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E-COMMERCE OPERATOR



TOPICS TO BE DISCUSSED

- ❖ INTRODUCTION
- ❖ SECTION 2(44) – DEFINITION OF E-COMMERCE
- ❖ SECTION 2(45) – DEFINITION OF E-COMMERCE OPERATOR
- ❖ SECTION 9(5)
- ❖ SECTION 24 – REGISTRATION
- ❖ FAQ RELATED TO REGISTRATION ISSUED BY LAW COMMITTEE
- ❖ MODELS OF E-COMMERCE BUSINESSES
- ❖ SECTION 52 – TAX COLLECTED AT SOURCE
- ❖ FAQ RELATED TO TCS ISSUED BY LAW COMMITTEE
- ❖ TDS U/S 194-O

INTRODUCTION

- ❖ Every e-commerce transaction involves below three parties and two types of transactions:
 - Seller;
 - Buyer;
 - E-Commerce Operator

- ❖ Types of transaction:
 - Between Seller & Buyer – Sale of Goods ;
 - Between Seller & E-Commerce Operator – Provision of marketplace

- ❖ GST shall be levied on both transactions:
 - Between seller & buyer:** GST on entire value of goods/ services supplied (GST shall be paid by the supplier except in case of services specified u/s9(5))
 - Seller & ECO:** GST on commission value/ other charges earned by E-Commerce Operator for providing market platform to seller. (GST shall be paid by the ECO)

DEFINITIONS

- ❖ **Section 2(44): “Electronic Commerce”** means the supply of goods or services or both, including digital products over digital or electronic network.
- ❖ **Explanation as per ICAI module:** Physical stores/ outlets that supply goods or services or both with the help of a digital network which is facilitated by a third party will fall within the scope of this definition. Electronic commerce is not to be understood as the activity of the operator of the digital network alone. Digital or electronic network does not always mean website on mobile app. A telephone network or a call centre using the fancy/easy number can also constitute digital or electronic network.

DEFINITIONS

- ❖ **Section 2(45) “Electronic Commerce Operator”** means any person who owns, operates, or manages digital or electronic facility or platform for electronic commerce.
- ❖ **Explanation as per ICAI module:** It includes every person who, directly or indirectly, owns, operates, or manages a digital/electronic facility or platform for supply of goods or services or both. While an aggregator only connects the customer with the supplier/ service provider, an ecommerce operator facilitates the entire process of the supply of goods/ provision of services. Under the GST law, even aggregators would be covered under the definition of ‘electronic commerce operator’. Setting up a website by a supplier for ‘own use’ also comes within the scope of this definition however the compliances that are triggered by being such an electronic commerce operator under section 52 cannot be attracted unless there are three distinct persons – customer, supplier and electronic commerce operator. A supplier creating an online channel for sale of product in addition to his off-line retail chain of stores is included in the definition of electronic commerce operator. The implications of being an electronic commerce operator will apply in such cases only if the distinct person who owns or manages the electronic or digital network and the distinct person who stores and distributes the product are independent of each other. Also, every internet-linked transaction would not be ecommerce as the website may merely be an information portal without concluding any specific transaction of supply. It may be noted that the threshold limits for registration would not apply and he would be required to obtain registration irrespective of his turnover.

SECTION 9(5)

