

Handout on E Commerce



Tax Research Department

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President's Message

In today's fast-paced digital landscape, e-commerce has become a driving force for businesses of all sizes. It refers to companies and individuals that buy and sell goods and services over the internet. E-commerce operates in different types of market segments and can be conducted over computers, tablets, smartphones, and other smart devices. Nearly every imaginable product and service is available through e-commerce transactions, including books, music, plane tickets, and financial services such as stock investing and online banking. And if we see this huge gamut, we should also see the tax implications – both Direct & Indirect that are related to this topic.

Tax implications of e-commerce can be complex and can vary depending on the jurisdiction, the nature of the e-commerce business, and the type of transactions involved. It's essential to consult with a tax professional or advisor who is well-versed in e-commerce taxation to ensure compliance with applicable laws and regulations. Further, E-commerce taxation is a rapidly evolving field, and tax regulations can change frequently.

I compliment CMA Dr. V. Murali, Chairman- Direct Taxation Committee and CMA Rajendra Singh Bhati, Chairman – Indirect Taxation Committee, and other members of both the Committees of the Institute for their efforts and contribution in bringing out this handbook on E-Commerce. I am sure that the Tax Research Department of the Institute will continue to bring out more such valuable documents for the capacity building of the members of the Institute.

Best wishes,

CMA Ashwin G Dalwadi

President

The Institute of Cost Accountants of India



Vice President Message

There are many taxation provisions which are directly related to the E-Commerce transactions and are under the purview of Income Tax or GST. The government has been introducing various sections in both the taxation regimes, that is Direct and Indirect Tax so as to evade non-taxation of the transactions and obtaining tax benefit.

Earlier, when there were no provisions on the E-Commerce transactions, small sellers who were selling their goods/ providing services through E-Commerce Operators, the transactions were out of the tax nets and taxes were being avoided. Also, the Non-Resident E-Commerce Operators made profits in India without paying any taxes. So, the Government introduced the several provisions in Income Tax and GST.

E-commerce is the buying and selling of goods and services over the internet. It is conducted over computers, tablets, smartphones, and other smart devices. Almost anything can be purchased through e-commerce today, which makes e-commerce highly competitive and understanding the tax implications on the same is important.

I am proud of the Tax Research Department for their efforts in bringing out this publication which addresses the major aspects in e-commerce. I compliment the efforts of dedicated resource persons without whose contributions the handbook could not have been completed. My best wishes to all for their future endeavours. All the best..!!

Best wishes,

CMA Bibhuti Bhusan Nayak

Vice President

The Institute of Cost Accountants of India



DT Chairman's Message

It is pertinent to note that Section 194-O was introduced in the Union Budget 2020 to curb the incidence of non-resident e-commerce operators making profits in India without paying any taxes. As of the present, E-commerce operators must deduct 1% TDS on the gross amount of sales or services or both when crediting the amount of sale of goods, services, or both to an e-commerce participant's account or making payment to an e-Commerce participant by any other mode, whichever is earlier.

The e-commerce operator to be taxed in India, must be an Indian citizen. The operator need not deduct TDS if the gross amount of sales of products, services, or both during the previous year did not exceed INR 5 lakh and the participant has provided his PAN or Aadhaar. If an e-Commerce participant fails to provide his Permanent Account Number (PAN) or Aadhaar, Tax is required to be deducted at Source at the rate of 5% under Section 206AA.

Our Tax Research Department has come out with a comprehensive booklet/handout that discusses threadbare the provisions with regard to tax incidence of e-commerce transactions, how tax would be attracted, what measures can be taken and FAQ's. It gives us immense pleasure to present this invaluable and useful booklet which would cater to our professionals and the public at large.

With Warm Professional Regards,

Forever, yours in service,

CMA (Dr.) V Murali

Chairman – Direct Taxation Committee

The Institute of Cost Accountants of India



IDT Chairman's Message

E-commerce has been under the scanners of the Government as we move towards a Digital world and consumers tend to swipe through rather than walking through the products. E-commerce has taken a gigantic shape and hence bringing it under the Taxation purview has become utmost important.

CBIC has not only imposed Taxes on e-commerce but has also improvised the same from time to time. For example, by Notification No. 36/2023-Central Tax, the CBIC has granted e-commerce operators specific responsibilities and laid down fresh procedures to manage handling the supply of goods by composition taxpayers. The key points that has been imposed herein are (i) Restrictions on inter-state supply (ii) Collection of TCS for the supply of goods by composition taxpayers (iii) Composition taxpayers have the flexibility to employ the funds available in their Electronic Cash Ledger and (iv) To ensure transparency and simplified reporting, e-commerce operators must electronically provide details of goods supplied by composition taxpayers through Form GSTR-8 on the common GST portal

I am very proud of the Tax Research Department as time and again they have proved their mettle by serving the professionals with knowledge and advisories for better performance. It is not only this handbook but all the activities of TRD are directed towards this noble cause.

Best Wishes.

CMA Rajendra Singh Bhati
Chairman – Indirect Taxation Committee
The Institute of Cost Accountants of India

E-COMMERCE

E-commerce, also known as electronic commerce or internet commerce, refers to the buying and selling goods or services over an electronic network, primarily the internet, as well as the transfer of money and data to complete these transactions. E-commerce is frequently used to refer to the online sale of physical products, but it can also refer to any type of commercial transaction that is facilitated by the internet. Whereas e-commerce covers all aspects of running an online business, e-commerce is solely concerned with the exchange of goods and services. Well-known Indian e-commerce examples include Amazon, Flipkart, Myntra, Paytm, Zomato, Swiggy, and others.

