

TAX CHAT – A Note



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Note on Compliance under TCS on Sale of Goods with effect from 1st October, 2020:

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Finance Act, 2020 widened the scope of Section 206C of the Income Tax Act, 1961 (the Act), which deals with provisions of Tax Collection at Source.

Section 206C of the Act provides for the Collection of Tax at Source (TCS) on business of trading in alcohol, liquor, forest produce, scrap, etc. Sub-section (1) of the said section, provides that 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 certain specified goods, a sum equal to specified percentage, of such amount as income-tax.

Finance Act, 2020 inserted three new items under TCS effective from 1st October, 2020: (In this note we are mainly dealing with TCS on sale of goods):

A. *TCS on foreign remittance under liberalized Remittance Scheme (LRS):*

An authorised dealer receiving an amount or an aggregate of amounts of seven lakh rupees or more in a financial year for remittance out of India under the LRS of RBI, shall be liable to collect TCS, if he receives sum in excess of said amount from a buyer being a person remitting such amount out of India, at the rate of five per cent. In non-PAN/Aadhaar cases the rate shall be ten percent [Section 206C (1G)(a) of the Act]. Although the Act uses the word every person, as of now, this scheme of LRS is available to only Resident Indian and, therefore, this section applies only to resident Indians.

“Authorised dealer” is defined to mean a person authorised by the Reserve Bank of India under sub-section (1) of section 10 of Foreign Exchange Management Act, 1999 to deal in foreign exchange or foreign security.

B. *TCS on Purchase of Overseas Tour Programme Package:*

A seller of an overseas tour program package who receives any amount from any buyer, being a person who purchases such package, shall be liable to

collect TCS at the rate of five per cent. In non-PAN/ Aadhaar cases the rate shall be ten percent [Section 206C(1G)(b) of the Act]. No threshold has been prescribed.

“Overseas tour program package” is defined to mean 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 expense of similar nature or in relation thereto.

C. TCS on Sale of Goods in excess of Rs. 50 lakhs to buyer:

Sub section (1H) of section 206C provides that –

“(1H) Every person, being 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, other than the goods being exported out of India or goods covered in sub-section (1) or sub-section (1F) or sub-section (1G) shall, at the time of receipt of such amount, collect from the buyer, a sum equal to 0.1 per cent of the sale consideration exceeding fifty lakh rupees as income-tax”.

The term ‘Buyers’ and ‘Sellers’ are defined as under:

- (a) "buyer" means a person who purchases any goods, but does not include, –
- (A) the Central Government, a State Government, an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State; or
 - (B) a local authority as defined in the Explanation to clause (20) of section 10; or
 - (C) a person importing goods into India or any other person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein;
- (b) "seller" means a person whose total sales, gross receipts or turnover from the business carried on by him exceed ten crore rupees during the financial year immediately preceding the financial year in which the sale of goods is carried out, not being a person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein.

1. A seller of goods is liable to collect TCS at the rate of 0.1 per cent on consideration received from a buyer in a previous year in excess of Rs. 50 lakhs.

2. **Please note triggering event is not sale of goods but receipt of consideration.**
3. Only those seller whose total sales, gross receipts or turnover from the business carried on by it exceed Rs. 10 crores during the financial year immediately preceding the financial year, shall be liable to collect such TCS.
4. Section applies to consideration received from a buyer in respect of consideration for sale of any goods. **What is goods?**

The term “goods” is not defined under this section or under section 2 of the Act. Therefore, we look at the definition of the term in other relevant Acts.

Article 366(12) of Constitution:

Unless the context otherwise requires goods includes all materials, commodities and articles.

Sale of Goods Act 1930:

“Goods” means every kind of moveable property other than actionable claims and money; and includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale [Section 2(7) of Sale of Goods Act 1930]

The Goods and Service Tax Act 2017:

“Goods” means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply [Section 2(52)].

Considering the above, it can be said that “goods” is what is generally understood in trade. It does not include services.