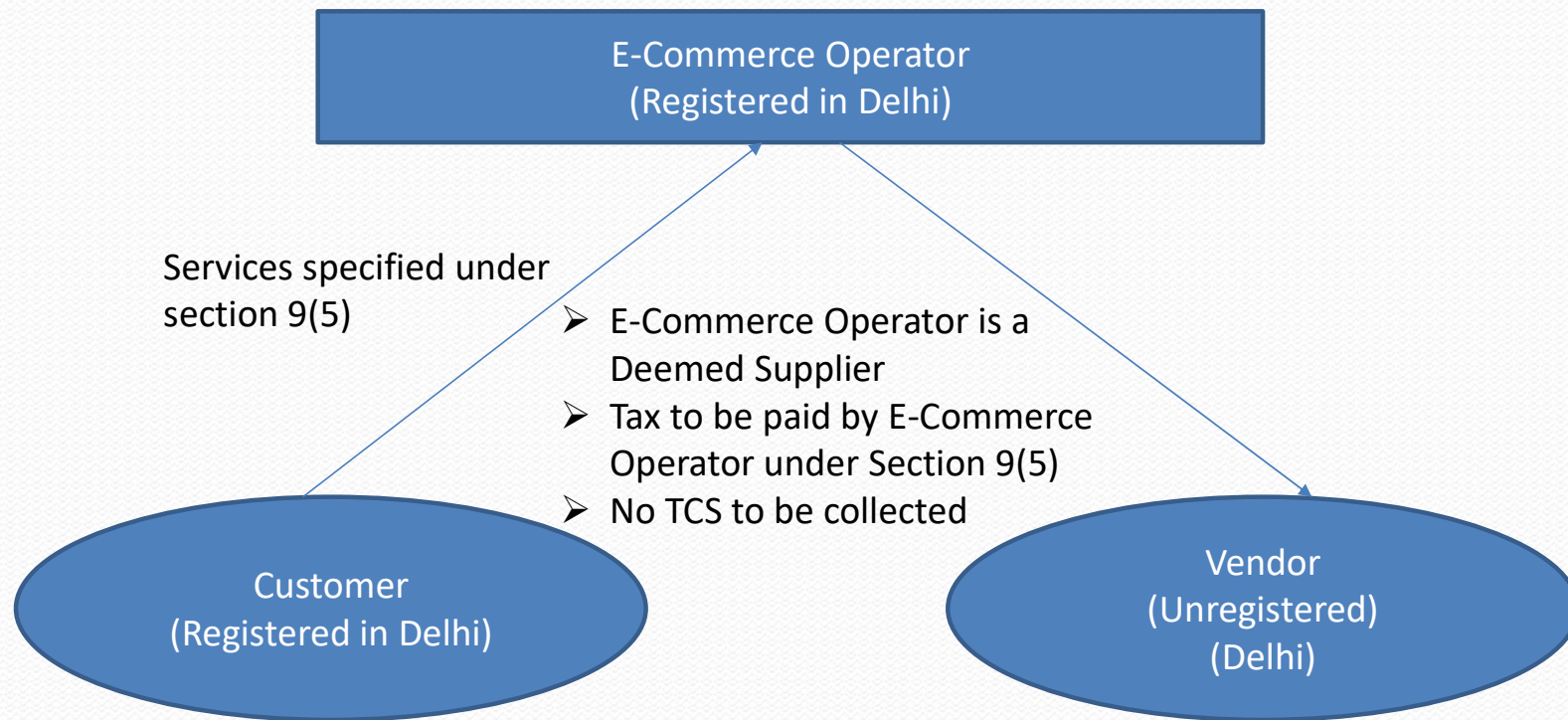
- ❖ The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be **paid by the electronic commerce operator** if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services.
- ❖ Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax.
- ❖ Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also, he does not have 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)

