All India Federation of Tax Practitioners
(An Association of Advocates, Chartered Accountants & Tax Practitioners of India)

Regd.Office :
215, Rewa Chambers,
31, New Marine Lines,
Mumbai 400 020.
Tel.: 2200 6342
Telefax: 2200 6343
aiftp@vsnl.com
www.aiftponline.org

National President	**Chairman-Indirect Tax (GST) Representation Committee**	**Secretary General**
Dr. Ashok Saraf	Mukul Gupta, Advocate	Anand Pasari
Senior Advocate		Advocate
9864020679	9811023739	9431125350

To,
Hon'ble Shri Arun Jaitely,
Finance Minister,
Government of India,
New Delhi

Dated: 19.1.2019

Sub: **REPRESENTATION FOR RESOLVING ISSUE OF VALUATION METHODOLOGY FOR CALCULALTING TCS UNDER SECTION 206C OF INCOME TAX ACT BY GIVING EFFECT OF POINT NO. 5 OF THE CIRCULAR NO. 76/50/2018-GST DATED 31ST DECEMBER UNDER GST LAW AND VISE-A-VERSA WHILE CALCULALTING THE AMOUNT OF TCS UNDER INCOME TAX LAW**

Hon'ble Sir,

'All India Federation of Tax Practitioners' established in 1976 is an Apex Body of Advocates, Chartered Accountants & Tax Practitioners consisting of more than 7,500 individual members spread over 26 states and 4 Union Territories who are practicing on Direct & Indirect Taxes. Most of the leading Senior Advocates, Advocates, Chartered Accountants and Tax Practitioners from different parts of our country as well as 139 leading Tax Professional's Associations/Tax Bar Associations from 18 States are Associate Members of this unique Federation.

The National Executive Committee of AIFTP has formed an 'Indirect Tax (GST) Representation Committee' to monitor and suggest the right path for a well-designed and ideal Indirect Tax Regime as well as to educate the tax fraternity about the finer aspects of the new GST Law implemented in our country.

We at AIFTP think that 'Simplicity, Clarity and Transparency' are essential elements of a good system of collection of Indirect Tax.

We, Indirect Tax (GST) Representation Committee are constantly in touch with our members who are practically working at ground level all over the country and taking their feedback/problems pertaining to GST in our Committee Meetings as well as during deliberations in the National Tax Conference or Seminars or Residential Courses or Workshops.

The members of All India Fderation of Tax Practitioners are facing grave problem in practically implementing the valuation methodology for TCS under Income Tax Act as prescribed in the point No. 5 of the Circular No. 76/50/2018-GST dated 31st December in GST and vise-a-versa while calculalting the amount of TCS under Income Tax Law.

Unusual circumstances has recently arisen when the clarification in point No. 5 of the Circular No. 76/50/2018-GST dated 31st December, 2018 is analysed. Complex situation questioning which law, whether Income Tax or GST will prevail over the other and what sequential system could be adopted for correctly calculating the amount of TCS and also GST at the same time pertaining to the affected transaction. *Which will affect what?*

In order to correctly understand and analyse the law so as to find out the possible solution to this unique confusion created by the circular, we are briefly discussing the relevant provisions of the Law under Income Tax as well as under GST.

Provision of Income tax: Section 206C of IT Act provides that the TCS is applicable 'on amount payable by buyer'. Relevant abstract of section 206C is reproduced below:
"*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, a sum equal to the percentage, specified in the corresponding entry in column (3) of the said Table, **of such amount** as income-tax*".

Hitherto, TCS is collected on aggregate value of invoice (inclusive of GST). This view is based on the various judicial pronouncements like Vinod Rathore v. Union of India [2005] 146 Taxman 32 (MP). CBDT had earlier issued the Circular No. 23/2017 dated 19-07-2017 wherein it is specified that TDS is not applicable on GST. However, there was no clarification from CBDT with regard to applicability of TCS on GST.

Recently, the Central Board of Indirect Taxes and Customs, in exercise of its powers conferred under section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") has issued the following controversial clarification in Point No. 5 (relevant extract only reproduced) under Circular No. 76/50/2018-GST dated 31st December, 2018 to clarify the valuation methodology in case of TCS under Income Tax Act with an aim to ensure uniformity of implementation across field formations.