5. Thus, following conditions needs to be satisfied for invoking provision for section 206C(1H) of the Act:
 - i) The transaction is in respect of goods;
 - ii) The consideration is received in respect of sale of goods;
 - iii) Buyer is not liable to deduct TDS under any provision of the Act and has not deducted such amount;

- iv) The total sales, gross receipts or turnover from the business carried on by the seller exceeds Rs. 10 crores in the immediately preceding financial year;
and
- v) During the year the total amount received from a buyer for consideration for sale of goods of the value or aggregate of such value exceeds Rs. 50 lakhs, other than-
 - a) Goods exported out of India;
No TCS to be collected on goods exported outside India.
However for goods sold to a unit in an SEZ/EOU, TCS may still be applicable.
 - b) Goods covered in sub-section (1) i.e. Alcoholic liquor for human consumption, Tendu leaves, Timber obtained under a forest lease, Timber obtained by any mode other than under a forest lease, Any other forest produce not being timber or tendu leaves, Scrap, Minerals, being coal or lignite or iron ore.
 - c) Goods covered in sub-section (1F) i.e. sale of motor vehicle of the value exceeding Rs. 10 lakhs.
 - d) Items covered under sub-section (1G) i.e. foreign remittance under liberalized Remittance Scheme and purchase of Overseas Tour Programme Package.
- 6. In case, the buyer has not provided the Permanent Account Number or Aadhaar Number to the seller, then the applicable rate would be 1% of the aggregate value of sale.
- 7. Cash system vs. Accrual system in payment of TCS:
As stated above the triggering event is not sale of goods but receipt of consideration. A Taxpayer should follow cash system for calculation and payment of TCS that is to say - tax to be collected when the amount received as sale consideration exceeds Rs. 50 lakhs irrespective of the amount of sale made during the previous year. Please refer para 4.4.2(ii) of Circular No. 17 of 2020 dated 29th September, 2020 – Para 10 below.

We understand following cash system for calculation of amount of TCS and payment has among others following administrative difficulties:

- Reconciliation between GST Return and TCS payment will be difficult. Sales as per GST Return will be on accrual while for TCS it will be on cash basis. One has to keep track of each invoice of sales and receipt of its consideration. This may have to be documented and substantiated at the time of assessment of TCS Return.
- Accounting softwares are made on concept of accrual. Whether, it will support generating such details? It is heard that so far SAP is not supporting it. May be in due course some Patch Software will be made to reconcile the two.
- Mismatch in month of purchase and TCS credit to buyer will require reconciliation. As per Rule 37-I (2A) credit is given in the year of collection. It may so happen buyer will book purchase in the month of March but since payment is made by it in June next, the TCS credit will appear in next years' Form 26AS. Will buyer get such credit in next year (when purchase is booked in earlier year or it should claim it in year of purchase though credit appears in next years' Form 26AS). Its an open issue.

Considering the above, we have taken a view earlier that a Taxpayer may follow accrual system for calculation in payment of TCS. However, considering the guidelines dated 29th September, 2020 and also the binding nature thereof, we now state that to avoid litigation, a Taxpayer should comply with the section and the guidelines by following cash system for TCS purposes. The amount of TCS is not large. Even when eligible turnover for TCS (in respect of which consideration is received), is say Rs. 50 crores, the amount of TCS would be Rs. 5 lakhs and for current financial year it would be Rs. 3.75 lakhs. The litigation is not worth it.

8. The TCS provision shall not apply as under-

- No TCS is to be collected from the Central Government, a State Government and an embassy, a High Commission, legation, commission, consulate, the trade representation of a foreign State, a local authority as defined in Explanation to clause (20) of section 10 or any other person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to conditions as prescribed in such notification.
- No such TCS is to be collected, if the seller is liable to collect TCS under other provision of section 206C or the buyer is liable to deduct TDS under any provision of the Act and has deducted such amount.