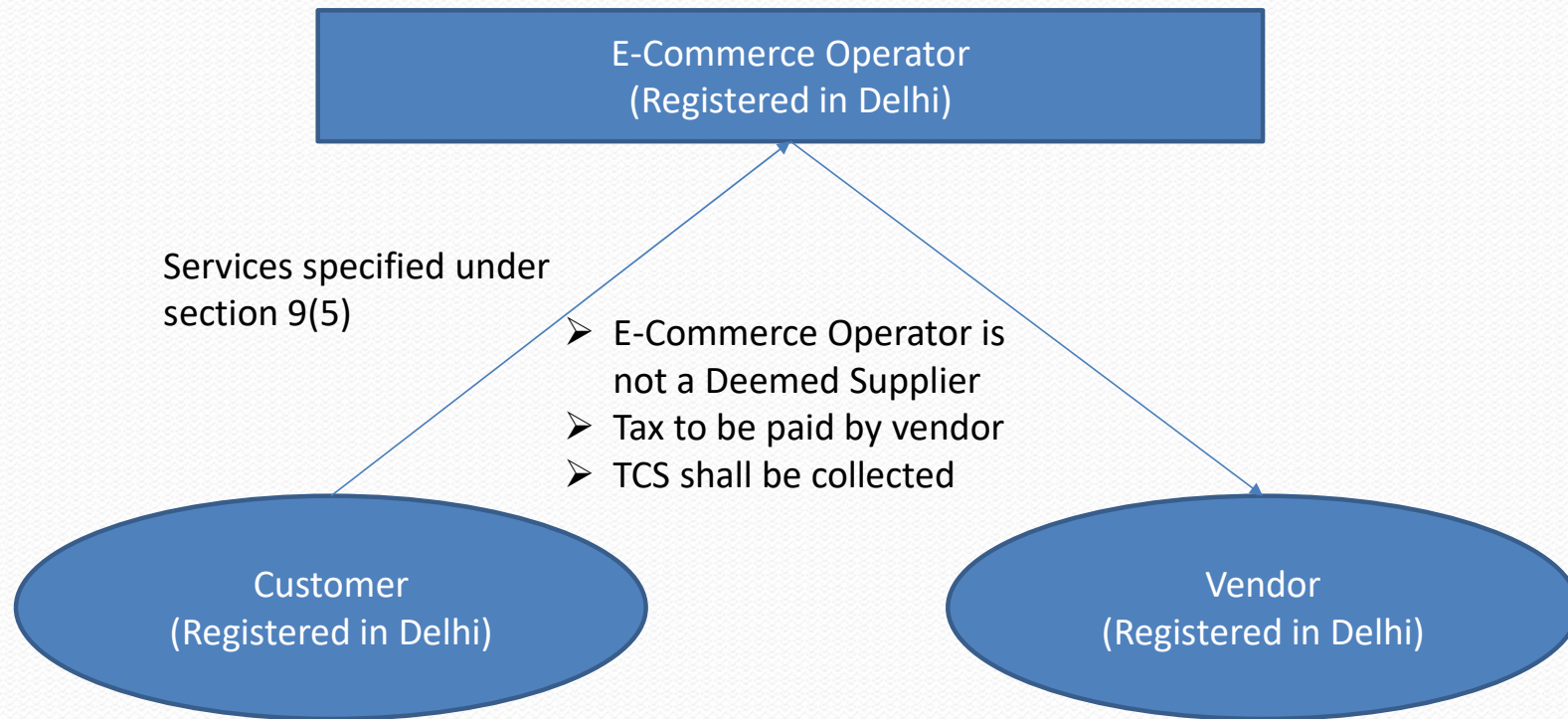
❖ Services listed u/s 9(5)

1. Services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motorcycle; Example: Ola, Uber
2. Services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, **except** where the person supplying such service through electronic commerce operator is liable for registration under sub-section (1) of section 22 of the said Central Goods and Services Tax Act. Example: OYO, Airbnb
3. Services by way of house-keeping, such as plumbing, carpentering etc, **except** where the person supplying such service through electronic commerce operator is liable for registration under sub-section (1) of section 22 of the said Central Goods and Services Tax Act.". (**w.e.f 22.08.2017**)

SECTION 9(5)



SECTION 9(5)



REGISTRATIONS

❖ **Mandatory Registration for E-Commerce Operator**

- ❑ **Section 24(iv):** Person who are required to pay tax under Section 9(5).
- ❑ **Section 24(ix):** Persons who supply goods or services or both, other than supplies specified under sub-section (5) of section 9, through such electronic commerce operator who is required to collect tax at source under section 52.
- ❑ **Section 24(x):** Every electronic commerce operator who is required to collect tax at source under section 52. (In addition to normal registration)
- ❑ **Exemption:** If a person supplying through e-commerce operator whose aggregate turnover (services), to be computed on all India basis, does not exceed an amount of twenty lakh rupees (10 lakh rupees – special category states) in a financial year, is exempted from obtaining registration under the said Act. (N/N 65/2017 – Dated 15.11.2017).

FAQ Released by Law Committee on 28.09.2018

- ❖ **Serial No 5:** As per section 24(x) of the CGST Act, 2017, every electronic commerce operator must obtain compulsory registration irrespective of the value of supply made by him.
- ❖ **Serial No 6:** As per Section 24(ix) of the CGST Act, 2017, every person supplying goods through an e-commerce operator shall be mandatorily required to register irrespective of the value of supply made by him. However, a person supplying services, other than supplier of services under section 9 (5) of the CGST Act, 2017, through an e-commerce platform are exempted from obtaining compulsory registration provided their aggregate turnover does not exceed INR 20 lakhs (or INR 10 lakhs in case of specified special category States) in a financial year. Government has issued the notification No. 65/2017 – Central Tax dated 15th November 2017 in this regard.
- ❖ **Serial No 8:** Where registered supplier is supplying goods or services through a foreign e-commerce operator to a customer in India, such foreign e-commerce operator would be liable to collect TCS on such supply and would be required to obtain registration in each State / UT. If the foreign e-commerce operator does not have physical presence in a particular State / UT, he may appoint an agent on his behalf.
- ❖ **Serial No 9:** E-Commerce operator has to obtain separate registration for TCS irrespective of the fact whether e-Commerce operator is already registered under GST as a supplier or otherwise and has GSTIN.