These business transactions occur mainly as business-to-business (B2B), business-to-consumer (B2C), consumer-to-consumer or consumer-to-business.

E-commerce has come a long way since the CompuServe launch in 1969. By May of 2020, e-commerce transactions reached \$82.5 billion — a 77% increase from 2019. E-commerce has allowed firms to establish a market presence, or to enhance an existing market position, by providing a cheaper and more efficient distribution chain for their products or services.

The working of e-commerce is similar to that of any offline or retail business. The main three functions in e-commerce are receiving orders, processing order information, and shipping. Let us look at the detailed understanding of the virtual process that takes place from computer surfing to dispatch. These steps are:

- A customer visits an online shop using a computer or mobile to search for products. The customer's web browser communicates simultaneously with a web server that handles the e-commerce website.
- The e-Commerce website connects to its database and requests this data to dynamically render any requested web pages.
- The customer browses the products and adds the product on their cart.
- An order manager or order management software confirms the product is in stock.



- If the product is available and the customer is ready to check out, she enters her payment card details and shipping information on your payment form or page.
- The bank computer confirms sufficient funds in the customer's account in the bank or enough credit on her card to complete the transaction..
- Once the order is complete, and the payment has gone through, the website typically provides an estimated shipping time, a unique transaction number, postal tracking number, etc.
- The order management system requests the warehouse system to initiate the dispatch of goods to the customers.
- The warehouse computer system emails the customer about en-route delivery upon the dispatch of goods.
- The goods are finally delivered to the customer's address.

The E-commerce business models have introduced new tax issues. The typical direct tax issues relating to e-commerce are

- i. difficulties of characterizing the nature of payment
- ii. establishing a nexus or link between a taxable transaction, activity and a taxing jurisdiction,
- iii. difficulty of locating the transaction, activity
- iv. identifying the taxpayer for income tax purposes.

Some terms related to taxation :

Person - Under Section 2(31), A 'Person' is An Association Of Persons (AOP) or a Body Of Individuals (BOI) or a Local Authority or an Artificial Juridical Person, whether or not, such Person or Body or Authority or Juridical Person, was formed or established or incorporated with the object of deriving income, profits or gains.

In other words, A Person includes...

- (i) An Individual
- (ii) A Hindu Undivided Family (HUF)

- (iii) A Company
- (iv) A Firm
- (v) An Association Of Person (AOP) or a Body Of Individual (BOI), whether incorporated or not.
- (vi) A Local Authority
- (vii) Every Artificial Judicial Person not falling within any of the preceding sub-clauses.

A Hindu Undivided Family (HUF) : has not been defined under the tax laws. However, as per the Hindu law, it means a family which consists of all persons lineally descended from a common ancestor including their wives and daughters.

Resident and Non-Resident :

The taxability of an individual in India depends upon his residential status in India for any particular financial year.

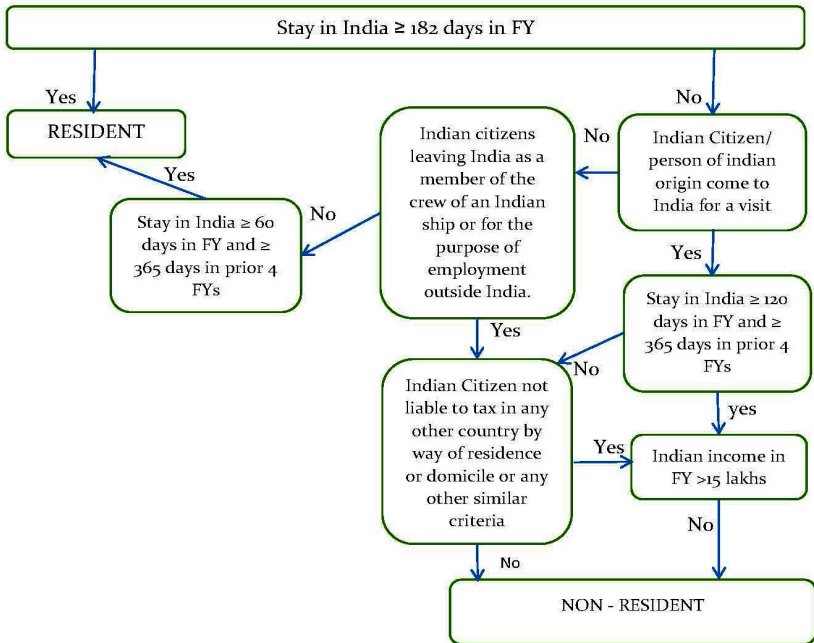
An individual is said to be a resident in the financial year if he/she is:

- physically present in India for a period of 182 days or more in the financial year, or
- physically present in India for a period of 60 days or more during the relevant financial year and 365 days or more in aggregate in four preceding financial years.

The Finance Act, 2020, w.e.f., Assessment Year 2021-22 has amended the above exception to provide that the period of 60 days as mentioned in point 2 above shall be substituted with 120 days, if an Indian citizen or a person of Indian origin whose total income, other than income from foreign sources, exceeds INR 15 Lakhs during the previous year. Income from foreign sources means income that accrues or arises outside India (except income derived from a business controlled in or a profession set up in India).

If none of the above two conditions are met, the individual is said to be an Non Resident in that financial year.

