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TDS - Introduction

Tax deduction at source (TDS) is a system, initially introduced by the income tax department. It is one of the modes/method to collect tax, under which, certain percentage of amount is deducted by a recipient at the time of making payment to the supplier. It is similar to “pay as you earn” scheme also known as withholding Tax, in many other countries.

It facilitates sharing of responsibility of tax collection between the deductor and the tax administration.

It also ensures regular inflow of cash resources to the government. It acts as a powerful instrument to prevent tax evasion and expand the tax net, as it provides for the creation of an audit trail.

Who is Required to deduct TDS? (Sec 51(1))

Sec 51(1) Notwithstanding anything to the contrary contained in this Act, the Government may mandate,—

- (a) a department or establishment of the Central Government or State Government; or
- (b) local authority; or
- (c) Governmental agencies; (**Eg. RBI, CBI, SEBI**) or
- (d) such persons or category of persons as may be notified by the Government on the recommendations of the Council,

(hereafter in this section referred to as “the deductor”), to deduct tax at the **RATE OF 1%** from the payment made or credited to the supplier (hereafter in this section referred to as “the deductee”) of taxable goods or services or both, where the total value of such supply, under a contract, **exceeds ₹2,50,000:**

In exercise of powers given under clause (d) of section 51(1) o the Act, Government has notified following person who are required to deduct TDS with effect from 1ST October 2018 through Notification No. 50/2018 dt 13-9-2018:-

- a) an authority or a board or any other body, -
 - (i) set up by an **Act of Parliament or a State Legislature**; or
 - (ii) **established by any Government,**with 51% or more participation by way of equity or control, to carry out and function;
- b) Society** established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860;
- c) public sector undertakings.**

Circular No. 76/2018 DT 31-12-2018 – Clarifying applicability of NN 50/2018-CT Exemption from deducting TDS given in Notification No. 50/2018-CT dt 13-9-2018

CLARIFICATION VIDE CIRULAR NO. 76/2018 dt 31-12-2018

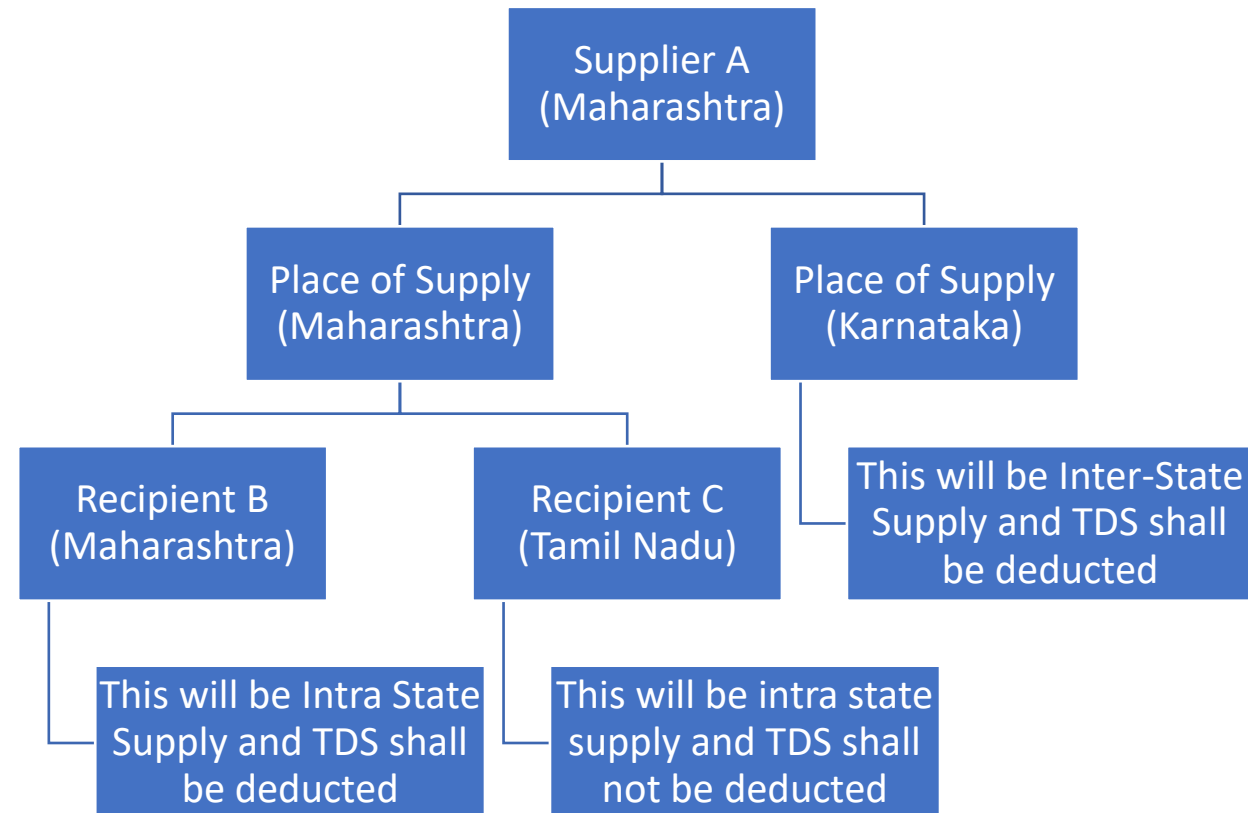
It has been clarified vide Circular No. 76/50/2018 GST dated 31-12-2018 that the rider of 51% or more participation by way of equity or control is applicable to both the items (i) and (ii). Thus, the provisions of section 51 of the CGST Act are applicable only to such authority or a board or any other body set up by an Act of parliament or a State Legislature or established by any Government in which 51% or more participation by way of equity or control is with the Government.