MODELS OF E-COMMERCE BUSINESSES

❖ **Market Place Model**

Under this model ,the role of the e-commerce company is only to link the Manufacturers/retailers /sellers with customers through its platform. The responsibility to Store the merchandise and deliver to the customer would be with the merchants either directly or through their service providers.

❖ **Direct Sales Model**

The direct sale model is the most used revenue earning model adopted by the e-commerce companies. It involves setting up a store in an online marketplace or a self owned website and shipping the goods as and when the money is paid by the customer.

❖ **Principal to Agent Model**

Under this model the site owner procures order and then pass on the vendors. Vendors on behalf of the site owner supply goods or services to the customers. The site owner is working on the commission basis for the procurement of orders.

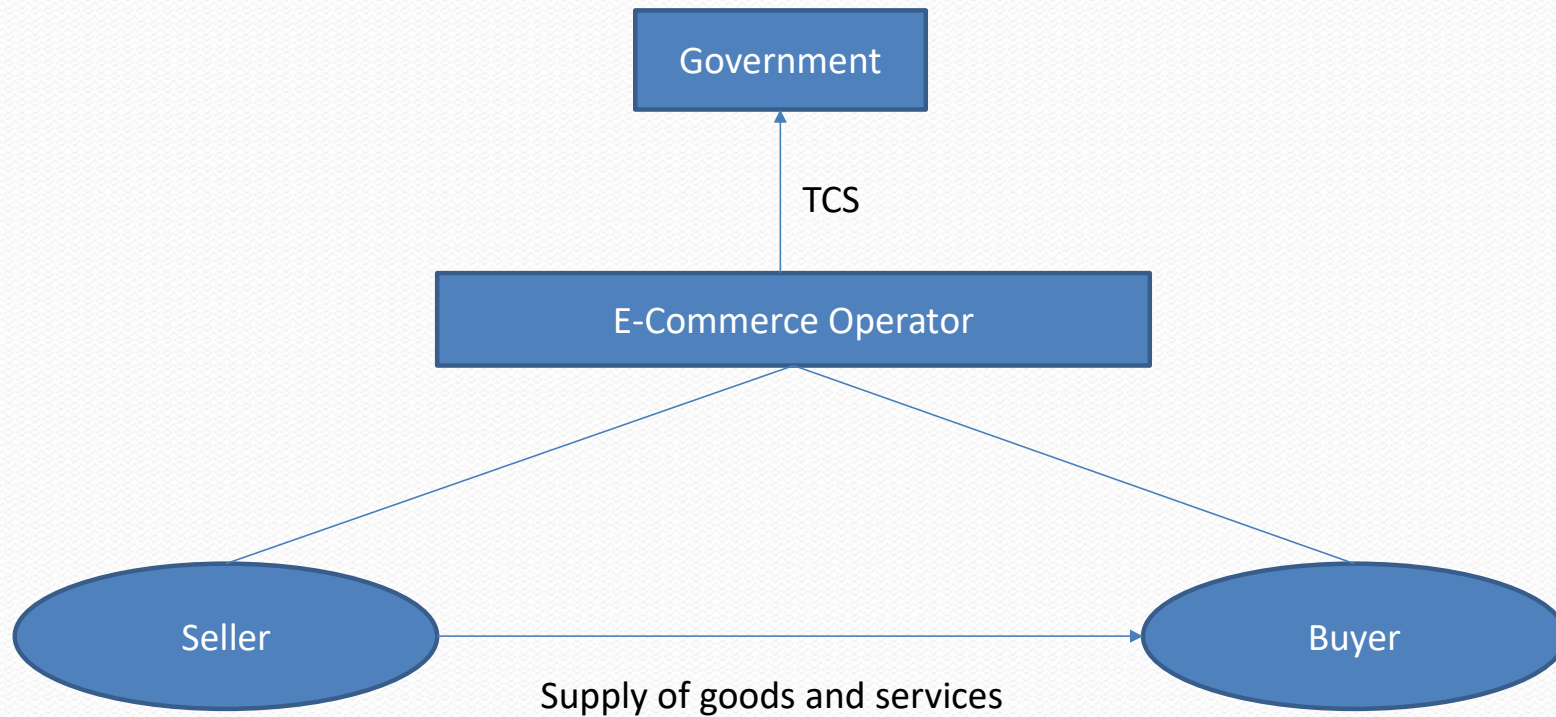
❖ **Aggregator Model**

This model is a networked model where the firm collects the information about a particular goods or services providers, make the providers their partners, and sell their services under its own brand. Since aggregators is a brand, they have to provide services which has a uniform quality and price. This is done through signing up a contract with the partners.

