



# Taxation on E-commerce - Indirect Tax Approach and FAQs

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## **Taxation of E-commerce under GST Regulations**

E-commerce transactions are taxed under the GST regime as follows:

### *Some important terms :*

- ◆ E-commerce is the delivery of commodities, services, or both, including digital items, on a digital or electronic network.
- ◆ Any individual who owns, runs, or manages a digital or electronic facility; or platform for electronic commerce represents as an e-commerce operator.
- ◆ Net value of taxable supplies means the aggregate value of taxable supplies of goods or services; or both made during any month by all registered people via the operator; less the aggregate value of taxable supplies returned to the suppliers during the same month.

### *Provisions for E-Commerce Operator Registration*

As per Section 24 of the CGST Act, in spite of anything contained in section 22(1)- which lays down a limit of 10 lacs or 20 lacs for the registration, the following categories of persons shall be required to be registered under this ACT :

- ◆ Person liable to pay tax under Section 9 sub-section (5)
- ◆ Persons who supply goods or services or both, other than supplies specified under section 9(5), through such electronic commerce operator who is required to collect tax at source

- ◆ Every electronic commerce operator
- ◆ Every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered person

\* Person supplying goods / services / both through e-commerce operator who is not required to collect tax at source is required to be registered under the CGST Act (only if his turnover exceeds the threshold limit of Rs 10 lakhs/20 lakhs)

If an electronic commerce operator does not have a physical presence in the taxable territory. Further, any person representing him for any purpose in the taxable territory shall be liable to pay tax, and if he neither has a physical presence nor a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax, and such person shall be liable to pay tax.

### *Section 9(5) of CGST Act, 2017*

Section 9 (5) of the CGST Act is a special case focusing on e-commerce operators.

This section deals with taxability of supply of services, the output tax of which shall be paid by the electronic commerce operator (ECO) if such services are supplied through it, (even though ECO is not an actual supplier).

All the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier of such services and liable for paying the tax in relation to the supply of such services.

**Specific Services as defined under Section 9(5) of the CGST Act**

S.N.	Description	Supplier of Service	Person Liable to pay GST
1.	Services include passenger transportation by radio-taxi, motor cab, maxi cab, and motor bike.*	Any person	E-commerce operator
2.	Services including the provision of lodging at hotels, inns, guest homes, clubs, campgrounds, or other commercial establishments intended for residential or lodging purposes.	Any person except who is liable for registration under section 22(1) of the CGST Act, i.e. whose turnover exceeds the Threshold level.	E-commerce operator
3.	Housekeeping services such as plumbing, carpentry, and so forth.	Any person except who is liable for registration under section 22(1) of the CGST Act, i.e. whose turnover exceeds the Threshold level.	E-commerce operator
4.	Restaurant Services (Cloud Kitchen) - Supply of restaurant service other than the services supplied by restaurant, eating joints etc. located at specified premises.**	Any person	E-commerce operator

\* With effect from 1st January 2022, the scope of Passenger Transport Service expanded to include service provided through Omnibus and any other motor vehicle.