EXEMPTION FROM DEDUCTING TDS GIVEN IN NN 50/2018-CT DT 13-9-2018

- ❖ With respect to the persons specified under clause(a) of sec 51(1) of the Act, nothing in the **Notification No. 50/2018-CT dt 13-9-2018** shall apply to the authorities under the Ministry of Defence, other than the authorities specified in the Annexure-A of NN 50/2018-CT dt 13-9-2018 and their offices, with effect from 1st October, 2018. **(Proviso inserted in NN 50/2018, dt 13-9-2018 through Notification No. 57/2018– Central Tax, dt 23-10-2018)**
- ❖ Nothing in this notification shall apply to the supply of goods or services or both from a public sector undertaking to another public sector undertaking , whether or not a distinct person, with effect from the 1st October, 2018. **(Proviso inserted in NN 50/2018, dt 13-9-2018 through Notification No. 61/2018 – Central Tax, dt 5-11-2018)**
- ❖ Nothing in this section shall apply to the supply of goods or services or both which takes place between one person to another person specified under clause (a),(b),(c) and (d) of sec 51(1) of the Act. **(Proviso inserted in NN 50/2018, dt 13-9-2018 through Notification No. 73/2018 – Central Tax, dt 31-12-2018)**

Sec 51(1) : When Will the Liability To Deduct TDS Be Attracted? What is the Rate Of TDS?

- ❖ Rate of 1% from the payment made or credited to the supplier . It may be noted that Sec 20 of IGST Act provides that in the case of TDS, the deductor shall deduct tax at the rate of 2% from the payment made or credited to the supplier.
- ❖ No deduction of Tax is required when the location of supplier and place of supply is different from the State of the registration of the recipient. **(Proviso to Sec 51(1))**



Sec 51(1) : Value Of Contract

Sec 24 and Sec 25(6): Registration Requirements

Sec 51(2) : When and To Whom Should the TDS be Paid

VALUE OF CONTRACT

- ❖ Where the total value of such supply, under a contract, exceeds ₹ 250,000/-
- ❖ **Explanation.**—For the purpose of deduction of tax specified above, the value of supply shall be taken as the amount **excluding** the central tax, State tax, Union territory tax, integrated tax and cess indicated in the invoice.

REGISTRATION REQUIREMENTS

- ❖ A person who is liable to deduct TDS has to compulsorily register and there is no threshold limit for this.
- ❖ The registration under GST can be obtained without PAN and by using the existing Tax Deduction and Collection Account Number (TAN) issued under the Income Tax Act. Thus it can be said having TAN is mandatory.