S. No.	Issue	Clarification
5.	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?	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.

If the present clarification is accepted as it is, then no doubt there is a calculation problem due to the fact whether 'TCS under Income Tax' should be calculated and incorporated first on the basic amount of consideration or 'GST' be calculated on inclusive amount of TCS could be calculated first i.e. which will take priority on the other. In the present case, the amount of TCS depends on GST which in turn depends on TCS. Similarly, the amount of GST depends on TCS which in turn depends on GST.

It needs to be appreciated that the provisions of 'TCS under Income-Tax law' and 'GST Law' has not been harmoniously interpreted and applied in the present Circular. In order to compute the correct amount of due tax, either Section 206C of the Income-tax Act or Section 15(2) of the CGST Act is violated, if not both.

In order to decide question No. 5 one needs to deeply understand the spirit or the purpose of TCS as provided U/s 206C of the Income Tax Act 1961. In short, the amount of TCS is collected as a statutory liability by 'seller' who is transferring/supplying specified goods or services to the buyer/recipient to be adjusted from the prospective liability of Income Tax exclusively of the buyer/recipient. 'Seller' has been put under statutory liability for separately collecting the TCS amount as prescribed U/s 206C and also to immediately deposit in the prescribed manner. This amount of TCS do not ultimately go to the coffers of the 'seller' and also do not constitutes towards the valuable consideration of the goods or services supplied to the 'buyer'. The 'buyer' make payment of TCS to the 'seller' of the goods who is statutorily required to deposit the amount as Income Tax of the 'buyer' and provide a certificate for the same to 'buyer' on the basis of which 'buyer' shall claim such TCS amount as Income Tax deposited by him on his income. 'Seller' is not gaining anything from amount of TCS nor the value of goods under transaction at all is increased or effected by the TCS amount which is separately collected by the 'buyer' to be deposited with the Income Tax Department.

The amount of TCS toward Income tax of the buyer to be adjusted/refunded to the buyer cannot be equated with the Central Excise Duty as an Indirect Tax attached or associated as a tax liability over the goods by the seller/manufacturer. In our humble view ratio arising out of the case law Vinod Rathore v. Union of India [2005] 146 Taxman 32 (MP) or other such similar cases does not have any role for the reasons stated above.

TCS is the statutory liability casted upon the 'seller' as the prescribed U/s 260C of the Income Tax Act to cover the possible liability of Income Tax of the 'buyer'. It is neither a tax on the 'seller' transferring the goods or services nor an indirect tax levied on the goods or services itself.

The purpose of prescribing TCS is to ensure the recording of the transaction of the specific goods and services in the regular books of accounts, so that the transaction may come in the main stream of recorded and declared transactions of the parties. The value of goods does not at all be effected by the amount of TCS as this amount is legally eligible for adjustment/refund to the buyer at the time of filing of Income Tax Return/Assessment in-accordance to the provisions of Income Tax Act.

Further, Section 15 sub section (1) of the GST Law refers to '*price actually paid or payable for the said supply of goods or services'* although amount of TCS though paid or payable at the time of transaction, but it is not in any way part of the price actually paid or payable for the said supply of goods or services.

We cannot ignore definition of 'Consideration' as prescribed under Section 2 sub-section (31) of the GST Law which does not refer to bring in its ambit the amount like TCS or amounts of such similar nature in the fore-corners of 'Consideration'.

The very basic concept of GST is to avoid levy of tax on tax or the 'cascading effect of Tax'. So, the interpretation or clarification given by the CBIC in response to Question No. 5 as mentioned in Circular No. 76/50/2018-GST is not in-consonance or harmony to the spirit of GST and thus this interpretation/clarification is not reasonable and may not stand test on judicial scrutiny.

We, request your honour to consider our representation and resolve the above referred issue in the larger interest of the revenue and proper implementation of booth the Income Tax Law and GST Law. We would be obliged if you could provide us an opportunity for personal audience.

Hoping for a very favourable and early action.

With highest regards,

Yours faithfully,
For All India Federation of Tax Practitioners

Dr. Ashok Saraf	Mukul Gupta, Advocate	Anand Pasari,
Senior Advocate	**Chairman-Indirect Tax (GST)**	Advocate
National President	**Representation Committee**	**Secretary General**