Period of stay and other conditions in current Financial Year and residential status:



Considering the growing numbers of e-commerce transactions and entities, Government of India has recently brought in certain provisions in the Income Tax Act, 1961 to tax such E-commerce transactions. We will discuss such provisions which were introduced through Finance Act, 2016 and Finance Act, 2020 as explained in brief herein below:

Provisions introduced by Finance Act 2016

Section 165- Equalization Levy

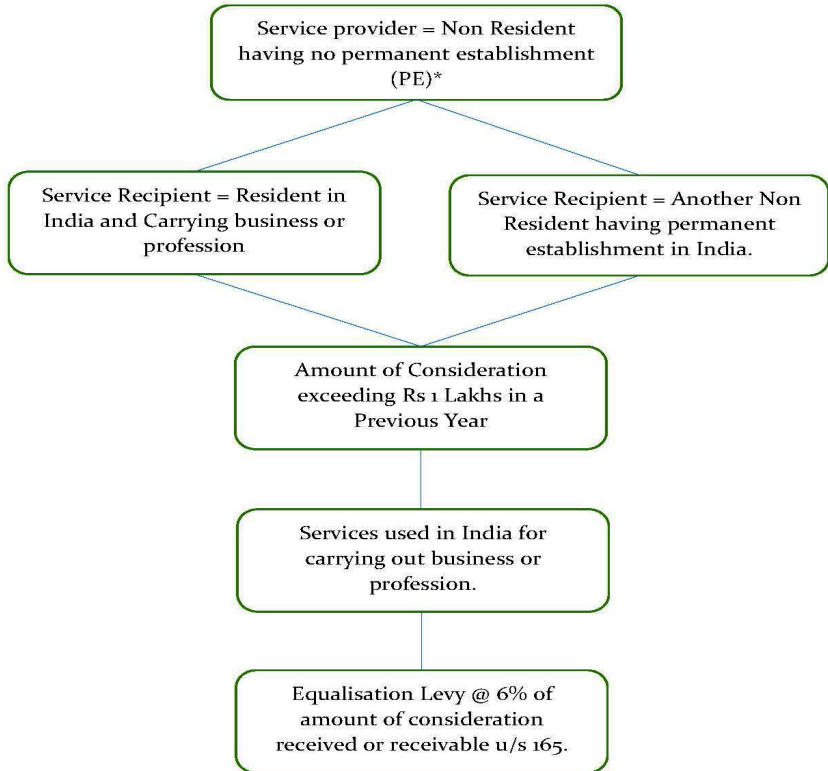
This is a tax leviable on consideration received or receivable by a non-resident for any specified service such as online advertising, any provision for digital advertising space or any other facility or service for online advertising @6% from:

- i. A resident person carrying on business/profession in India or
- ii. A Non-Resident having a permanent establishment in India

Specified services include the following:

- i. Online advertisement
- ii. Any provision for digital advertising space or any other facility or service for the purpose of online advertisement.
- iii. Any other service as notified by the Central Government for this purpose.

The government identified that Indian people majorly availed services relating to advertising over the internet from non-resident service providers and hence decided to levy a fixed percentage as tax on the consideration amount which has to be deducted by the Indian resident before making payment to the Non-resident service provider.





* PE includes a fixed place of business through which the business of the enterprise is wholly or partly carried on. A PE will generally not be deemed to exist where the activity performed is preparatory or auxiliary in nature.

As the income earned by Non- residents having PE in India are already deemed to accrue or arise in India under section 9 of the Income Tax Act and are taxable in India, Non-residents having NO PE in India are only included as service providers for this purpose.

Time of levy - The equalisation levy should be deducted at the time of payment (or) at the time of credit to the account of the payee whichever is earlier.

Due date of payment - Within 7th of the month immediately following the calendar month when the equalization levy collected under section 165.

Furnishing the statement:

- i. The statement under section 165 should be submitted by the person receiving the specified services from the Non-resident.
- ii. The assessee shall furnish the statement in Form No.1 on or before 30th June immediately following the Financial Year of deduction.
- iii. Penalty @ Rs. 100/day will be charged till the default continues.
- iv. Revised statement shall be filed by an assessee before the expiry of 2 years from the end of the financial year in which the service was provided in the following cases:
 - a. If the assessee fails to furnish the equalization levy statement within the prescribed time or
 - b. If he notices any omission or wrong particulars in the statement filed.

Non payment within due date:

- i. Interest: at the rate of 1% per month or part of the month after due date till the date of payment
- ii. Penalty: (over and above the above of equalisation levy)

For Non-deduction: Penalty equal to amount of equalisation levy

For Non-payment: Penalty equal to Rs. 1000/day (maximum upto equalisation levy not paid)

Under the following conditions the Equalization Levy @6% is not charged

- i. The non-resident providing the specified service has a permanent establishment in India and the specified service is effectively connected with such permanent establishment;
- ii. The aggregate amount of consideration for specified service received or receivable in a previous year by the non-resident From a person resident in India and carrying on business or profession, or From a non-resident having a permanent establishment in India, **does not exceed one lakh rupees**; or
- iii. Where the payment for the specified service by the person resident in India, or the permanent establishment in India is **not for the purposes of carrying out business or profession**.

Co-relation with other sections of Income Tax Act, 1961:

Section 40(a)(ib)

If the equalisation levy under section 165

- i. Is deductible but not deducted during PY (or)
- ii. Deducted but not paid to government upto the due date of filing return of Income

100% of the expenditure on which equalisation levy should have been deducted will be disallowed while computing taxable income of the person liable to deduct equalisation levy.

Section 10(50)

Under section 10(50) of the Income Tax Act, income arising to a non-resident from supplying specified services on which equalisation levy under section 165 is levied shall be exempt for the purpose of calculating taxable income for the purpose of paying income tax.