WHEN AND TO WHOM SHOULD THE TDS BE PAID

- ❖ TDS shall be paid within 10 days from the end of the month in which tax is deducted. The payment shall be made to the appropriate government which means:
 - The Central Government in case of the IGST and the CGST
 - The State government in case of the SGST

Sec 51(3) And Sec 51(4) : Provisions Relating To Issue Of TDS Certificate

Sec 51(5) : What is the Benefit of TDS to the Deductee

Sec 51(8) : How is Refund of TDS Possible Under GST

PROVISIONS RELATING TO ISSUE OF TDS CERTIFICATE

- ❖ As in Income Tax Law, here also the person deducting tax has to issue the TDS certificate in **FORM GSTR-7A** to the concerned person ~~within 5 days of depositing the tax to the government.~~ [Omitted vide The Finance Act, 2020, w.e.f. 1-1-2021]
- ~~❖ Failure to do so will make the person liable to pay a late fee of ₹ 100 per day up to a maximum of ₹ 5,000. [Omitted vide The Finance Act, 2020, w.e.f. 1-1-2021]~~

WHAT IS THE BENEFIT OF TDS TO THE DEDUCTEE

- ❖ The deductee can claim credit in his electronic cash ledger of this tax deducted and use it for payments of other taxes.

HOW IS REFUND OF TDS POSSIBLE UNDER GST

- ❖ The refund to the deductor or the deductee arising on account of excess or erroneous deduction shall be dealt with in accordance with the provisions of section 54:
- ❖ Provided that no refund to the deductor shall be granted, if the amount deducted has been credited to the electronic cash ledger of the deductee.

Sec 51(6) : Provisions Relating to Failure to Pay to the Government

Sec 51(7) : The determination of the amount in default

PROVISIONS RELATING TO FAILURE TO PAY TO THE GOVERNMENT

- ❖ If any deductor fails to pay to the Government the amount deducted as tax under sub-section (1), he shall pay interest in accordance with the provisions of sub-section (1) of section 50, in addition to the amount of tax deducted.

DETERMINATION OF THE AMOUNT IN DEFAULT

- ❖ The determination of the amount in default under this section shall be made in the manner specified in section 73 or section 74.

When TDS is not required to be made?

1. Total value of taxable supply is less than or equal to 2.5 lakh under a contract.
2. Contract value exceeds INR 2.5 Lakh for taxable supply and exempted supply, but the value of taxable supply under the contract is less than or equal to 2.5 Lakh.
3. Receipt of services which are exempted under Notification 12/2017-CTR dated 28-6-2017.
4. Receipt of good which are exempted under Notification 2/2017-CTR dated 28-6-2017.
5. Transaction specified in schedule III of the CGST/SGST Acts 2017, irrespective of the value.
6. Goods on which GST is not leviable.
7. Location of the supplier and place of supply is in a State/ UT which is different from the State/UT where the deductor is registered.
8. Tax is to be paid on reverse charge basis.
9. Where payment relates to a tax invoice that has been issued before 1.10.2018.
10. Where any amount was paid in advance prior to 1.10.2018 and the tax invoice has been issued on or after 1.10.2018 to the extent of advance payment made before 1.10.2018
11. Where the payment is made to an unregistered supplier.
12. Where the payment relates to “Cess” component.