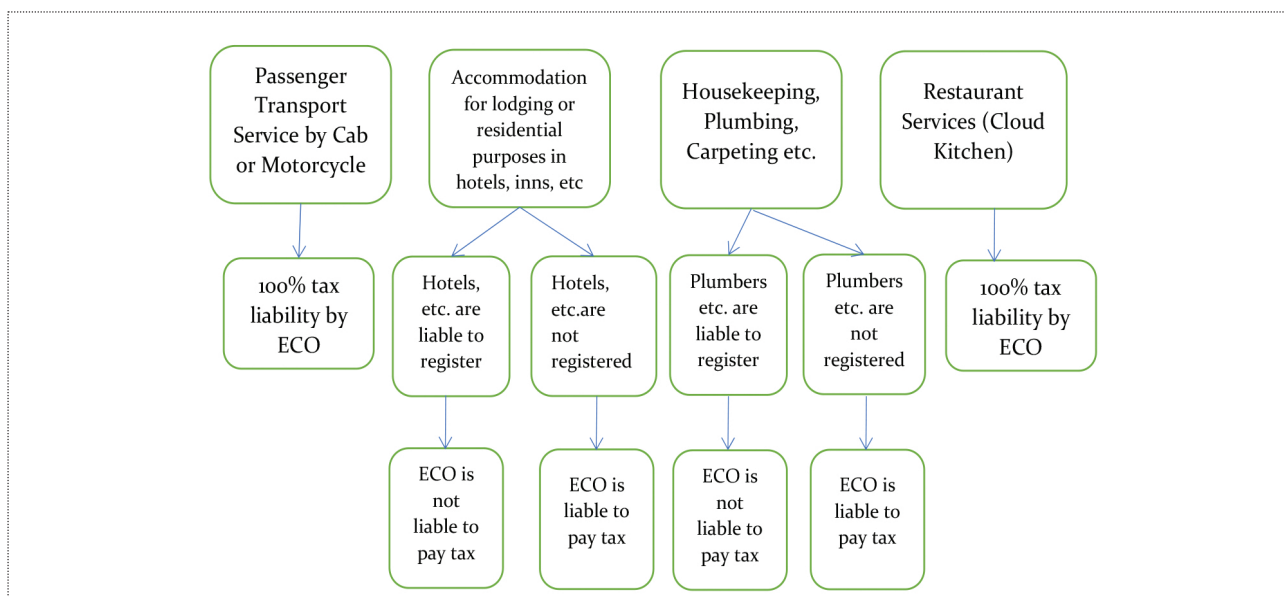
\*\*Specified premises means premises providing hotel accommodation service having declared tariff of any unit of accommodation above seven thousand five hundred rupees per unit (Rs 7500/- per unit) per day or equivalent

As per Section 24 of CGST Act, any E-COM supplying services as notified under section 9(5) of CGST Act 2017, it is required to get registration under GST laws as supplier of

these services even if turnover does not exceed threshold limit.

In case service is notified under section 9(5), then actual supplier need not registration under GST laws subject to the conditions mentioned for each notified service.

e.g. in case of taxi business, cab-owner need not to get registered under GST even if his turnover exceeds threshold limit. However, in case of Hotel (accommodation) business, if the turnover exceeds threshold limit, hotel owner needs to get registration for GST.