9. Sub-section (1I) and (1J) of Section 206C provides that -
- If any difficulty arises in giving effect to the provisions of sub-section (1G) or sub-section (1H), the Board may, with the approval of the Central government, issue guidelines for the purpose of removing the difficulty; and
 - Every guideline issued by the Board under sub-section (1-I) shall be laid before each House of Parliament, and shall be binding on the income-tax authorities and on the person liable to collect the sum.
10. CBDT has issued guidelines on section 206(1I) of the Act vide Circular No. 17 of 2020 dated 29th September, 2020 and also Press Release on 30th September, 2020. The copies of Circular No. 17 of 2020 dated 29th September, 2020 and Press Release dated 30th September, 2020 are enclosed herewith. The guidelines provides as under:
- i) The TCS is required to be made at the time of receipt of amount of sales consideration.
 - 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 1st October, 2020. Consequently it would apply on all sale consideration (including advance received for sale) received on or after 1st October, 2020 even if the sale was carried out before 1st October, 2020.
 - iii) Since the threshold of Rs. 50 lakhs is with respect to the previous year, calculation of receipt of sale consideration for triggering TCS under sub-section (1H) of section 206C shall be computed from 1st April, 2020. Hence, if a person being seller has already received Rs. 50 lakhs or more up to 30th September, 2020 from a buyer, the TCS under sub-section (1H) of section 206 shall apply on all receipt of sale consideration during the previous year, on or after 1st October, 2020, from such buyer.
 - iv) 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 Rs. 50 lakhs during the previous year against aggregate sale of goods. 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 -

- 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 206 of the Act.
 - 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. [For example, cost of vehicle is Rs. 6 lakh and a business unit purchases 10 such vehicles during the year, the provisions of section 206C(1H) will apply and not 206C(1F)].
- v) The CBDT has clarified that provisions of this section shall not be applicable in relation to transactions in securities (and commodities) which are traded through recognised stock exchanges or cleared and settled by the recognised clearing corporation, including recognised stock exchanges or recognised clearing corporations located in International Financial Service Centre (IFSC).
- vi) It is 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 (1H) of section 206C of the Act since the collection is made with reference to receipt of amount of sale consideration.
- vii) Fuel supplied to NR airlines: Clarifies that section 206C shall not apply on the sale consideration received for fuel supplied to non-resident airlines at airports in India.
11. The above guidelines are issued under sub-section (1-I) of the Act with the approval of the Central Government. It will now be laid before each House of Parliament and shall be binding on the person liable to collect the sum. Not following the same in the spirit and letter may have its own consequences.
12. There is no separate FAQ issued by the CBDT. However, in last 4 weeks we have received queries from our clients in respect of applicability and working of this section. We have collated some of the common questions and are trying herein below to provide our thoughts on the same:

i) *At what rate tax is to be collected?*

Ans: The tax shall be collected by the seller of goods at the rate of 0.1% of the sale consideration exceeding Rs. 50 lakhs if the buyer has furnished his PAN or Aadhaar, otherwise, the tax shall be collected at the rate of 1%.

The rates of TCS for the specified receipts have been reduced by 25% for the period from 14-05-2020 to 31-03-2021 vide The Taxation and Other Laws (Relaxation and Amendment of certain provisions) Act, 2020. Hence, the rate of TCS on sale of goods shall be 0.075% till 31-03-2021. However, if the buyer does not submit the PAN or Aadhaar the rate of TCS would be 1%.

ii) *For the financial year 2020-21 from which date the threshold limit of Rs. 50 lakhs will be computed?*

Ans: The CBDT vide Circular No. 17, dated 29-09-2020, has clarified that since the threshold of Rs. 50 lakhs is with respect to the previous year, calculation of sale consideration for triggering TCS under this provision shall be computed from 01st April, 2020. Hence, if a seller has already received Rs. 50 lakhs or more up to 30th September, 2020 from a buyer, TCS under this provision shall apply on all receipts of sale consideration on or after 01st October, 2020. Please see example on page 14 below.

iii) *Whether TCS is to be collected on GST?*

Ans: Section 206C (1H) of the Act provides that TCS shall be collected on the consideration for "sale of any goods".