Example:

Y Ltd., an Indian company makes a payment of Dollar 3200 to ABC Inc., a company based in Panama for online advertisement of its products. ABC Inc. does not have a permanent establishment in India. Should Y Ltd deduct equalization levy in respect of the above transaction?

In the above case, equalization levy shall be applicable as ABC Inc is a non-resident company having NO PE in India and the payment is made in respect for availing online advertisement services.

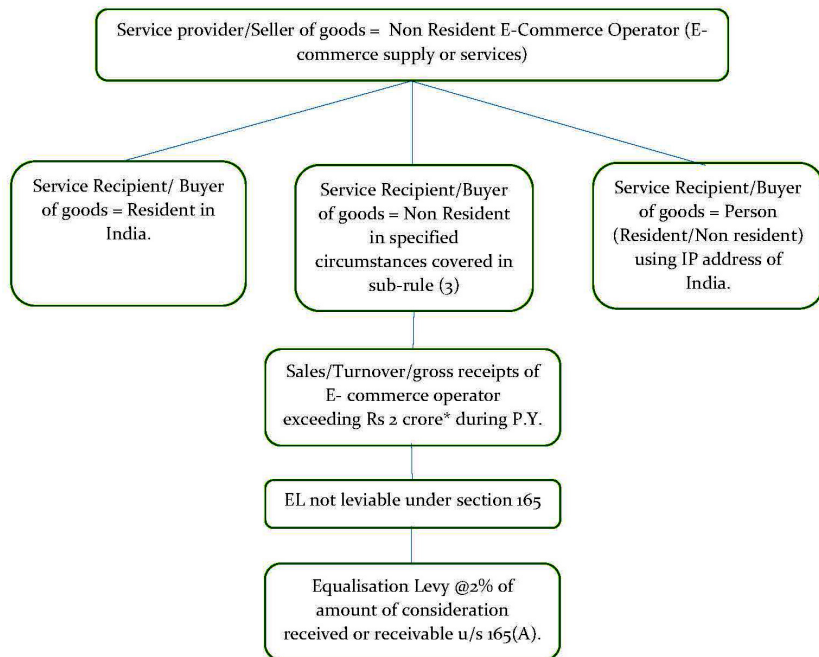
Y Ltd shall deduct Rs. 15,850 [6% of (3200 x 82.55)] as equalization levy and remit the balance amount to ABC Inc.

Provisions introduced by Finance Act 2020**Section 165A - Equalisation Levy**

As per Section 165 of the Finance Act, 2016 (“FA, 2016” for short), Equalisation Levy was chargeable only on the consideration received or receivable by a non-resident from providing online advertisement services or related services to the Indian resident or person having PE in India.

Now, Chapter VIII of Finance Act, 2016 is amended by Finance Act 2020 and provisions regarding Equalisation Levy are inserted (Section 165A and some more sections). The same is now extended to consideration received or receivable by an e-commerce operator for e-commerce supply or services w.e.f. 01.04.2020 and is levied @2% on such consideration and made or provided or facilitated by it—

- i. To a person resident in India; or
- ii. To a non-resident in the specified circumstances as referred to in sub-section (3); or
- iii. To a person who buys such goods or services or both using internet protocol address located in India.



*As per Section 165A(2)(iii) r.w. sub-section (1) of Section 165A for computing the threshold limit of Rs. 2 crore only the supplies or services made to the Specified Persons will be considered and not the global turnover or global receipts of the e-commerce operator.

For instance, ABC Inc. is providing e-commerce services all over the world in respect of which it has generated gross receipts of Rs. 20 Crore during the P.Y. 2020-21. Out of the said gross receipts, Rs. 1 crore has been received from customers resident in India. In the said case, New Equalisation Levy will not be attracted as the turnover from the customers resident in India does not exceed Rs. 2 crore.

The equalisation levy is a direct tax on the e-commerce operator and to be paid by the e-commerce operator. Equalisation levy under section 165 is similar to the TDS mechanism where the service receiver is required to deduct the equalisation

levy before making payment to the non-resident service provider, however, section 165A requires the service provider to directly pay the equalisation levy to the government. Now the e-commerce operator can decide to charge the consideration including the levy.

Example - An e-commerce operator receives a consideration of Rs. 6 crores for the e-commerce services provided to Indian Residents and accordingly, it is required to deposit an equalisation levy @2% of the consideration received from such services which comes out to Rs. 12 Lacs. Now, if the e-commerce operator decides to charge this equalisation levy of Rs. 12 Lacs from its customers and increases the consideration to Rs. 6.12 Crores.

But then it will be liable to pay Equalisation levy on this revised consideration.

As per amended provisions of Section 163 in relation with 165A of FA, 2016, New Equalisation Levy applies to consideration received or receivable by an e-commerce operator for e-commerce supply or services made/provided/facilitated by it on or after 01.04.2020.

Therefore, it can be said that the Equalisation Levy will be applicable when both the following conditions are satisfied

- (i) consideration is received/ receivable on or after 01.04.2020; and
- (ii) the said consideration is received/receivable for e-commerce supply or services made/provided/facilitated on or after 01.04.2020.

Therefore, if

- i. Supply of goods is made on 30.03.2020 and the consideration is received on 12.04.2020 - the equalisation levy will not be attracted as both the aforesaid conditions are satisfied.
- ii. Supply of goods is made on 05.04.2020 and the consideration is received on 20.04.2020 but the Order was placed on 22.03.2020 - the equalisation levy will be attracted both the aforesaid conditions are satisfied.
- iii. Supply of goods is made on 10.04.2020 but the consideration was received in advance on 20.03.2020 - equalisation levy will not be attracted as the consideration was received before 01.04.2020.