❖ **Inventory Model**

Under this model, inventory of goods and services is owned by e-commerce entity and is sold to the customers directly. The main feature of the model is that the customer buy the products directly from the e-commerce operator.

SECTION 52: TAX COLLECTED AT SOURCE



SECTION 52: TAX COLLECTED AT SOURCE

- (1) Notwithstanding anything to the contrary contained in this Act, every electronic commerce operator (hereafter in this section referred to as the “operator”), **not being an agent**, shall collect an amount calculated at such rate not exceeding one per cent., as may be notified by the Government on the recommendations of the Council, of the **net value of taxable supplies** made through it by other suppliers **where the consideration with respect to such supplies is to be collected by the operator**.
Explanation.—For the purposes of this sub-section, the expression “net value of taxable supplies” shall 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 persons through the operator **reduced by** the aggregate value of taxable supplies returned to the suppliers during the said month.
- (2) The power to collect the amount specified in sub-section (1) shall be without prejudice to any other mode of recovery from the operator.
- (3) The amount collected under sub-section (1) shall be paid to the Government by the operator **within ten days** after the end of the month in which such collection is made, in such manner as may be prescribed. **(Time Limit for Payment)**
- (4) Every operator who collects the amount specified in sub-section (1) shall furnish a 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 under sub-section (1) during a month, in such form and manner as may be prescribed, **within ten days after the end of such month**. **(Monthly Statement)**

SECTION 52: TAX COLLECTED AT SOURCE

(5) Every operator who collects the amount specified in sub-section (1) shall **furnish an annual statement (GSTR – 9B)**, 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 under the said sub-section during the financial year, in such form and manner as may be prescribed, before the **thirty first day of December following the end of such financial year.**

(Annual Statement)

(6) If any operator after furnishing a statement under sub-section (4) discovers any omission or incorrect particulars therein, 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, as specified in sub-section (1) of section 50: **(Rectification of error or omission)**

Provided that **no such rectification** of any omission or incorrect particulars shall be allowed after the due date for furnishing of statement for the month of September following the end of the financial year or the actual date of furnishing of the relevant annual statement, whichever is earlier.

(7) The supplier who has supplied the goods or services or both through the operator shall **claim credit**, in his electronic cash ledger, of the amount collected and reflected in the statement of the operator furnished under sub-section (4), in such manner as may be prescribed. **(Credit of TCS to the supplier)**

(8) The details of supplies furnished by every operator under sub-section (4) shall be matched with the corresponding details of outward supplies furnished by the concerned supplier registered under this Act in such manner and within such time as may be prescribed. **(Matching of details of supplies)**

SECTION 52: TAX COLLECTED AT SOURCE

- (9) Where the details of the outward supplies furnished by the operator under sub section do not match with the corresponding details furnished by the supplier, the **discrepancy shall be communicated** to both persons in such manner and within such time as may be prescribed. **(Rule 79)**
- (10) The amount in respect of which any discrepancy is communicated under sub-section (9) and which is not rectified by the supplier in his valid return or the operator in his statement for the month in which discrepancy is communicated, shall be added to the output tax liability of the said supplier, where the value of outward supplies furnished by the operator is more than the value of outward supplies furnished by the supplier, in his return for the month succeeding the month in which the discrepancy is communicated in such manner as may be prescribed.
- (11) The concerned supplier, in whose output tax liability any amount has been added under sub-section (10), shall pay the tax payable in respect of such supply **along with interest**, at the rate specified under sub-section (1) of section 50 on the amount so added from the date such tax was due till the date of its payment.
- (12) Any authority not below the rank of Deputy Commissioner may serve a notice, either before or during the course of any proceedings under this Act, requiring the operator to furnish such details relating to—
- (a) supplies of goods or services or both effected through such operator during any period; or
 - (b) stock of goods held by the suppliers making supplies through such operator in the godowns or warehouses, by whatever name called, managed by such operator and declared as additional places of business by such suppliers, as may be specified in the notice. **(Notice to E-commerce Operator)**
- (13) Every operator on whom a notice has been served under sub-section (12) shall furnish the required information **within fifteen working days** of the date of service of such notice.
- (14) Any person who fails to furnish the information required by the notice served under sub-section (12) shall, without prejudice to any action that may be taken under section 122, be liable to a **penalty which may extend to twenty-five thousand rupees**. **(Penalty)**