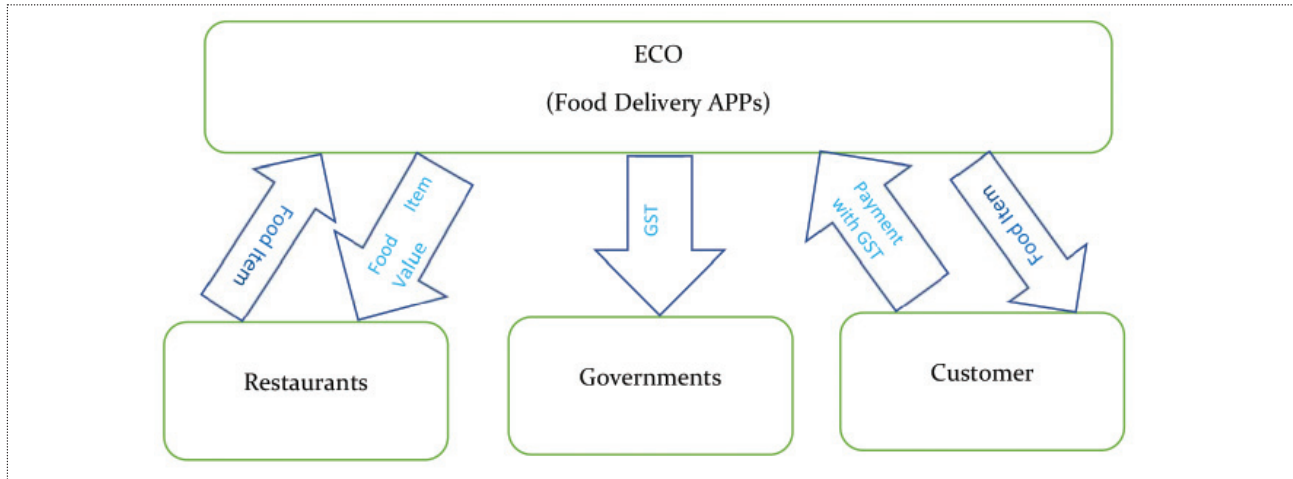




### **GST burden on food delivery apps from 1st January 2022**

From 1st January 2022, food delivery apps like Zomato and Swiggy, for deliveries made by the platforms, will have to collect GST from customers on the behalf of the restaurant and deposit with the government.

Online food delivery platforms such as Swiggy and Zomato will collect the tax at the last point of delivery and pay 5% GST on restaurant services. Rather than collecting GST from restaurants, food delivering companies will collect it directly from consumers. However, there won't be much difference in the end-users bills. The new changes will come into effect from 1st January 2022.



As a result of this, the restaurants will also have to mandatorily register themselves in Goods and Services Tax like e-commerce sellers.

### **Section 52 of the CGST (Central Goods and Service Tax) Act**

Every electronic commerce operator shall collect an amount calculated at a rate not exceeding 1% (0.5% CGST and 0.5% SGST; In case of inter-state transactions, 1% under IGST Act), as may be notified by the Government on the recommendations of the Council, of the net value of taxable supplies (other than supplies u/s 9(5)) made through it by other suppliers where the consideration for such supplies is to be collected by the operator.

As per the Explanation, “net value of taxable supplies” means the taxable supplies returned to suppliers are subtracted from the gross value of taxable supplies.

#### **Some important points :**

- ◆ No threshold limit is mentioned in this section, so irrespective of the amount, the ECO is to collect TCS @1% in all cases and deposit by 10th of next month.
- ◆ As per the Act, the TCS is to be collected on net

amount. Therefore, sales return will be deducted from the gross sale amount.

For example – M/s. A Ltd, a registered supplier is supplying goods through an e-commerce operator. It has made supplies of Rs.45,00,000 in the month of Sep 2022. The goods returned were worth Rs.5,00,000 to A Ltd. during the month of Sep 2022. Here, the net value of taxable supplies for TCS collection will be Rs.40,00,000 and TCS @ 1%, i.e Rs.40,000 will be deducted by the e-commerce operator. Hence, the final payment to be made to the supplier is Rs.39,60,000.

- ◆ As per GST law, the e-commerce operators are not allowed to get TCS registration in some states/UTs, where they do not have any physical presence. From 01.04.2020 onwards, the e-commerce operators not having a physical presence in any particular state/UTs has been allowed to apply for TCS registration based on their registered head office/ premises address.

### **GST registration for TCS**

The e-commerce operators liable to collect TCS as per section 52 have to compulsorily register under GST and there is no threshold limit exemption for it. Also, the sellers supplying goods through the online portal of e-commerce

players are also mandatorily required to get registered under GST except for a few exceptions.

