

NPV & ASSOCIATES | AUGUST, 2021

E-COMMERCE OPERATOR

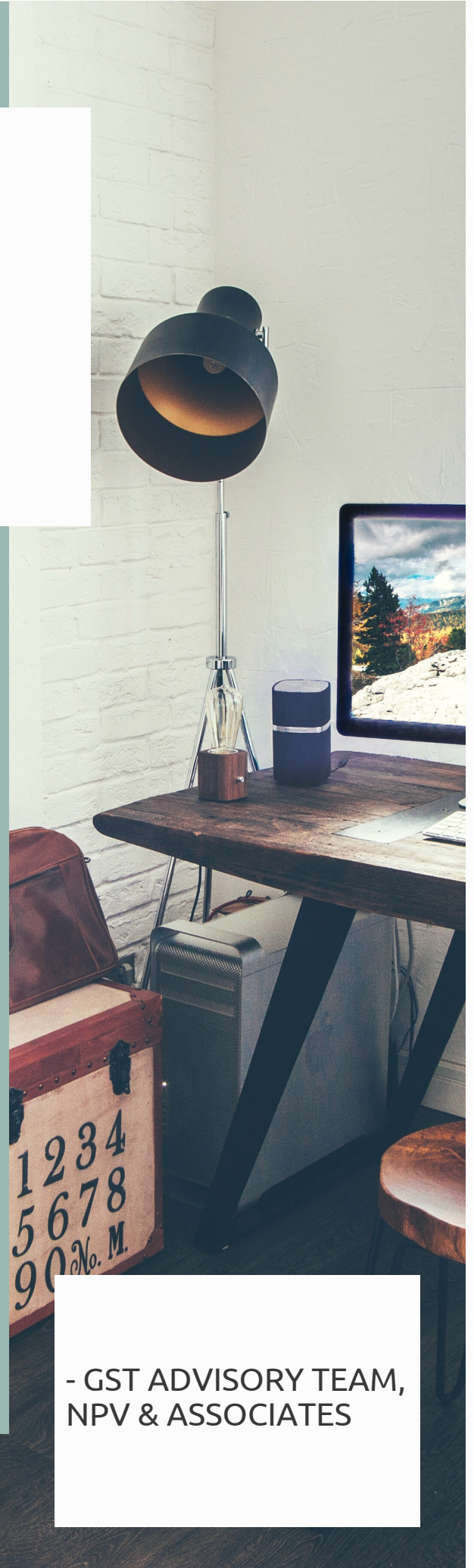
TDS, GST AND TCS (GST) IMPLICATION

Background

E-Commerce business has been rising manifold in last decade. vis-a-vis compliance related to this industry is also changing. Following points are covered in this article

1. TDS Compliance as per Income Tax Act
2. GST Compliance as per GST Act
3. TCS Compliance as per GST Act

- GST ADVISORY TEAM,
NPV & ASSOCIATES



Tax Deduction at Source under Income Tax Act, 1961

TDS Applicability

Section 194-O of the Income Tax Act, 1961 was introduced by the Finance Act, 2020 and effective from 1st October 2020 to provide for levy of TDS on E-commerce transactions.

The section applies at the time of sale of goods or provision of services by an e-commerce participant through digital or electronic facility or platform facilitated by an e-commerce operator.

E-commerce operator shall deduct income-tax at the rate of 1% (0.75% upto 31-3-21 on account of COVID-19 relief given by GOI) of the gross amount of such sales or services or both at the earlier of the following

- At the time of credit of amount of sale or services or both to the account of an e-commerce participant; or
- At the time of payment thereof to such e-commerce participant by any mode

For the purpose of the above,

- “Electronic Commerce” means the supply of goods or services or both, including digital products, over digital or electronic network.
- “E-Commerce Operator” means a person who owns, operates or manages digital or electronic facility or platform for electronic commerce.
- “E-Commerce Participants” 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.

E-commerce operator shall deduct income-tax under this provision, even in case of direct payment by purchase of goods or recipient of services directly to an e-commerce participant.

In case of non-furnishing of PAN/ Aadhar number by e-commerce participants, income-tax shall be deducted at the rate of 5%.



Exception from tax deduction

E-commerce operator shall not deduct income-tax if all the following conditions are satisfied

- The e-commerce participant is an individual or HUF.
- The gross amount of such sale or services or both during the previous year does not exceed Rs. 5 lakh.
- The e-commerce participant has furnished his PAN or Aadhar number to the e-commerce participant.

As per the guideline issued by the CBDT, in the following cases also tax deduction shall not be made

- Transactions in securities and commodities which are traded through recognized stock exchanges or cleared and settled by the recognized clearing corporation, including recognized stock exchanges or recognized clearing corporation located in International Financial Service Centre.
- Transactions in electricity, renewable energy certificates and energy saving certificates traded through power exchanges registered in accordance with Regulation 21 of the CERC

Other Points

Following transactions shall not be liable to tax deduction at source under any other provision of Part B of Chapter XVII

- A transaction in respect of which tax has been deducted by the e-commerce operator under section 194-O, or
- A transaction which is not liable to deduction in respect of payment to individual of HUF under section 194-O(2).

E-Commerce participant can apply for lower rate of tax under section 197.

Compliance Required by E-Commerce Operator

Monthly deduction of income-tax by e-commerce operator and deposit of the same with Income Tax Challan ITNS 281 as per timeline prescribed below:

Tax Deduction Month	Timeline for Tax Deposit
April to February	Within 7th day from the end of month in which tax is deducted.
March	On or before 30 th April

Filing of quarterly statement in Form No 26Q by E-Commerce operator as per timeline prescribed below:

Quarter ending on	Due Date of Filing
June	On or before 31 st July of the financial year
September	On or before 31 st October of the financial year
December	On or before 31 st January of the financial year
March	On or before 31 st May of the financial year immediately following the financial year in which tax is deducted

Issue of TDS certificate to the e-commerce participants in Form No 16A by the e-commerce operator. Such TDS certificates shall be issued on quarterly basis within 15 days from the due date of furnishing the statement of TDS in Form 26Q.

