



Tax alert: Guidelines issued for TDS on payment by e-commerce operator

31 December 2023

The Central Board of Direct Taxes, vide Circular No. 20 of 2023 dated 28 December 2023, has issued guidelines under section 194-O of the Income-tax Act, 1961, in relation to the applicability of tax deduction provisions on payment / deemed payment made by an e-commerce operator to an e-commerce participant.

Background:

- Finance Act, 2020 (FA 2020) had introduced section 194-O under the Income-tax Act, 1961 (ITA), stipulating that an e-commerce operator (ECO) shall deduct/ withhold tax at the rate of 1% of the gross amount of sale of goods or provision of service, or both, facilitated through its digital or electronic facility or platform, at the time of credit of amount of such sale or service or both, to the account of an e-commerce participant or at the time of payment thereof to such e-commerce participant, whichever is earlier. However, exemption from deduction has been provided in case of certain individuals and Hindu Undivided Family (HUF) fulfilling certain conditions. Further, any payment made by a buyer to a seller, both e-commerce participants, in a transaction facilitated by an ECO, shall be deemed to be the amount paid by the ECO to the e-commerce participant and is to be included in the gross amount of sale of goods or provision of services or both, for the purposes of tax deduction at source (TDS).
- Section 194-O(4) of the ITA authorises the Central Board of Direct Taxes (CBDT) to issue guidelines for the purpose of removal of difficulties with the prior approval of the central government. Earlier, guidelines on section 194-O of the ITA were issued vide Circular No. 17 of 2020 dated 29 September 2020 and Circular No. 20 of 2021 dated 25 November 2021. The CBDT has now, vide Circular No. 20 of 2023¹ dated 28 December 2023 (Circular), issued further guidelines in respect of TDS under section 194-O of the ITA.

Key definitions under section 194-O of the ITA:

- "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 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;

¹ F.No. 370142/43/2023-TPL

Highlights of the Circular:

The Circular has issued the following key clarifications, in question and answer (Q&A) form, with respect to applicability of section 194-O of the ITA:

1) *Who should deduct TDS where there are multiple ECOs involved in a transaction?*

Answer:

There may be a platform or network (e.g., the Open Network for Digital Commerce) on which multiple ECOs are participating in a single transaction. For example, there could be a buyer side ECO involved in buyer side functions and a seller side ECO involved in seller side functions. In this case there may be two situations:

Situation 1: *Where multiple ECOs are involved in a single transaction of sale of goods or provision of services through ECO platform or network and where the seller-side ECO is not the actual seller of the goods or services*

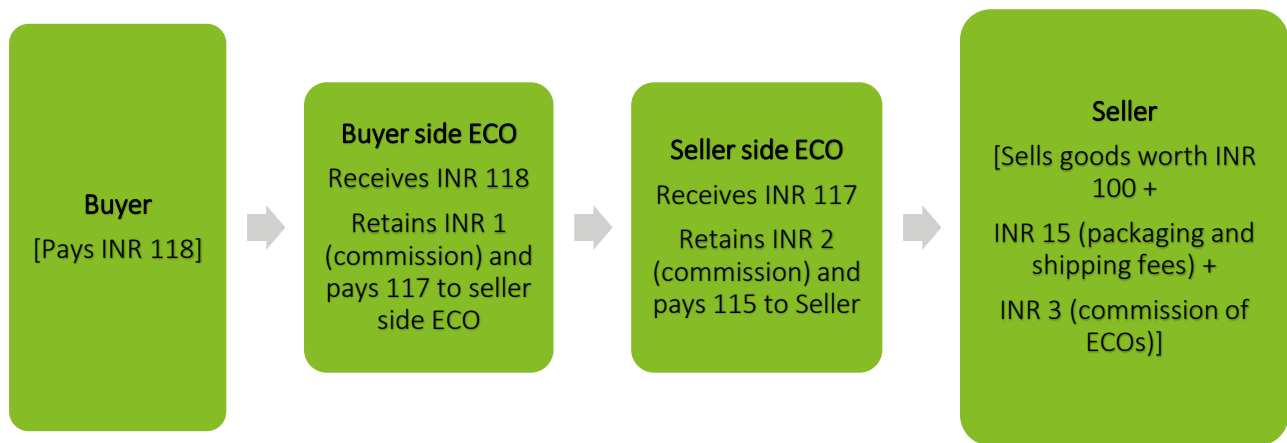
- On the buying side, a buyer-side ECO could be providing an interface to the buyer and on the selling side, a seller-side ECO could be providing an interface to the seller.
 - In this situation, TDS under section 194-O of the ITA is to be done by the seller-side ECO who finally makes the payment or the deemed payment to the seller for goods sold or services provided.
 - The TDS shall be on the 'gross amount' of such sales of goods or provision of services and shall be deducted by the seller-side ECO at the time of credit to the account of a seller (being e-commerce participant) or at the time of payment or deemed payment thereof to such seller by any mode, whichever is earlier.
 - Seller ECO to file the requisite TDS return in Form 26Q and issue certificate to seller under Form 16A.
- Situation 2: *Where multiple ECOs are involved in a single transaction of sale of goods or provision of services through ECO platform or network and where the seller-side ECO is the actual seller of the goods or services***
- On the buying side, an ECO (say ECO-1) could be providing an interface to the buyer and on the selling side, the seller itself is an ECO and is directly interacting with another ECO (say ECO-2).
 - In this situation, TDS under section 194-O of the ITA is to be done by the ECO-2 which finally makes the payment or the deemed payment to the seller for goods or services sold (i.e. ECO).
 - The TDS shall be on the 'gross amount' of such sale of goods or provision of services and be deducted by ECO-2 at the time of credit to the account of a seller or at the time of the payment or the deemed payment thereof to such seller by any mode, whichever is earlier.
 - ECO-2 to file the requisite TDS return in Form 26Q and issue certificate to the seller under Form 16A.

