

GST applicability in case of E-Commerce



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Relevant Definitions

Electronic Commerce has been defined in Sec. 2(44) of the CGST Act, 2017 to mean the supply of goods or services or both, including digital products over digital or electronic network.

Electronic Commerce Operator has been defined in Sec. 2(45) of the CGST Act, 2017 to mean any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

Tax collection at source : Every electronic commerce operator like Amazon, Flipkart etc (herein after referred to in this article as ECO) is required to collect tax at 1% of the net value of taxable supplies made through it by other suppliers. Where suppliers sell their own products through electronic portals TCS of 1% would not be applicable. Services specified under section 9 (5) of CGST Act viz. (restaurant services , taxi services, housekeeping like plumbing and carpentering etc. and hotel booking) through ECOs will not be included within the net value of taxable supplies for applying 1% TCS. In case of such services specified in section 9(5) above the ECOs will be liable to pay the GST on such specified services as if they are the suppliers. In all the other cases, the supplier while paying the GST can claim credit of the 1% TCS paid by the ECO. Thus introduction of 1% TCS was tax neutral except in cases of exempt goods like (agricultural goods, fruits and books) on which no GST is payable and hence no tax credit can be claimed.

Thus, to summarize for goods and services sold through ECO 1% TCS is required to be collected by ECO and balance GST needs to be paid by the actual supplier. For exceptional cases mentioned in section 9(5) above there is no requirement to collect 1% TCS and the ECO is deemed to be the actual supplier and needs to pay GST as if the ECO is the actual supplier. Persons supplying goods or services through ECO cannot pay tax under composition scheme and will have to pay tax only under normal scheme.

TCS provisions do not apply in following cases :

- Cases where GST is payable under reverse charge mechanism
- Exempt supplies
- Import of good an services

Payment of tax collected - The tax so collected needs to paid to government within 10 days after the end of the month in which such collection is made.

Registration – Every ECO is required to obtain GSTIN registration irrespective of the turnover. This registration is over and above the registration obtained as normal supplier. If ECO has suppliers in different state, registration is required to be obtained in each such state. Even the suppliers supplying goods or services through ECO is mandatorily required to obtain registration irrespective of annual turnover. However, where the e-commerce operators are liable to pay tax on behalf of the suppliers under a notification issued under section 9 (5) of the CGST Act, 2017, the suppliers of such services are entitled for threshold exemption.

Returns of TCS - Every ECO 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 ten days after the end of such month. The statement will be filed 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. (Refer to Section 52(4) and Section 52(5) of the CGST Act, 2017). Details of outward supplies furnished by ECO need to match with the corresponding details furnished by the actual supplier. If any mismatch is identified between the two, and if the same is not rectified by either eCO or supplier in the statement for the month in which discrepancy is communicated, then the amount in respect of which discrepancy is communicated shall be added to the output liability of the said supplier in his return for the month succeeding the month in which the discrepancy is communicated. Such tax needs to be paid along with interest calculated @ 18 % pa from date the tax was due till the date of payment.

Conclusion

One may observe that the ECOs are required to collect 1% TCS and file returns as well in addition to the GST payment and filing by the actual suppliers (net of TCS credit). ECOs mentioned in section 9(5) are on slightly different footing. The objective of section 52 seems to be more control based given the huge scale of online business whereby the details filed by ECOs are verified against details filed by the actual suppliers. While a lot of information is available on this subject within the CGST ACT as well as FAQs on the GST portal, the assesses would truly need to understand their responsibilities in order to discharge them without being subjected to any interest or penalties.