NET VALUE OF TAXABLE SUPPLIES

Tax is to be collected on **net taxable value of goods or services** supplied by other suppliers through e-commerce operator, to be collected on following manner **{Section 52(1)}**

Net Value of supplies means:

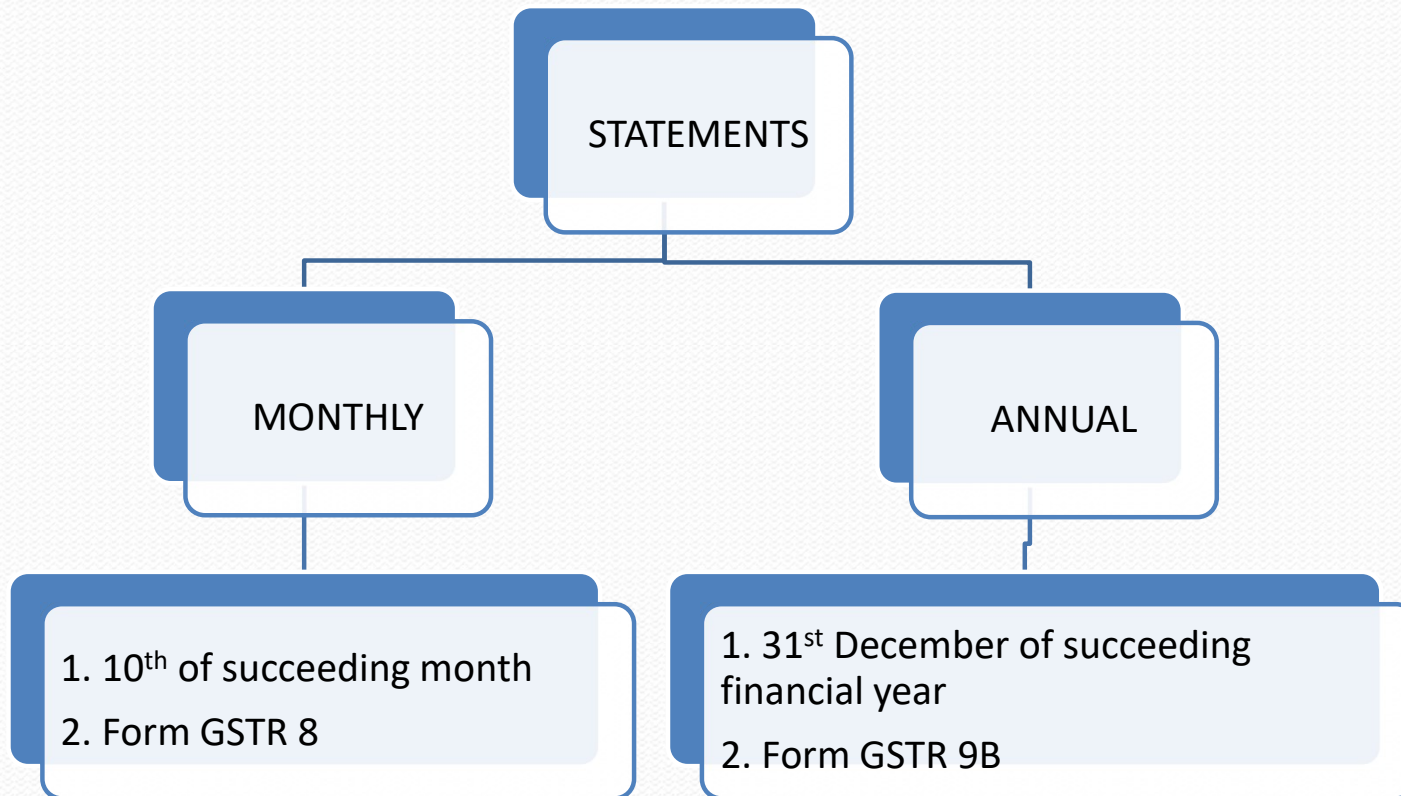
Aggregate value of taxable supplies or goods or service or both

Not to be include: Services notified under sec 9(5), made during any month by all registered taxable persons through the e-commerce operator

Reduce by: Aggregate value of supplies returned.