**Registration conditions are as follows:**

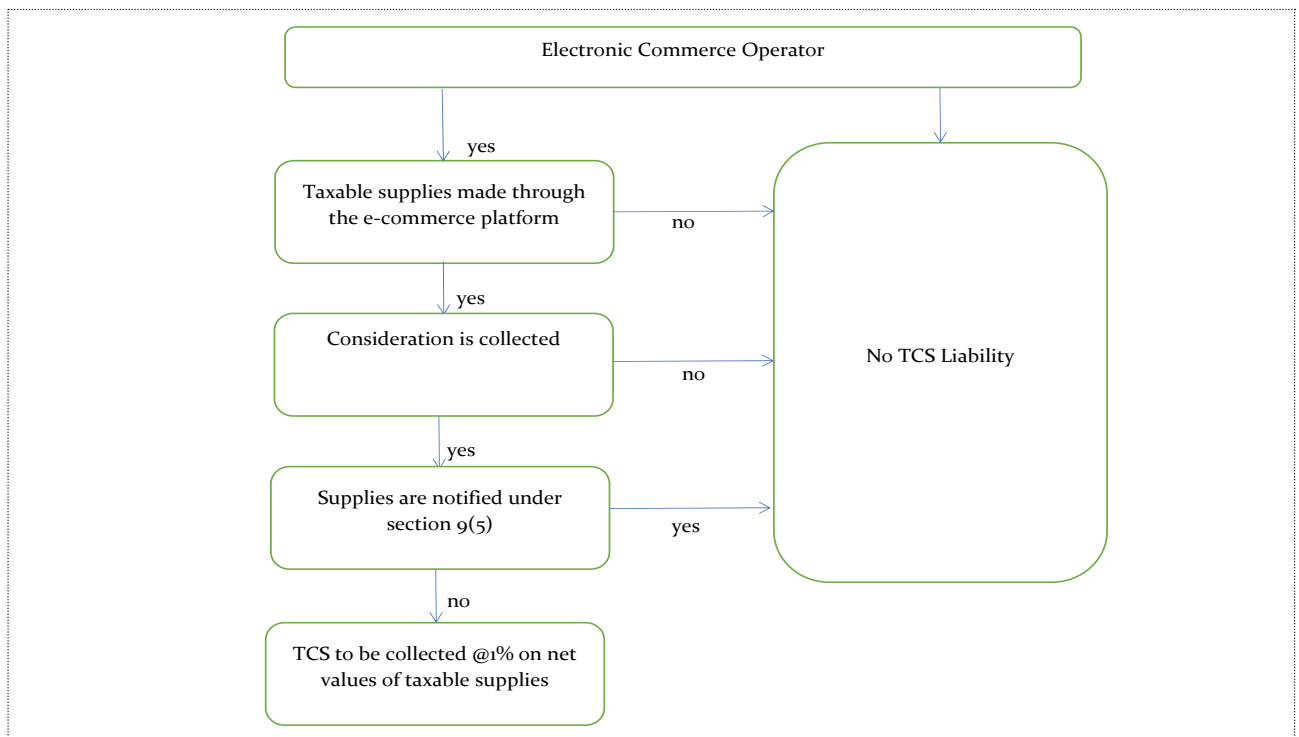
- a. Every e-commerce operator who is required to collect TCS must mandatorily register under GST
- b. Every person who supplies through an e-commerce operator, except those who make supplies notified under section 9 (5) of CGST Act.
- c. Also, note that suppliers of services making a supply through an e-commerce platform are exempt from registration if their aggregate turnover is less than Rs.20 lakh or Rs.40 lakh (assuming they do not make inter-state supplies).
- d. Suppliers of goods selling through an e-commerce platform are not exempt from registration.

- e. An e-commerce company must register itself in GST in every state it supplies goods or services to.

**Requirements for TCS Registration**

- 1. For Registration as Tax Collector: Applicant has valid PAN.
- 2. Applicant must have a valid mobile number.
- 3. Applicant must have valid E-mail ID.
- 4. Applicant must have a place of business.
- 5. Applicant must have an authorized signatory with valid details.
- 6. Applicant has to file form GST REG-07 for taking registration as Tax Collector.

**TCS Liability**



**Payment of Tax and Statement Filing**

- ◆ The amount collected by operator as TCS is to be deposited within 10 days from the end of the month in which TCS was collected

- ◆ GSTR-8 is a return to be filed by the e-commerce operators who are required to deduct TCS (Tax collected at source) under GST. GSTR-8 contains the details of supplies effected through e-commerce



platform, supplies which are returned and amount of TCS collected on such supplies.