Some Concepts :

Specified Circumstances-

- i. Sale of Advertisement, which targets a customer who is Indian resident or a customer who accesses the advertisement through IP Address* located in India; and

Example - XYZ, a US based cosmetics company approaches MNP which is a UK based company targeting Indian customers at large, for placing advertisement of its cosmetics products on digital platform of MNP. In this case, MNP will be liable to pay Equalisation levy @ 2% of the consideration received by it from XYZ.

- ii. Sale of data, collected from an Indian resident or from a person who uses IP Address located in India

* IP address: a unique string of characters that identifies each computer using the Internet Protocol to communicate over a network

For instance, ABC Inc. a US based Company, an e-commerce operator, collects data from an Indian resident person and further sells such data collected to a UK based company. In this case, US based company selling the data collected from an Indian resident will be liable to pay Equalisation levy @2% on the amount of consideration received by it from the UK based company.

Non resident e-commerce operator -

The expression “e-commerce operator” has been defined by way of inserting a new clause (ca) in Section 164 of the FA, 2016. As per the said definition, “e-commerce operator” means

- i. a non-resident who owns, operates or manages a digital/electronic facility/platform for online sale of goods or online provision of services or both.
- ii. A person who owns, operates or manages a digital/electronic facility/platform for facilitating transactions between the buyer and seller will also be included under the scope of an e-commerce operator. (i.e. an intermediary e-commerce operator will also be covered)

#If any non-resident uses a third party’s facility or platform to supply its goods which is also operated and managed by the said third party, such non-resident will not be covered within the ambit of an e-commerce operator and accordingly will not be chargeable to New Equalisation Levy.

E-commerce supply or services -

The expression “e-commerce supply or services” is defined in clause (cb) of Section 164 of the FA, 2016 as under:

- i. online sale of goods owned by the e-commerce operator; or
- ii. online provision of services provided by the e-commerce operator; or
- iii. Online facilitation of transactions between a buyer and a seller where consideration is collected by the e-commerce operator. ; or
- iv. Any combination of activities listed in clause (i), (ii) or clause (iii).

“Online sale of goods” and “online provision of services” shall include one or more of the following activities :

- i. Acceptance of offer for sale: or
- ii. Placing of purchase order: or
- iii. Acceptance of the purchase order: or
- iv. Payment of consideration; or
- v. Supply of products or making provisions of services.

The aforesaid definition can be explained as below :

ABC Inc. a non-resident is operating an electronic or digital platform, whereby services of enabling online meeting for various participants is being provided. The platform of ABC Inc. is being used for online webinars/meetings, etc. by Indian customers who are availing such services by paying annual/ monthly charges. In the said example, ABC Inc. is an e-commerce operator and online provision of services of enabling webinars/meetings by the said company will fall within the meaning of “e-commerce supply or services”.

Under the following conditions the Equalization Levy @2% is not charged

- i. The e-commerce operator having permanent business establishment in India and their e-commerce supply of services has been extensively connected with such PE. or

- ii. Where the equalization levy is levied under section 165. or
- iii. Sales, turnover or gross receipts, as the case may be, of the e-commerce operator from the e-commerce supply or services made or provided or facilitated as referred to in sub-section (1) is less than 2 crore rupees during the previous year.

Due date of depositing Equalisation Levy under section 166A

According to section 166A Equalisation Levy is required to be deposited by the e-commerce operator on quarterly basis as follows:

Quarter ending	Due date of payment of Equalisation levy
30th June	7th July
30th September	7th October
31st December	7th January
31st March	31st March

Consequences of non-payment

Interest: at the rate of 1% per month or part of the month after due date till the date of payment by every e-commerce operator who fails to deposit whole or any part of the equalisation levy by the due date

Penalty: (over and above the above of equalization levy)

For Non-deduction: Penalty equal to amount of equalization levy

For Non-payment: Penalty equal to Rs. 1000/day (maximum upto equalization levy not paid)

Statement of equalization levy

Every e-commerce operator liable to pay equalisation levy shall furnish an annual statement containing all particulars, as prescribed in Form No. 1 on or before 30th June of the relevant assessment year.

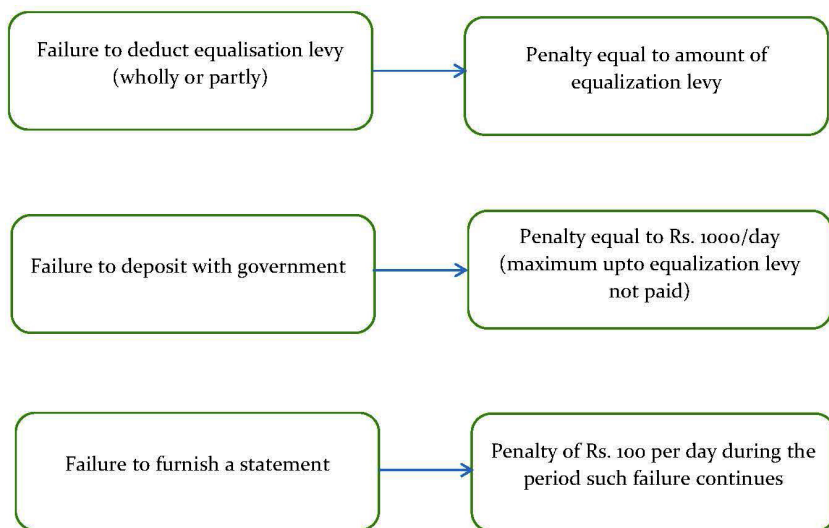
The Form should be signed and verified electronically under digital signature or electronic verification code.