Illustrations of Various Situations Requiring Deduction of TDS

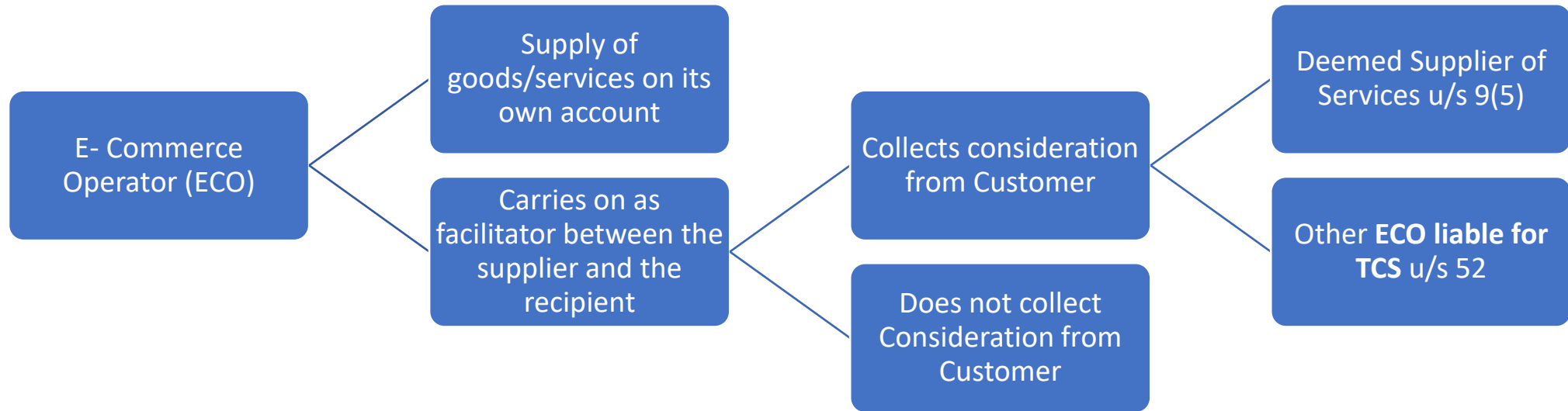
Situation/Contract	Deduction required YES/NO	Remarks
Finance Department is making a payment of Rs.3 Lakh to a supplier of 'printing & stationery'.	Yes	Where the total contract value of taxable supply is more than Rs.2.5 Lakh deduction is mandatory
Education Department is making payment of Rs.5 Lakh to a supplier of 'printed books and printed or illustrated post cards' where payment for books is Rs.2 Lakh and Rs.3 Lakh is for other printed or illustrated post cards.	Yes, deduction is required in respect of payment of Rs. 3 Lakh only i.e. for payment in respect of taxable supply.	Books are exempted goods; no deduction is required in respect of supply of books. However, payment involving 'printed or illustrated post cards' is for supply of taxable goods and value of such supply is > Rs.2.5 Lakh; so deduction is required
Finance Department, is making payment of Rs.1.5 Lakh to a supplier of 'car rental service'.	No	Where the total contract value of taxable supply is more than Rs.2.5 Lakh deduction is mandatory
Health Department executed a contract with a local supplier to supply "medical grade oxygen" of Rs.2.6 Lakh (including GST) and is making full payment.	No	Total value of supply as per the contract is Rs.2.6 Lakh (including GST). Tax rate is 12%. So, taxable value of supply (excluding GST) stands at $Rs.2.6L \times 100/112 = Rs.2.32 L < Rs.2.5 Lakh$ Hence, deduction is not required.
Municipal Corporation of Kolkata purchases a heavy generator from a supplier in Delhi. Now, it is making payment of Rs.5 Lakh and IGST @18% on Rs.5 Lakh for such purchase.	Yes, deduction is required @2%	Deduction is required in case of inter-State supply and if the value of taxable supply under a contract exceeds Rs.2.5 Lakh.

Illustrations of Various Situations Requiring Deduction of TDS

Situation/Contract	Deduction required YES/NO	Remarks
Fisheries Department is making a payment of Rs.10 Lakh to a contractor for supplying labour for digging a pond for the purpose of Fisheries.	No	This supply of service is exempt in terms of Sl. No. 3 of notification No.12/2017 – Central Tax (Rate) dated 28.06.2017 and hence deduction is not required.
Municipality is making payment of Rs.5 Lakh to a supplier in respect of cleaning of drains where the value of supply of goods is not more than 25% of the value of composite supply.	No	This supply of service is exempt in terms of Sl. No. 3A of Notification No. 12/2017 – CTR dt 28-6-2017 as amended by notification no. 2/2018 – CTR dt 25-1-2018 and hence deduction is not required
Government school is making a payment of Rs.3 Lakh to a supplier for supply of cooked food as mid-day meal under a scheme sponsored by Central/State Government.	No	This supply of service is exempt in terms of Sl. No. 66 of notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017 as amended and hence deduction is not required.
Health Department is making payment of Rs.10 Lakh to a supplier for supply of Hearing Aids.	No	This supply of goods is exempt in terms of Sl. No.142 of notification No. 2/2017 – Central Tax (Rate) dated 28.06.2017 as amended and hence deduction is not required.