- ◆ GSTR-8 is to be filed within 10 days from the end of the month
- ◆ If the operator discovers any omission or incorrect particulars in a statement filed, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the statement to be furnished for the month during which such omission or incorrect particulars are noticed, subject to payment of interest.
- ◆ No such rectification of any omission or incorrect particulars shall be allowed after any of the following dates
  - ✓ Due date for filing statement for the month of September following the end of the financial year i.e. 10th October of the next financial year
  - ✓ Actual date of furnishing of the relevant annual statement.
- ◆ An Annual statement GSTR 9B is to be filed for every financial year on or before 31st December following the end of the year.

### Claim of Credit by Supplier

The supplier who has supplied the goods or services through the e-commerce portal can claim such amount as input tax credit in his electronic cash ledger. The details submitted by the operators in GSTR 8 will be available to all the suppliers in Part C of GSTR 2A. The supplies will be available GSTR 2A after the due date of filing GSTR-8. The tax collected will be reflected in the electronic cash ledger of the respective suppliers. The suppliers can claim the credit accordingly after matching and reconciling their supplies with the details in GSTR 2A.

GSTR 8 cannot be revised once it is filed. Any discrepancy found while matching and reconciling the supply data and GSTR 2A will be communicated to both the parties. If the discrepancy is not resolved by the supplier in his return or operator in his statement in the month in which discrepancy is communicated then such amount will be added to the output tax liability of the supplier. Such amount will be

added to output tax liability of supplier only where the value of outward supplies furnished by the operator is more than the value of outward supplies furnished by the supplier and in the month succeeding the month in which the discrepancy is communicated. The supplier also needs to pay interest from the due date of payment to the date of its actual payment.

### Penalty under Finance Act 2023

Penalty of Rs.10,000 or the tax amount, whichever is higher, shall be charged on e-commerce operators who-

- ◆ Allow an unregistered person to sell goods or services or both through the operator except when they are exempt.
- ◆ Allow any GST-registered person from supplying outside their registered state any goods or services via the operator where they are ineligible to do so.
- ◆ Operator do not file accurate GSTR-8 for information on the online sale through them by e-tailers except persons exempted from GST registration.

### Comparison of Section 52 and Section 9(5)

Basis	Section 52	Section 9(5)
Collection of TCS/Tax Liability	TCS to be collected by the e-commerce operator on the net value of taxable supplies made by other suppliers through it.	Liability of tax falls on the e-commerce operator and he is treated as if he is the supplier of those services.
Registration	Compulsory registration for both the e-commerce operator as well as the actual supplier	Voluntary registration can be availed by the actual supplier. e-Commerce operator must mandatorily obtain registration.
Threshold Exemption	Not applicable	Applicable in the case of the actual supplier

Basis	Section 52	Section 9(5)
Compliance	Form GSTR-8 has to be filed every month (TCS collected as well as details regarding the supplies). Form 2A of each supplier will reflect the details entered in GSTR-8 by the e-commerce operator.	Form GSTR-3B needs to be filed in this case, specifically Table 3.1.1
Reverse Charge Mechanism	Not Applicable	Applicable

### GST Registration for Online Information Suppliers Outside India

Online Information and Database Access or Retrieval (OIDAR) services are those whose merchandise is mechanised and conveyance has interceded online. There is insignificant human mediation in these administrations and they can't be conveyed without the utilization of data innovation.

#### Few OIDAR service providers are:

- ◆ Cloud Service Providers
- ◆ Online Game Providers
- ◆ Internet Advertising
- ◆ Providers of digital books, music, films, software applications, etc.
- ◆ Providers of recoverable or unrecoverable information and data in electronic form
- ◆ Providers of online services, for example, legal information, money related information, trade insights, social networking, and so forth

#### Some of the non-OIDAR service providers are:

- ◆ Suppliers of products who procedure arranges electronically



- ◆ Suppliers of books, magazines, newspapers and so forth.
- ◆ Advocates and counsellor who provide services using email
- ◆ Educational and Professional course instructors who provide content online
- ◆ Offline computer equipment repair services providers
- ◆ Repair service providers for software and hardware via the internet
- ◆ Newspapers, magazines, posters, television advertisers
- ◆ Internet backbone service providers and internet access services providers

#### Overseas OIDAR service providers can register under GST by following the below-provided steps:

- ◆ Get Form GST REG-10 from the GST portal
- ◆ Submit the form to a GST official. The registration will be confirmed and conceded by the explicit official under specific conditions.
- ◆ A registration certificate will be issued by the officer within 3 working days of submission.