Thus , an e-commerce company is required to collect tax only on net value of taxable supplies made through it i.e. value of the supplies which are returned (supply /sale return) may be adjusted from the aggregate value of taxable supplies made by each supplier.

STATEMENTS TO BE FURNISHED



IMPORTANT POINTS ON TCS

- ✓ Supply of service through e-commerce operator where consideration is paid directly to the supplier of goods or service : **NO TCS**
- ✓ Supply of exempt goods or services through e-commerce operator : **NO TCS**
- ✓ Supply of exempt goods or services through-commerce operator recipient is liable to pay tax under **reverse charge (Inc Import of goods and services)** : **NO TCS**
- ✓ Supply of goods by **composition suppliers** through e-commerce operators : **NO TCS**

Note: As per sec 10(2) of the CGST Act , a composition taxpayer cannot make supplies through e-commerce operator. Thus, question of collecting TCS in respect of supplies made by the composition taxpayer does not arise.

CREDIT OF TCS TO THE SUPPLIER

- ✓ The amount of TCS deposited by the E-Commerce operator will be **reflected in the electronic cash ledger** of the supplier on the basis of the statement filed by the operator in FORM GSTR-8.
- ✓ The said credit can be used at the time of **discharge of output tax liability** by the said supplier.
- ✓ If the Supplier is not able to use the amount lying in the said cash ledger, the said supplier may claim **refund of the excess balance lying in his electronic cash ledger in accordance with the provisions contained in Section 54.**

EXAMPLE ON TCS

A customer in Delhi place order of Ladder through E-Commerce Operator GST registered in Delhi, worth INR 5,00,000/- plus GST of 18%. Let us assume 20% commission of E-commerce Operator.

1. Customer to E-Commerce Operator

Particulars	Amount(INR)
Value of Ladder	5,00,000
Add CGST @9%	45,000
Add SGST @9%	45,000
Total price payable	5,90,000

2. E-commerce Operator to Supplier (Commission)

Particulars	Amount(INR)
Value of supply of services E-Commerce operator (20% of INR 5,00,000/-)	1,00,000
Add: CGST @9%	9,000
Add: SGST @9%	9,000
Total price payable	1,18,000

3. Amount to be remitted by E-Commerce operator to Supplier **(Subject to Sec.194H and Sec.194O)**

Particulars	Amount(INR)
Amount received from customer	5,90,000
Less : Commission Invoice	1,18,000
Less: TCS of GST @0.5% of net taxable value (0.5% of INR 5,00,000/-)	2,500
Less: TCS of GST @0.5% of net taxable value (0.5% of INR 5,00,000/-)	2,500
Amount to be remitted by E-commerce Operator to supplier	4,67,000

FAQ Released by Law Committee on 28.09.2018

- ❖ **Serial No 7:** As per the extant law, registration for TCS would be required in each State / UT as the obligation for collecting TCS would be there for every intra-State or inter-State supply. In order to facilitate the obtaining of registration in each State / UT, the e-commerce operator may declare the Head Office as its place of business for obtaining registration in that State / UT where it does not have physical presence.
- ❖ **Serial No 10:** The “net value of taxable supplies” means the aggregate value of taxable supplies of goods or services or both, other than the services on which entire tax is payable by the e-commerce operator, made during any month by a registered supplier through such operator reduced by the aggregate value of taxable supplies returned to such supplier during the said month.
- ❖ **Serial No 11:** The value of net taxable supplies is calculated at GSTIN level.
- ❖ **Serial No 14:** No, TCS is not required to be collected on exempt supplies.
- ❖ **Serial No 16:** As per section 10(2)(d) of the CGST Act, 2017, a composition taxpayer cannot make supplies through e-commerce operator. Thus, question of collecting TCS in respect of supplies made by the composition taxpayer does not arise.
- ❖ **Serial No 17:** TCS is not liable to be collected on any supplies on which the recipient is required to pay tax on reverse charge basis. As far as **import of goods** is concerned since same would fall within the domain of Customs Act, 1962, it would be outside the purview of TCS. Thus, TCS is not liable to be collected on import of goods or services.