The CBDT vide Circular No. 17, dated 29-09-2020, has clarified that since the collection is made with reference to receipt of the amount of sale consideration, no adjustment on account of indirect taxes including GST is required to be made for the collection of tax under this provision. Thus, TCS is required to be collected on the sale consideration inclusive of GST.

iv) *What treatment be given for sales return or credit/ debit notes for quality or quantity claims, discounts etc or amounts are received less ?*

Ans: Para 4.6 of circular dated 29th September, 2020 provides that - It is hereby clarified that no adjustment on account of sale return or discount is required to be made for collection of tax under sub-section (1H) of section 206C of the Act since the collection is made with reference to receipt of amount of sale consideration. Same thing will apply to quality and quantity claims. Thus, no adjustment shall be made if the receipt towards sale has already been received. It means the Taxpayer cannot reverse TCS on account of sales

returns/ claims / discounts etc. The buyer can claim TCS credit against the tax liability in its return of income.

v) *Is a non-resident, selling goods from outside India, required to collect tax at source under this section (import of goods)?*

Ans: The definition of a buyer in Explanation to Section 206C(1H) specifically excludes 'any person importing goods into India'. Hence, the obligation to collect tax at source is not triggered in the hands of the non-resident seller.

vi) *Whether TCS to be collected on the sale of immovable property by a developer?*

Ans: As referred to above, 'goods' means every kind of movable property subject to certain exceptions and inclusions. Thus, the immovable property shall not be treated as 'goods'. Consequently, the TCS shall not be collected from the sale of immovable property by a developer. Also, there is a TDS applicable on sale of immovable property exceeding Rs. 50 lakhs u/s 194IA of the Act.

vii) *Whether TCS is liable to be collected on Sale of Jewellery by a Jeweller?*

Ans: Up to the previous year 2016-17, Section 206C(1D) requires the collection of tax at source at the rate of 1% from the sale consideration received in cash on sale of bullion, jewellery or any other goods or for providing any service. The aforesaid provision has been omitted by the Finance Act, 2017 with effect from 1-4-2017.

The Finance Act 2020 has introduced a general provision for collection of TCS on sale of goods. Jewellery, being a movable property, is covered within the term goods. There is no specific exclusion under Section 206C(1H) for collection of TCS on sale of jewellery. Thus, a Jeweller shall be liable for the collection of tax if other conditions are also fulfilled.

viii) *Whether TCS is liable to be collected from re-sale of goods?*

Ans: Once the seller is covered in the definition of seller under sub-section (1H) and all the conditions as stated above are complied with, TCS is applicable. The term 'seller' is defined to mean - "a person whose total sales, gross receipts or turnover from the business carried on by him.....". Thus, where a person, re-selling the goods, is not engaged in carrying on of any business, no tax shall be collected under this provision.

ix) *Whether TCS has to be collected on advance received from the buyer?*

Ans: The CBDT vide Circular No. 17, dated 29-09-2020, has clarified that TCS is required to be collected under this provision from the advance received for sale.

As long as the intention is to adjust the advance payment against the future sale of goods, the tax should be collected at the time of receipt of consideration. If the advance payment is not made with an intention to adjust it against future sale (deposit or loan) but eventually it is adjusted against the future sale, in such cases an issue may arise as to TCS should be collected when. Logically, the answer should be that the TCS should be derived when advance is appropriated as sale consideration.

x) *Whether tax to be collected on the transfer of goods from one branch to another?*

Ans: The TCS under this section is required to be collected by any person, being a seller receiving consideration for the sale of goods. Thus, the 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. Therefore, the provisions of this section shall not apply in the case of branch transfers.

xi) *If the buyer has multiple units, whether sales made to different units need to be aggregated?*