#### TDS and TCS in e-commerce transactions :

From the above, it can be seen that there are TDS u/s 1940 of Income Tax Act and TCS u/s 52 of CGST Act liability on the electronic commerce operators on the same transaction.

This situation can be explained with the following examples :

Rajesh - A

Alpha - B

**Example 1** - A (Resident) makes the following inter-state sales through the E-Commerce Operator B Ltd to its customers:



Particulars	Amount (Rs)	Amount (Rs)
Taxable Value (Gross Sales)	35,00,000	
Add: GST @18%	6,30,000	28,70,000
Sales Return	5,00,000	
Add: GST @18%	90,000	4,10,000
Net Sales		24,60,000

So, in the above case, Gross Sales is 35 lacs, Net Sales is 30 lacs which is net of Sales Returns and exclusive of GST. Hence, B Ltd will deduct TDS under Income Tax Act @1% on 35 lacs which is Rs 35,000 and collect TCS under CGST Act @1% on 30 lacs which is Rs 30,000. Suppose B Ltd charges 5% as commission which comes to Rs 1,50,000 (5% of 20 lacs) and charges 18% GST on it, total commission is Rs 1,77,000.

There is no liability on A to deduct TDS under Section 194H on the commission it pays to B Ltd since Section 194O overrules the entire chapter of TDS.

Total payment to be made by B Ltd to A is shown below:

Particulars	Amount (Rs)
Net Sales	24,60,000
Less: Commission	1,77,000
Less: TDS under IT Act	35,000
Less: TCS under CGST Act	30,000
Net Amount payable to A	22,18,000

A will be able to claim the TCS of Rs 30,000 in Electronic Cash Ledger and utilise/ claim refund of the same. TDS of Rs 35,000 can be claimed in the Income Tax Return.

**Example 2-** A (Resident) sells its products in India through XYZ Inc which is a Non-Resident E-Commerce Operator. Total Sales of Rs 15 crores are made.

As per Section 194O, E-Commerce Operator includes Residents as well as Non-residents. Hence, XYZ Inc is required to deduct TDS @ 1% on Rs 15 crores which is Rs.

15 lacs.

XYZ Inc shall also be liable to 2% Equalization Levy on Rs 15 Crores under Section 165A introduced by Finance Act, 2020.

If in the above example, instead of sale of goods, it would have been advertisement services/ digital marketing then Section 194O and Section 165 both would get triggered.

XYZ Inc would deduct TDS u/s 194O @ 1% on Rs 15 Crores which is Rs 15 lacs.

A would be liable to deduct/pay equalization levy @ 6% on Rs 15 crores u/s 165 introduced by Finance Act, 2016.

## Conclusion

There are numerous taxation provisions affecting E-Commerce transactions in both Income Tax and GST. The government is introducing new sections in both taxation regimes, Direct and Indirect Tax, in order to avoid non-taxation of transactions and obtain tax benefits.

## FAQ on E-commerce

1. It is very common that customers of e-commerce companies return goods. How these returns are going to be adjusted?

**Answer:** An e-commerce company is required to collect tax only on the net value of taxable supplies. In other words, the value of supplies which are returned are adjusted in the aggregate value of taxable supplies. (Refer to Explanation to Sec. 52(1) of the CGST Act, 2017).

2. Are there any powers given to tax officials under the GST Act to seek information on supply/stock details from e-commerce operators?

**Answer:** Yes. Any officer not below the rank of Deputy Commissioner may issue a notice to the electronic commerce operator to furnish such details within a period of 15 working days from the date of service of such notice. (Refer to Section 52(12), (13) and (14) of the CGST Act, 2017).