Applicability and compliance under GST

Applicability of GST

Section 24(x) of the Central Goods and Service Tax Act, 2017 (CGST Act) prescribes registration requirement for every e-commerce operator irrespective of his turnover. For e-commerce operator such registration is compulsory.

The definition in respect of electronic commerce and electronic commerce operator given under CGST Act are like provided under section 194-Oof the Income Tax Act. For the purpose of the above

- “electronic commerce” means the supply of goods or services or both, including digital products over digital or electronic network.
- “electronic commerce operator” means any person who owns, operates, or manages digital or electronic facility or platform for electronic commerce.

Filing of regular GST returns

Return Form	Details Covered	Periodicity	Timeline
GSTR 1	All the outward supplies made to registered businesses (B2B) captured at invoice level, and supplies made to unregistered business or end consumers to be captured at a rate-wise Level	Monthly or quarterly based on aggregate turnover	11th of next month from the end of respective month.
GSTR 3B	Summary of transactions involving outward and inward supplies made by registered taxpayer in each month. Net liability is to be paid before filing GSTR 3B.	Monthly or quarterly based on aggregate turnover	20 th / 22 nd of next month from the end of respective month.
GSTR 9	Annual return comprising of overall summary of all return filed during the year.	Annual	

Tax Collection at Source under GST (TCS – GST)

Applicability of TCS- GST

The e-commerce operator as well as the supplier supplying goods or services through an e-commerce operator need to compulsorily register under GST.

Need to take separate registration of TCS for each state where sellers are registered.

As per section 52 of the CGST Act, every e-commerce operator, not being an agent is required to collect tax at source (TCS) at the rate of 1% (0.5% CGST + 0.5% SGST) of the net value of taxable supplies made through it by other suppliers, where the consideration in respect of such supplies is collected by e-commerce operator.

“Net value of taxable supplies” is defined to mean the aggregate value of taxable supplies of goods or services or both, other than services notified under sub-section (5) of section 9, made during any month by all registered supplier through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

An e-commerce company is required to collect tax only on the net value of taxable supplies. Therefore, if there are any returns to the e-commerce operator, then, the value of supplies which are returned are adjusted in the aggregate value of taxable supplies.

If in a particular month, the sale returns are more than supplies made, there will be no TCS for that month. However, such negative figure will not be carried forward.

Further, TCS by e-commerce operator shall be on billing basis and not on collection basis.

FAQ issued by GST council on TCS provisions under GST can be accessed at following link http://www.gstcouncil.gov.in/sites/default/files/faq/28092018FAQs_on_TCS.pdf

Payment and Filing of TCS return

The amount of TCS collected by e-commerce operator shall be deposited with Government within ten days after the end of the month in which such collection is made. Further, e-commerce operator is required to furnish a monthly statement in form GSTR 8 by the 10th of following month.

Every operator who collects the tax shall furnish an annual statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected during the financial year in GSTR 9B before 31st December following the end of FY.

Its pertinent to note that if E- Commerce Operator is acting as an agent then compliance of Sec 52 (as mentioned in point 5.3 to 5.10) is not required. Hence, they should not collect TCS, and all provisions related to TCS shall not apply to the entity.

Agent is defined in Sec 2(5) of The CGST Act ,2017 which means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another.

In addition to above, reference should be given to Circular no 57/31/2018 where detailed meaning of agent is explained. (https://www.cbic.gov.in/resources//htdocschec/gst/Circular_No.57.pdf;jsessionid=A7218B1B37473D0FE2AC43D39DDF8466)

Gist of circular is that following are important elements of agent

- There has to be principal-agent relation
- Supply of goods or service on behalf of principal.

Appendix A

Seller (S) sells to Buyer (B) through ECO certain goods. Taxable value of such goods is Rs. 100 and rate of GST applicable is 18%. ECO charges commission of 2% from seller on value of goods sold through its platform. While charging commission income @ 2%, ECO will also collect GST @ 18% on such commission income.

After sale transaction, ECO will collect payment from B and remit the same to seller after deducting its commission, TDS and TCS.

Rate of TDS under Section 194-O of the Income tax Act is 1%, TCS rate under GST Act is 1%. TDS required to be deducted by seller from commission payable to ECO is @ 5% u/s 194H of the Income Tax Act.

The above transaction can be depicted as below:



*Remittance to seller is calculated as equal to amount received from buyer after deducting amount remittable to Govt as statutory dues and commission income (net of TDS @ 5% to be deducted by Seller)

Note: For simplicity in the example, TDS u/s 194-O is considered on taxable value of good sold in place of total invoice value.

Disclaimer

In this note, we have only commented on the income-tax and goods and service tax implications with respect to applicability to e-commerce operator. Our scope does not include analysis of agency relationship between the parties. This note sets forth our views based on the completeness and accuracy of the facts stated and any assumptions that were included and on current Indian tax law including judicial and administrative interpretations. Indian Tax law is subject to continual change, at times on a retrospective basis and may result in incremental taxes, interest, or penalty. Should the law or its interpretation change, our advice may be inappropriate. We are not responsible for updating our advice for changes in law or interpretation after the date hereof.

This note is given solely on the basis of request received from client. We have relied on explanation provided by them. Note should not be circulated for any other purpose. It is for internal use only. We do not hold any legal responsibility w.r.t note given.

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