In case of failure to furnish within the time allowed:

- i. It would be required to furnish the annual statement in Form No. 1 or revised statement at anytime before the expiry of 2 years from the end of the financial year in which the e-commerce supply or services was made or provided or facilitated.
- ii. If the e-commerce operator fails to furnish annual statement, the A.O. may serve a notice upon the e-commerce operator requiring him to submit the statement, within 30 days from the date of service of the notice.

Penalty and Prosecution

- i. Penalty of Rs. 100 per day during the period such failure continues. However, no penalties shall be imposed unless the e-commerce operator is given an opportunity of being heard.
- ii. Prosecution: If a person files false statement, he shall be punishable with imprisonment for a term which may extend to 3 years and with fine.

Penalties under section 165A

Exemption under Income Tax

Vide the Finance Act, 2020, a consequential amendment has been brought in Section 10(50) of the IT Act to provide that income arising from e-commerce supply or services made/provided/facilitated by the e-commerce operator shall not be chargeable to income-tax on which New Equalisation Levy is chargeable u/s 165A.

Main ingredients of Section 165 & 165A

	Section 165	Section 165A
Amount of consideration	In Excess of INR 1 lakh	In excess of INR 2 Crore
Services/ Goods received or receivable	<p>“Specified service” means</p> <ul style="list-style-type: none"> • online advertisement; or • any provision for digital advertising space or any other facility or service for online advertisement; or • any other service as may be notified by the central government on this behalf. 	e-commerce supply or services made or provided or facilitated by it
Service receipt, Who is	Resident in India and carrying business in India; or Non-Resident having permanent establishment in India.	Resident in India <ul style="list-style-type: none"> • Non Resident in specified circumstances; or • Buy such goods or services or both using internet protocol address located in India.
Services Provider	Non-Resident	E-commerce operators
Rate of Equalisation Levy	6%	2%

E-commerce taxation under Section 194O of the Income Tax Act

Section 194O has been introduced in the Union Budget 2020. According to Section 194O, an e-Commerce operator is required to deduct TDS @1% on the gross amount of sales or services provided or facilitated by them through their digital or electronic facility or platform. The TDS is to be deducted at the time of crediting—for example, an amount to the supplier's account or at the time of payment thereof in cash, by the issue of a cheque or draft, or by any other mode, whichever is earlier.

For example, a proprietary company XY (an e-commerce participant) sells its products on Flipkart (an e-commerce operator). On November 1, 2021, Mr A purchases this product online from MN for INR 60,000.

Flipkart credits XY's account on November 1, 2021, but the customer pays XY directly on November 15, 2021. Flipkart is required to deduct TDS at 1% on INR 60,000 when crediting the party or making payment, whichever comes first. TDS should be deducted in this case on November 1, 2021.

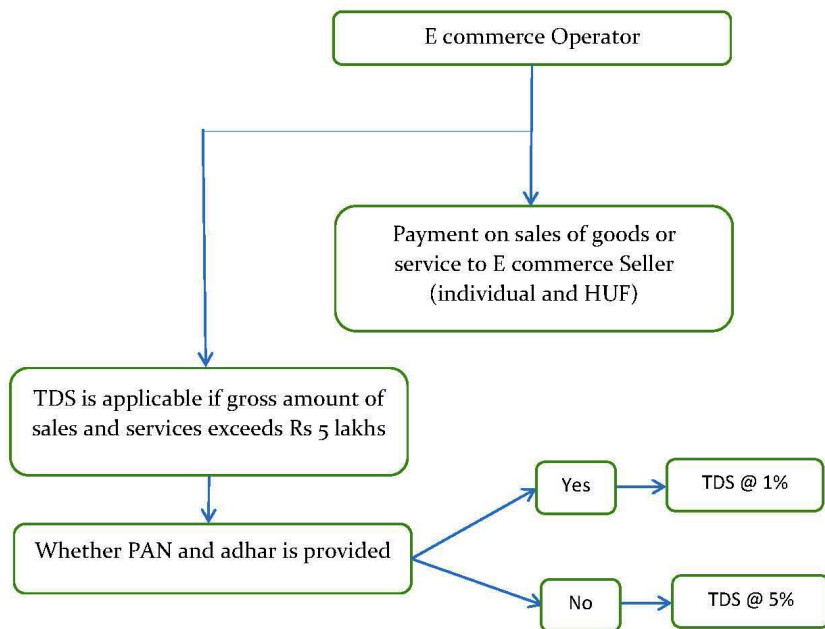
TDS on e-commerce operators under section 194-O is applicable from 1 October 2020.

Before including this section, payments paid to participants in e-Commerce were not tax deductible. They had to submit their income tax return on their own. Many small-scale participants in e-Commerce as a result avoided filing their income tax returns and paying taxes.

No TDS is required to be deducted if the amount paid/credited to E-Commerce Participant being an individual/HUF whose gross amount of such sales or services does not exceed Rs 5 lacs. The limit of Rs 5 lacs shall not be available when the services provided are in relation to hosting of advertisements.

But the word “gross amount of sales” has not been defined in this case.

Example - Suppose there is sales of Rs 50 lacs and returns of Rs 10 lacs, TDS should be deducted @ 1% on Rs 50 lacs and not on Rs 40 lacs.