3. The sellers supplying goods through e-Commerce operators (ECO) may have common places of

business, especially if their goods are stored in a shared facility operated by the ECO. This will result in the same additional place of business being registered by multiple suppliers. Is this allowed?

**Answer:** Yes, this is allowed. Any registered person can declare a premises as a place of business if he has requisite documents for use of the premises as his place of business (like ownership document, agreement with the owner etc.) and there is no restriction about use of a premises by multiple persons. The registered person shall have to comply with the requirements of maintaining records as per section 35 of the CGST Act, 2017 and Rules 56 to 58 of the CGST Rules, 2017.

4. Do travel agents providing services through digital or electronic platform qualify as ECOs? Will they be required to collect tax at source as per the provisions of Section 52 of the GST Act?

**Answer:** Online travel agents providing services through digital or electronic platform will fall under the category of ECOs liable to deduct TCS under Section 52 of the CGST Act, 2017.

5. There are transactions in which two or more ECOs are involved. In such cases who would deduct the TCS?

**Answer:** In such cases, each transaction needs to be treated separately and examined according to the provisions of Section 52 of the CGST Act, 2017. The TCS will be deducted accordingly.

6. There are cases in which the ECO does not provide invoicing solution to the seller. In such cases, invoice is generated by the seller and received by the buyer without ECO getting to know about it. The payment flows through the ECO. In such cases, on what value is TCS to be collected? Can TCS be collected on the entire value of the transaction?

**Answer:** Section 52(1) of the CGST Act, 2017 mandates that TCS is to be collected on the net taxable value of such supplies in respect of which the ECO collects the consideration. The amount collected should be duly reported in GSTR-8 and remitted to the Government. Any such amount collected will be available to the concerned supplier

as credit in his electronic cash ledger.

7. There are sellers who are selling exempted or zero-tax goods like books through ECOs. Will marketplaces be required to collect TCS on such supplies?

**Answer:** As per Section 52(1) of the CGST Act, 2017 TCS is to be collected on “the net value of taxable supplies” made through an ECO. When the supply itself is not taxable, the question of TCS does not arise.

8. I am a supplier selling my own products through a web site hosted by me. Do I fall under the definition of an “electronic commerce operator”? Am I required to collect TCS on such supplies?

**Answer:** As per the definitions in Section 2 (44) and 2(45) of the CGST Act, 2017, you will come under the definition of an “electronic commerce operator”. However, according to Section 52 of the Act *ibid*, TCS is required to be collected on the net value of taxable supplies made through it by other suppliers where the consideration is to be collected by the ECO. In cases where someone is selling their own products through a website, there is no requirement to collect tax at source as per the provisions of this Section. These transactions will be liable to GST at the prevailing rates.

9. We purchase goods from different vendors and are selling them on our website under our own billing. Is TCS required to be collected on such supplies?

**Answer:** No. According to Section 52 of the CGST Act, 2017, TCS is required to be collected on the net value of taxable supplies made through it by other suppliers where the consideration is to be collected by the ECO. In this case, there are two transactions - where you purchase the goods from the vendors, and where you sell it through your website. For the first transaction, GST is leviable, and will need to be paid to your vendor, on which credit is available for you. The second transaction is a supply on your own account, and not by other suppliers and there is no requirement to collect tax at source. The transaction will attract GST at the prevailing rates.

10. Under multiple e-commerce model, Customer





books a Hotel via ECO-1 who in turn is integrated with ECO-2 who has agreement with the hotelier. In this case, ECO-1 will not have any GST information of the hotelier. Under such circumstances, which e-commerce operator should be liable to collect TCS?

**Answer:** TCS is to be collected by that e-Commerce operator who is making payment to the supplier for the particular supply happening through it, which is

in this case will be ECO-2.

*For more such FAQ's please visit the following links :*

<https://gstcouncil.gov.in/faqs-sectoral-series-e-commerce>

<https://cbic-gst.gov.in/pdf/FAQs-TCS-30-11-2018.pdf>

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