TCS under GST

- Tax Collected at Source (TCS) under GST means the tax collected by an e-commerce operator from the consideration received by it on behalf of the supplier of goods, or services who makes supplies through operator's online platform.
- TCS will be charged as a percentage on the net taxable supplies.
- Effective date of implementation of TCS provisions is 1st Oct, 2018.



Who is Liable to Collect TCS Under GST?

When Will the Liability of Collecting TCS Arise?

WHO IS LIABLE TO COLLECT TCS UNDER GST?

- Certain operators who own, operate and manage e-commerce platforms are liable to collect TCS.
- TCS applies only if the operators collect the consideration from the customers on behalf of vendors or suppliers.
- In other words, when the e-commerce operators pay the consideration collected to the vendors they have to deduct an amount as TCS and pay the net amount.

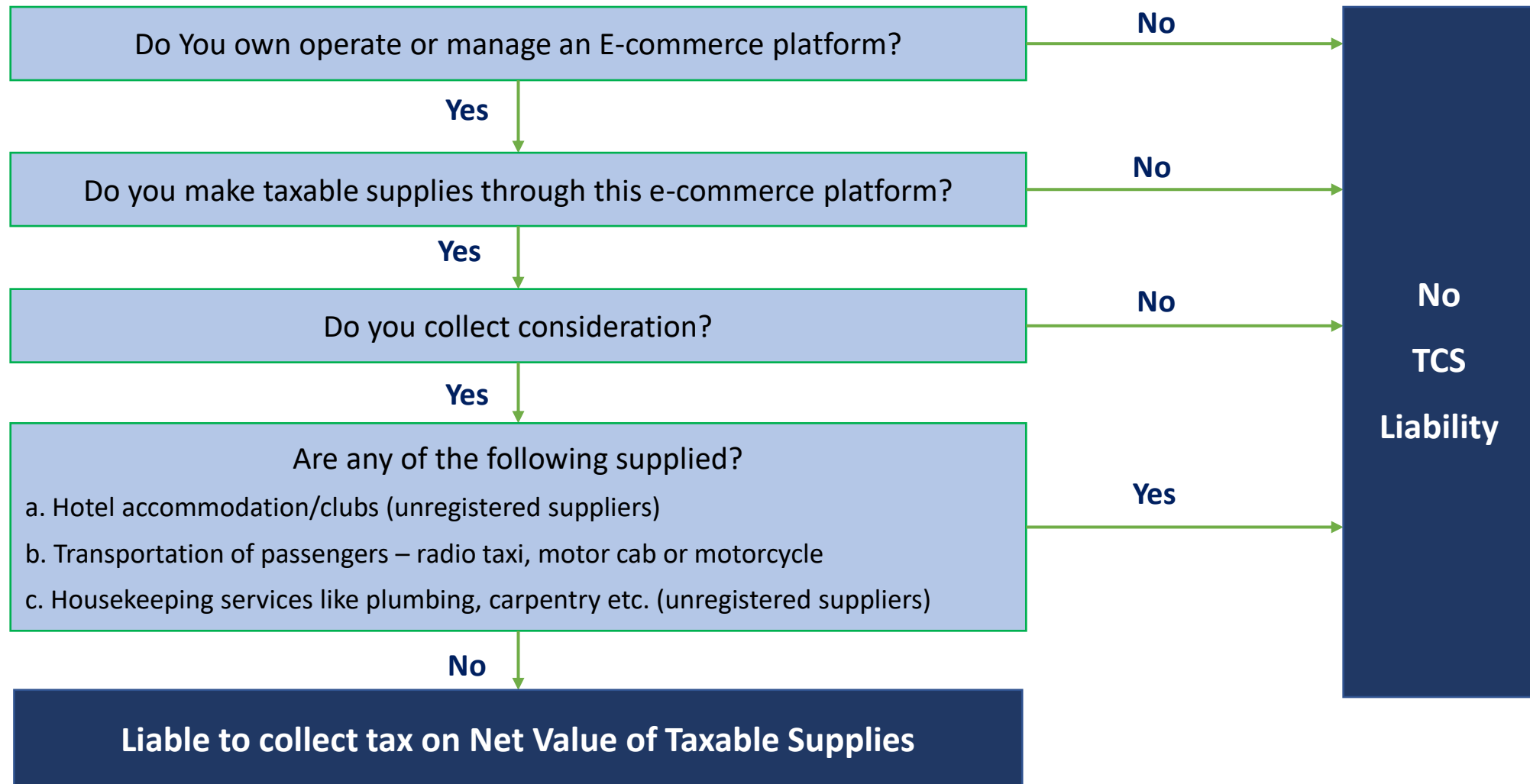
Here are few exceptions to the TCS provisions for the services provided by an e-commerce platforms