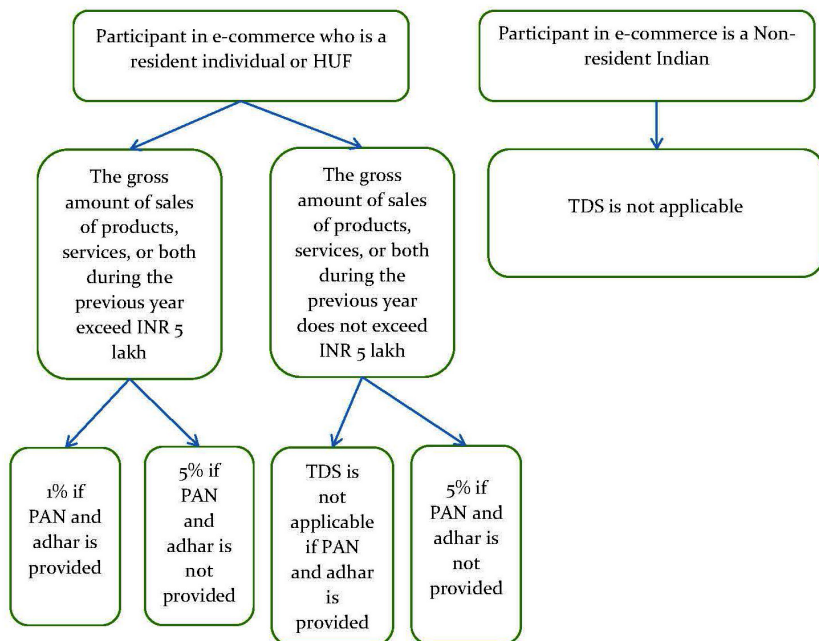
Definitions :

- i. “Electronic Commerce” means the supply of goods or services or both, including digital products over digital or electronic network.
- ii. “E-commerce operator” means a person who owns, operates or manages digital or electronic facility or platform for electronic commerce. An E-Commerce Operator can be a resident or a non-resident in India.
- iii. “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. Hence, if the E-Commerce participant is a non-resident, no TDS provisions would be applicable.

Some important points to keep in mind are:

- As per the Explanation to Section 194O, 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 TDS.
- These provisions are applicable even if the purchaser of goods/ recipient of services is a non-resident but does not apply if the E-commerce participant conducts business through its own website.
- Any payment made directly to an e-commerce participant by a purchaser of goods or a recipient of services for the sale of products or the supply of services, or both, enabled by the e-commerce operator is presumed to be paid by the e-commerce operator, and TDS is needed to be deducted.
- Section 194-O applies only to e-commerce operators who are resident in India, and whose annual sales or turnover exceeds Rs. 10 crore.
- The TDS under Section 194-O is deducted on the gross amount paid or credited to the e-commerce participant, which includes the sale value, commission, delivery charges, and any other charges.
- No TDS is required to be deducted by an e-commerce operator if the gross amount paid or credited to the e-commerce participant does not exceed Rs. 5 lakhs in a financial year.
- The e-commerce participant must have a valid PAN to receive payment from the e-commerce operator.

Scope of Section 194O on E-commerce taxation



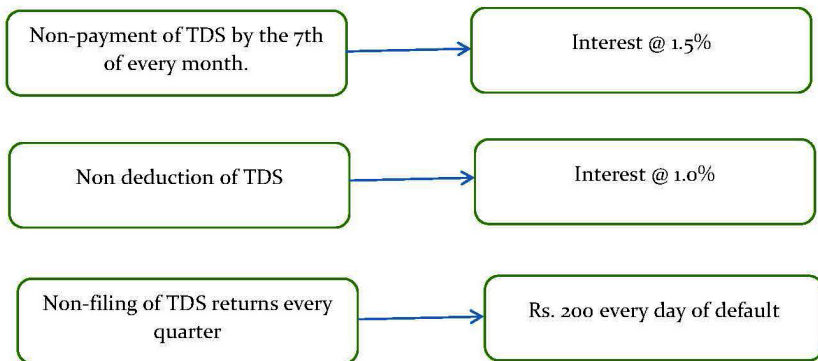
Section 194-O is not applicable if the following requirements are met:

- The E-Commerce participant is a person or a HUF;
- The gross value of sale of products or supply of services or both during the year does not exceed Rs.5 lakhs; and
- Further, the E-Commerce participant has provided his PAN or Aadhar number to the e-commerce operator.

Moreover, if TDS has been deducted in respect of a transaction under Section 194-O of the Act, TDS must not be deducted on such transaction under any Section of Chapter XVII-B of the Act. TDS requirements, on the other hand, will continue to apply to amounts received by an E-Commerce operator for hosting ads or providing any other services not covered by this Section.

Penalties under Section 194O

The e-commerce operator will be subject to the penalties that are detailed here, if they fail to report and submit the TDS as required:



TDS Certificate

The e-commerce operator is required to issue Form 16A to the e-commerce seller. This form can be used by the seller to claim credit of the tax deducted while filing the Income Tax Return.

TDS Return

After depositing TDS with the income tax department, the deductor should file Form 26Q on TRACES (TDS Reconciliation Analysis and Correction Enabling System).

Example of TDS deduction for an E-commerce Business

Let's say A is a registered e-commerce seller on Nykaa (e-commerce operator). Here are the details of her sales.

