerce operator is required to deduct tax at source under section 194-O
4. “**E-Commerce operator**” - means a person who owns, operates or manages digital or electronic facility or platform for electronic commerce;
5. “*Services*” includes "*fees for technical services*" and "*fees for professional services*" as per Section 194J.

Tax Collected at Source (TCS) on Sale of Goods as per 206C(1H)

Seller to collect TCS on receipt of consideration from the buyer for sale of goods excluding export of goods, as per the specified limits as mentioned below.



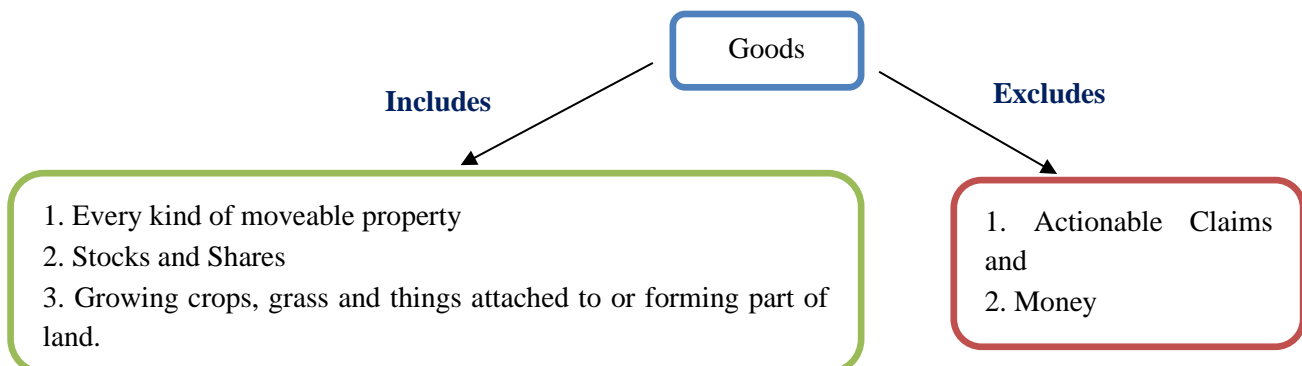
General Points:

1. Tax Liability arises at the **“Time of receipt of payment”**
2. **No TCS** to be collected if:
 - a. Goods are exported out of India
 - b. Buyer is liable to deduct TDS under other provision of the Act
 - c. Goods are already liable for TCS under other sub-sections of Section 206C

Key Definitions:

- Buyer:** Buyer means a person who purchases any goods but **excludes**,
- a. Central, State Government, Embassy, High Commission etc.
 - b. Local authorities
 - c. Person importing goods into India

Goods: Goods are not defined under Income Tax act. The definition of goods as per Sale of Goods Act, 1930 is as below:



Clarification provided by CBDT for provision of Section 206C(IH) for the below issue:

- a) Provision of this section 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 corporations located in International Financial Services Centre (IFSC).
- b) Goods means every kind of movable property subject to certain exceptions and inclusion. Thus, immovable property shall not be treated as “goods”.
- c) Allied or out-of-pocket charges recovered from the customers may or may not form part of the sale consideration. Where these expenses have been reflected in the sales invoices itself, it should form part of the sale consideration. If they are charged through a separate invoice, it should not form part of the sale consideration.
- d) Threshold of INR 50 lakh is with respect to the previous year, calculation of sale consideration for triggering TCS under this provision shall be computed from April 1, 2020. Hence, if a seller has already received INR 50 lacs or more up to September 30, 2020 from a buyer, TCS under the provision of 206C(1H) shall apply on all receipts of sale consideration on or after October 1, 2020.
- e) It is hereby clarified that no adjustment in account of sale return or discount of indirect taxes including GST is required to be made for collection of tax under the section since the collection is made with reference to receipt of amount of sale consideration.
- f) Tax is required to be collected where the amount is received in consideration for the sale of goods. It is not mentioned whether such sale needs to be effected immediately or at a future date. As the tax is required to be collected at the time of receipt of consideration, it should be reasonable to conclude that the provision may get attracted even if such sale happened in past, happens in present or would happen in future. Further, it is clarified that TCS is required to be collected under this provision from the advance received for sale. Consequently, it would apply on all the sale consideration, including advance received for sale, received on or after October 1, 2020 even if the sale was carried out before October 1, 2020.
- g) The provision of this section would apply when there is existence of two distinct parties as “seller” and “buyer” is a pre-requisite to construe a transaction as a sale. The condition of sale is not fulfilled in the context of branch transfer, thus, deduction of TCS is not applicable for branch transfers.
- h) The threshold for collection of tax is to be computed in respect of each PAN or Aadhaar number.
- i) Section 206C (9) of the Income tax Act, does not extend the benefit to apply for lower tax collection at source for the section 206(1H). Hence, the assessee does not have the option to approach the Assessing Officer to issue lower tax collection certificate for the transactions covered under this section.
- j) If any person responsible for collecting tax in accordance with the provisions of this section does not collect the whole or any part of the tax or after collecting, fails to pay the tax as required by or under this Act, he shall without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of tax as per section 206C(6A).

www.manian-rao.com

Address:

Bangalore

#361, First Floor, 7th Cross, 1st Block,
Jayanagar, Bangalore – 560011
Phone: +91 80 26569500 / 9501

Chennai

4, Easwaran Koil Street
Old Pallavaram,
Chennai – 60017
Phone: +91 44 22641404

Madurai

110, First Floor
Old No 85, 4th Street
Harvey Nagar, Arasaradi
Madurai – 625016
Phone: +91 452 2343630

Key Contacts

Paresh Daga

Senior Partner
paresh@manian-rao.com

R Srikanth

Senior Partner
srikanth@manian-rao.com

Ravindra C

Partner
ravindra@manian-rao.com

Pallavi V Rao

Partner
pallavi@manian-rao.com

This Publication contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgement. Manian and Rao Chartered Accountants will not accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor from Manian and Rao Chartered Accountants.