Ans: When different units of buyer are under the same PAN or Aadhaar number, the amount received from all such units shall be aggregated to compute the limit of Rs. 50 Lakhs.

xii) *Whether TCS is liable on interest charged on delayed payment?*

Ans: With respect to interest charged in case of delay in payment of credit sales, it can be stated that it is not a consideration for sale of goods. It is a compensation for delay in payment. It is in nature of interest on debt incurred and therefore, it is out of the purview of TCS.

xiii) *What procedure should be followed?*

Ans: The procedure is similar to what is being followed for other TCS and TDS currently:

- a) it has to be paid electronically in Challan No. ITNS-281.
- b) Tax collected during the month shall be deposited on or before the 7th day of next month in which tax has been collected.
- c) TCS return has to be filed in Form 27 EQ quarterly on 15th July, 15th October, 15th January and 15th May of the financial year immediately following the financial year in which collection is made.

xiv) *What shall be consequences for failure to collect or pay TCS?*

Ans: If any person, responsible for the collection of tax at source, fails to collect the whole or any part of the tax or after collection fails to deposit the same to the

credit of the Central Government, then he shall be deemed to be assessee-in-default.

If a collector fails to collect or after collection fails to pay it to the credit of Central Government, he shall be liable to pay interest at the rate of 1% for every month or part thereof on the amount of tax he failed to collect or pay. The interest shall be calculated for the period starting from the date on which tax was required to be collected and ending on the date on which tax is deposited. The interest is required to be paid before furnishing the TCS return.

xv) What shall be consequences of non-filing of TCS return?

Ans: If there is a delay in filing of TCS return, the late filing fee shall be payable under Section 234E. The fee for default in furnishing the TDS/TCS Statement shall be levied at the rate of Rs. 200 per day during which such failure continues. However, the amount of fee shall not exceed the total amount deductible or collectable, as the case may be. The fee shall be payable before submission of the belated TDS/TCS Statement.

If a person fails to file the TCS return or does not file it by the due dates, he shall be liable to pay penalty under Section 271H. The penalty under Section 271H is also levied in case of furnishing of inaccurate information under TCS return. The minimum amount of penalty for failure to furnish TCS return or providing inaccurate information therein is Rs. 10,000 which can go up to Rs. 1,00,000.

xvi) Is TCS applicable on sale of fixed asset by a Taxpayer?

Ans: Unless the taxpayer is carrying on business in that item of Fixed Asset, TCS will not apply on sale of such fixed asset.

xvii) Whether TCS should be added in the invoice or a separate Debit note should be issued?

Ans: While complying with TDS provisions, does a Taxpayer deduct it from invoice or issue separate credit note /debit note for the same? NO.

Same way, even this section does not require adding it to invoice or raising of separate debit note. Whichever way it is convenient for a Taxpayer to communicate with the buyer for this and collect this amount is fine. One may consider initially in FY 2020-21, mentioning following on invoice or covering letter, if any –

“SECTION 206C (1H) OF THE INCOME TAX ACT, 1961 IS APPLICABLE WEF 01ST OCTOBER, 2020. YOU ARE REQUESTED TO REMIT TCS OF Rs...../- ALONGWITH PAYMENT OF THIS INVOICE.”

In smaller organisation, instead of modifying the software which prepares the bill, a rubberstamp bearing note on similar lines may be put.

xviii) *How do we extract this data form accounts?*

Ans: Well, we will not be able to comment as to how to modify your SAP or ERP software. However, in the interim period a Taxpayer may consider following for ease of calculation:

- a) Firstly check earlier year's turnover whether it exceeds Rs. 10 crores.
- b) If yes, then scrutinise debtors ledger for the period 01st April, 2020 to 30th September, 2020 and classify debtors in following three baskets:

Basis of classification	Action to take
Basket A :Debtors from whom receipt by way of sale consideration has already exceeded Rs. 50 lacs	start calculating TCS from 01 st October, 2020;
Basket B : Debtors who are likely to cross threshold of Rs. 50 lacs;	keep reviewing performance every month end
Basket C : debtors who are not likely to cross threshold of Rs. 50 lacs.	Review performance after three months

- c) Those who are maintain accounts on Tally software – please generate Report ‘Cash Flow’ which will give month wise receipts from debtors. Check the report and then on this basis baskets may be decided and also for post the month of September, 2020, TCS can be calculated and paid for debtors in Basket A and debtors in basket B can be reviewed and worked on accordingly.