FAQ Released by Law Committee on 28.09.2018

- ❖ **Serial No 19:** Payment of TCS is not allowed through Input Tax Credit of e-Commerce operator.
- ❖ **Serial No 21:** If returns are more than the supplies made during any tax period, the same would be ignored in current as well as future tax period(s).
- ❖ **Serial No 24:** TCS collected is to be deposited by the e-commerce operator separately under the respective tax head (i.e. Central tax / State tax / Union territory tax / Integrated tax). Based on the statement (**FORM GSTR-8**) filed by the e-commerce operator, the same would be credited to the electronic cash ledger of the actual supplier in the respective tax head. If the supplier is not able to use the amount lying in the said cash ledger, the actual supplier may claim refund of the excess balance lying in his electronic cash ledger in accordance with the provisions contained in section 54(1) of the CGST Act, 2017.
- ❖ **Serial No 25:** Yes, every operator is required to furnish a statement, electronically, containing the details of outward supplies of goods or services effected through it, including the supplies of goods or services returned through it, and the amount collected by it as TCS during a month within 10 days after the end of such month in **FORM GSTR-8**. The operator is also required to file an annual statement by 31st day of December following the end of the financial year in which the tax was collected in **FORM GSTR-9B**.
- ❖ **Serial No 27:** As per section 12(11) of the IGST Act, 2017, the address on record of the customer with the supplier of services is the place of supply.
- ❖ **Serial No 28:** TCS is to be collected by that e-Commerce operator who is making payment to the supplier for the supply happening through it,

SECTORAL FAQs – SUPPLIES THROUGH OWN WEBSITE

Question 1: 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.

Question 2: 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.

TDS U/S 194-O

- ❖ **Section 194-O:** Has been introduced vide Finance Act, 2020.
- ❖ **Nature of payment:** On Payment by E-commerce operator to E-commerce participant for sale of goods or provision of service over electronic platform.
- ❖ **Threshold:** No TDS u/s 194-O where gross amount of sales/service through the e-commerce platform does not exceeds Rs.5 Lakhs.
- ❖ **Rate of tax:** 1% (0.75% w.e.f 01.10.2020 to 31.03.2021)
- ❖ **Rate of TDS if No PAN:** 5% as per First proviso to Section 206AA.
- ❖ For the purpose of determining applicability of Section 194-O for the FY2020-21, the Sales/Gross receipts prior up to 30th September, 2020 shall also be included.

EXAMPLE: TDS U/S 194-O

Ambani Ltd. (E-Commerce participant) is selling its product through Jio (E-Commerce Operator). Mr A buys this product online from Ambani Ltd. for Rs. 1,18,000/- (Including GST of Rs. 18,000/-) on 1st Dec'2020.

Jio credits the account of Ambani Ltd. on 1 Dec 2020, but the customer makes the payment directly to Ambani Ltd. on 15 Dec 2020.

Here, Jio is required to deduct TDS @1% on Rs 1,00,000/- (Excluding GST) at the time of credit to the party or making payment, whichever is earlier. In this case, TDS should be deducted on 1 Dec 2020.

Date	In the books of E-commerce participants (Ambani Ltd.)		In the books of E-commerce Operators (Jio)	
1 st Dec'2020	Jio A/c Dr	1,18,000	Mr. A A/c Dr	1,18,000
	To Sales	1,00,000	To Ambani Ltd	1,18,000
	To GST	18,000		
	(Being sale to customer through Jio)		(Being sale to customer)	
1 st Dec'2020	TDS Receivable A/c Dr	10,000	Ambani Ltd. A/c Dr	10,000
	To Jio A/c	10,000	To TDS Payable A/c	10,000
	(Being TDS recoverable from Operator)		(Being TDS u/s 194O deducted)	
1 st Dec'2020	–		TDS Payable A/c Dr	10,000
	–		To Bank A/c	10,000
	–		(Being TDS u/s 194O deposited)	
15 th Dec'2020	Bank A/c Dr	1,18,000	–	
	To Mr. A A/c	1,18,000	–	
	(Being amount received from Customer)		–	
15 th Dec'2020	Mr. A A/c Dr	1,18,000	Ambani Ltd. A/c Dr	1,18,000
	To Jio A/c	1,18,000	To Mr. A A/c	1,18,000
	(Being adjustment entries passed)		(Being adjustment entries passed)	
15 th Dec'2020	Jio A/c Dr	10,000	Bank A/c Dr	10,000
	To Bank A/c	10,000	To Ambani Ltd.	10,000
	(Being TDS payment made to operator)		(Being TDS amount received from participants)	

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