2) *E-commerce operators may be levying convenience fees or charging commission for each transaction and seller might levy logistics & delivery fees for the transaction. Payments may also be made to the platform or network (e.g., ONDC) provider for facilitating the transaction. Would these form part of "gross amount" for the purposes of TDS under section 194-O of the ITA?*

Answer:

In e-commerce, it is common for an order to be shipped to the buyer from the seller. It is therefore common for the sellers to charge the buyer additionally for shipping in the form of logistics/delivery/shipping/packaging fees. Further, the buyer-side ECO and seller-side ECO may charge a commission to the seller to enable the online transaction, and the seller may choose to recoup all or part of that amount from the buyer.

Example:



- TDS is to be deducted by the seller-side ECO on the gross amount of sales of goods or provision of services at the time of payment or credit (i.e. INR 118). Seller-side ECO to file the requisite TDS return in Form 26Q and issue certificate to the seller under Form 16A.
 - Under section 194-O(3) of the ITA, a transaction on which tax has been deducted by an ECO under section 194-O(1) of the ITA, shall not be liable to TDS under any other provision of Chapter XVII-B.
 - Accordingly, this exclusion will also apply to the amount received by buyer side ECO (INR 1) and seller side ECO (INR 2) for provision of services which are in connection with the main transaction of sale of goods or provision of service or both referred to in section 194-O(1) of the ITA. However, section 194S(4) of the ITA [relating to TDS on payment on transfer of virtual digital asset] overrides section 194-O of the ITA and states that if TDS under section 194S of the ITA, is done then no tax is deductible under section 194-O of the ITA.
 - Payments may also be made to the platform or network (e.g. ONDC) provider for facilitating the transaction. These would form part of 'gross amount' for the purposes of TDS under section 194-O of the ITA if they are included in the payment for the transaction. If these payments are being paid on a lump-sum basis and are not linked to a specific transaction, then these need not be included in the 'gross amount'.
 - It is further clarified that TDS under section 194-O of the ITA will be calculated on the gross invoice value (INR 118 in this example) at 1% and that the responsibility of withholding and depositing would be on the seller ECO. The buyer ECO's fees charged to seller ECO (INR 1 in this example) and seller ECO's fees (INR 2 in this example) charged to seller will not be subject to further TDS (say under section 194H of the ITA).
- 3) *How will GST, various state levies and taxes other than GST such as VAT/ Sales tax/ Excise duty/ CST be treated when calculating gross amount of sales of goods or provision of services as per the provisions of section 194-O of the ITA?*

Answer:

It is clarified that under section 194-O of the ITA, when tax is deducted at the time of credit of amount in the account of seller and the component of GST/ various state levies and taxes comprised in the amount payable to the seller is indicated separately, tax shall be deducted under section 194-O of the ITA on the amount credited without including such GST/various state levies and taxes.

However, if TDS is on payment basis because the payment is earlier than the credit, the tax would be deducted on the whole amount as it is not possible to identify that payment with GST/ various state levies and taxes component of the amount to be invoiced in the future.

Reference was made to circulars² in relation to TDS on purchase of goods under section 194Q of the ITA.

- 4) *How will adjustment for purchase-returns take place?*

Answer:

² Para 4.3.2 of Circular No. 13 of 2021 dated 30 June 2021 and para 5.2.3 of Circular No. 20 of 2021 dated 25 November 2021

Tax is required to be deducted under section 194-O of the ITA at the time of payment or credit, whichever is earlier. Thus, before purchase-return happens the tax must have already been deducted under section 194-O of the ITA on that purchase. If that is the case and against this purchase-return the money is refunded then this tax deducted, if any, may be adjusted against the next transaction by the deductor with the same deductee in the same financial year. Further, the tax deducted and deposited will be allowed as credit to the seller.

Further, no adjustment is required if the purchase-return is replaced by the goods, since in that case the transaction on which tax was deducted under section 194-O of the ITA has been completed with goods replaced.

Reference was made to circular³ in relation to TDS on purchase of goods under section 194Q of the ITA.

5) *How will discounts given by seller as an e-commerce participant or by any of the multiple ECOs be treated while calculating 'gross amount'?*

Answer:

a) Seller Discount:

In the situation where the discount (say INR 10) is given by the seller itself, the seller would reduce the price of the products sold or services provided (say price before discount being INR 100 and post discount being INR 90). In this case, the seller will invoice the buyer for INR 90, hence, the TDS will be calculated on INR 90.

b) Buyer ECO or Seller ECO Discount:

In cases where discount (say of INR 10) is given by the buyer ECO/seller ECO, **usually the seller receives full consideration (say INR 100)** for the product, however part of it is received from the buyer (say INR 90) and the balance (say INR 10) is discharged to the seller by the buyer ECO/seller ECO, as the case may be.

The invoice on the buyer will be raised for INR 100 (i.e. full consideration received by seller), and **tax would therefore be deducted by the seller side ECO on INR 100, which is the gross amount of sales.**

Comments: The guidelines will provide clarity to taxpayers, while applying TDS provisions under section 194-O of the ITA in respect of the specific transactions discussed in the above Circular.

³ Para 4.3.3 of Circular No. 13 of 2021 dated 30 June 2021



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