- d) Tally may be coming out with some updation, please check with your vendor and meantime if you so deem fit follow above tips.

xix) *One of the client asked us inspite of all this if it wants to follow accrual system, considering the administrative difficulties, how should it go about it?*

Ans: At the outset we clearly say that please revisit your decision and try to comply the provisions on cash basis as contemplated by the section and the guidelines. Now coming to the question, we feel that its need more elaborate thinking. However, following prima facie point needs to be considered:

- a) Goods sold before 30th September, 2020 for which amount is received on or after 1st October needs to be captured and TCS be applied on that.
- b) If advances are received against the sale of goods and the sale is in a different month, the same needs to be included while making payment of TCS.
- c) In case of boarder line buyer, (to whom sale is just about Rs. 50 lakhs) it may effect your of taxability of TCS.
- d) Filing of TCS returns may be another issue. It has a column for date of receipt from the buyer.
- e) The consequences are if there is a short payment in any month because of above, the taxpayer is subject to interest and penalty and above all as and when the TCS officer ask data on cash basis at the time of TCS Return assessment, the reconciliation will be a task.

Really speaking this issue of accrual v/s cash system is relevant only in case of boarder line cases on sale of Rs. 50 lakhs. Otherwise, whichever method is followed consistently, over the period the collection and the payment will be same. This point needs to be reconsidered at CBDT level and some more guidelines may be provided. Till then as a compliant Taxpayer, one is expected to follow the law as it exists.



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Source: Economic Times

Example on TCS as attached to Note on TCS on sale of goods with effect from 1st October, 2020:

Amounts are in Rupees

	Scenario 1	Scenario 2	Scenario 3	Scenario 4	Scenario 5
Opening Balance as on 01/04/2020	35,00,000	35,00,000	1,00,00,000	1,00,00,000	
Billing during the period 01/04/2020 to 30/09/2020	10,00,000	35,00,000	5,00,00,000	5,00,00,000	
Amount of sale consideration received upto 30/09/2020	5,00,000	5,00,000	3,00,00,000	3,00,00,000	
Closing Balance as on 30/09/2020	40,00,000	65,00,000	3,00,00,000	3,00,00,000	-
Billing during the period 01/10/2020 to 31/12/2020				5,00,00,000	60,00,000
Amount of sale consideration received upto 31/12/2020					
02/10/2020	30,00,000	30,00,000	75,00,000	75,00,000	
03/11/2020	10,00,000	20,00,000	1,25,00,000	1,25,00,000	40,00,000
05/12/2020	-	15,00,000	1,00,00,000	2,50,00,000	
Total Received between 01/10/2020 to 31/12/2020	40,00,000	65,00,000	3,00,00,000	4,50,00,000	40,00,000
Closing Balance as on 31/12/2020	NIL	NIL	NIL	3,50,00,000	20,00,000
Taxable amount of TCS	NIL	20,00,000	3,00,00,000	4,50,00,000	NIL
TCS Amount payable for the month of October 2020 on or before 07/11/2020	NIL	NIL	5,625	5,625	NIL
TCS Amount payable for the month of November 2020 on or before 07/12/2020	NIL	375	9,375	9,375	NIL
TCS Amount payable for the month of December 2020 on or before 07/01/2021	NIL	1,125	7,500	18,750	NIL
Total amount of TCS	Nil	1,500	22,500	33,750	NIL