Gross sales = Rs. 6,20,000

GST @ 18% included in the above sales = Rs. 1,11,600

Nykaa's commission @ 2% = Rs. 12,400

TDS Calculation according to Section 194O

E-Commerce Operator – Nykaa

E-Commerce Seller – A

TDS = 1% of 6,20,000 = Rs. 6,200

Nykaa is required to,

- deduct TDS of Rs. 6,200 at the time of credit fulfillment or making payment, whichever is earlier.
- file TDS return via Form 26Q & issue form 16A to A.
- If A fails to furnish the PAN or Aadhar, then TDS should be deducted @ 5% irrespective of gross sales amount.

Taxation of E-commerce under GST Regulations

Aside from the criteria given above in the Act, 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

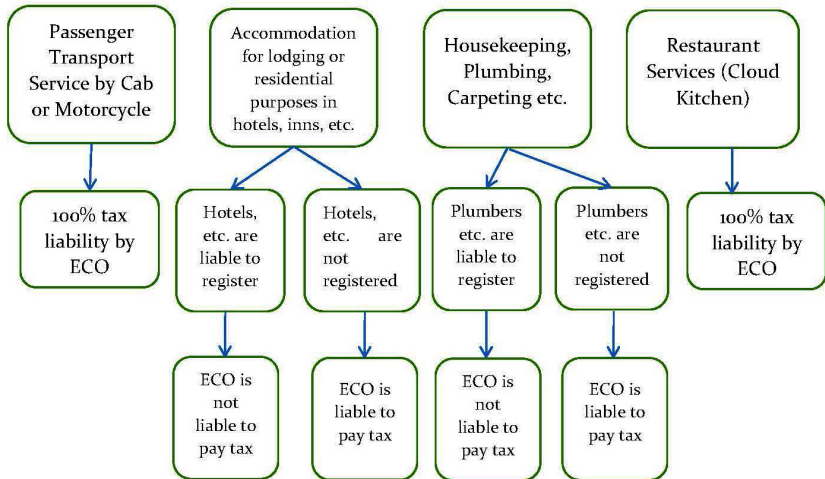
* With effect from 1st January 2022, the scope of Passenger Transport Service expanded to include service provided through Omnibus and any other motor vehicle.

**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.

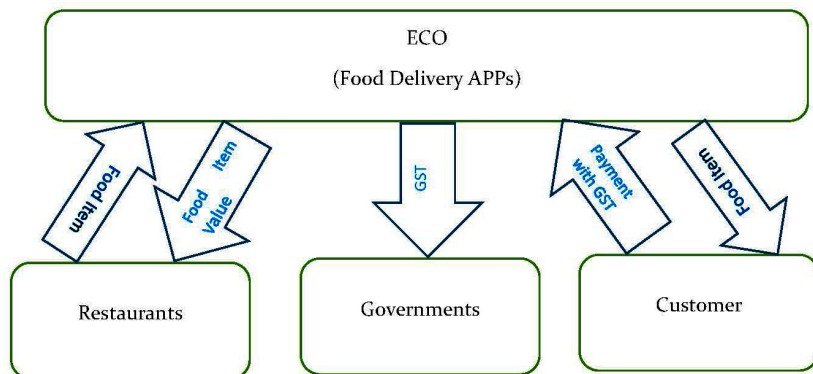
e.g. in case of taxi business, cab-owner need not to get registered under GST even if his turnover exceeds threshold limit. However, in case of Hotel (accommodation) business, if the turnover exceeds threshold limit, hotel owner needs to get registration for GST.



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:

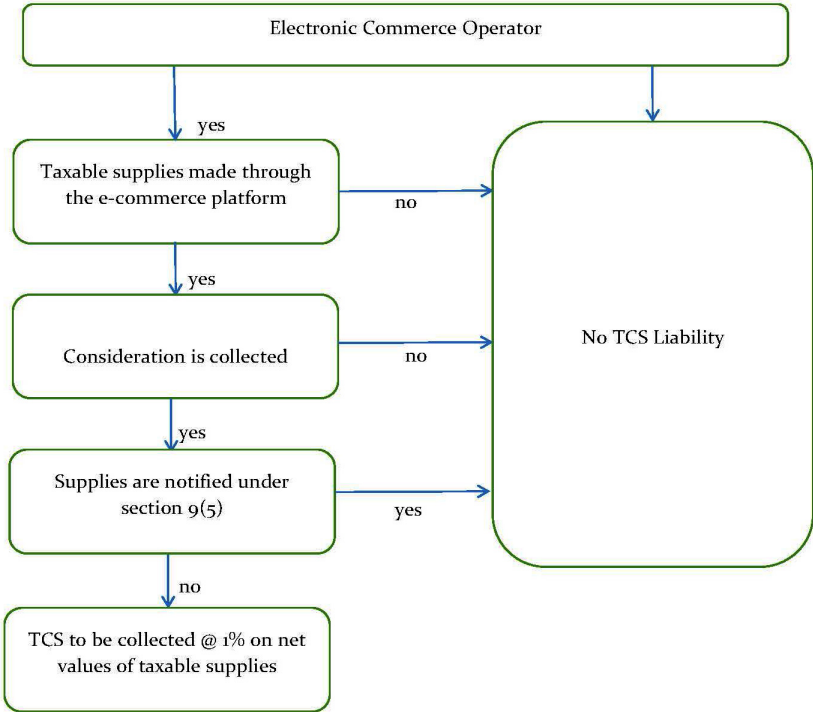
- a. Every e-commerce operator who is required to collect TCS must mandatorily register under GST
- b. Every person who supplies through an e-commerce operator, except those who make supplies notified under section 9 (5) of CGST Act.
- c. Also, note that suppliers of services making a supply through 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 persons 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
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 194O 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>