- Hotel accommodation/clubs (unregistered suppliers)
- Transportation of passengers – radio taxi, motor cab or motorcycle
- Housekeeping services like plumbing, carpentry etc. (unregistered suppliers)

WHEN WILL THE LIABILITY OF COLLECTING TCS ARISE?

- TCS will be collected by e-commerce operators while making a payment to the vendor.
- This payment will be the consideration collected on the vendor's behalf for the supplies made by him via the online portal.
- This tax will be collected on the net value of taxable supplies.

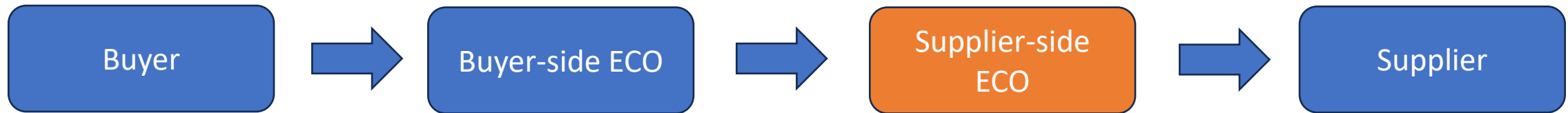
Who is Liable to Collect TCS Under GST?



Who is Liable to Collect TCS Under GST?

Circular No. 194/06/2023-GST dated 17-7-2023 - Clarification on TCS liability under Sec 52 of the CGST Act, 2017 in case of multiple E-commerce Operators in one transaction.

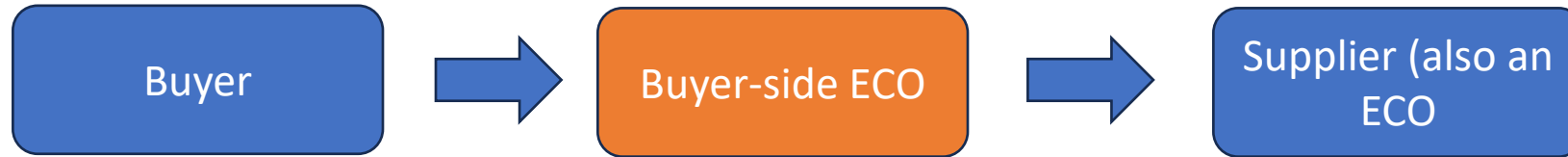
Issue 1: In a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and where the supplier-side ECO himself is not the supplier in the said supply, who is liable for compliances under section 52 including collection of TCS?



Clarification: In such a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and where the supplier-side ECO himself is not the supplier of the said goods or services, the compliances under section 52 of CGST Act, including collection of TCS, is to be done by the **supplier-side ECO** who finally releases the payment to the supplier for a particular supply made by the said supplier through him. e.g.: Buyer-side ECO collects payment from the buyer, deducts its fees/commissions and remits the balance to Seller-side ECO. Here, the Seller-side ECO will release the payment to the supplier after deduction of his fees/commissions and therefore will also be required to collect TCS, as applicable and pay the same to the Government in accordance with section 52 of CGST Act and also make other compliances under section 52 of CGST Act. In this case, the Buyer-side ECO will neither be required to collect TCS nor will be required to make other compliances in accordance with section 52 of CGST Act with respect to this particular supply.

Who is Liable to Collect TCS Under GST?

Issue 2: In a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and the Supplier-side ECO is himself the supplier of the said supply, who is liable for compliances under section 52 including collection of TCS?



Clarification: In such a situation, TCS is to be collected by the **Buyer-side ECO** while making payment to the supplier for the particular supply being made through it.

e.g. Buyer-side ECO collects payment from the buyer, deducts its fees and remits the balance to the supplier (who is itself an ECO as per the definition in Sec 2(45) of the CGST Act). In this scenario, the Buyer-side ECO will also be required to collect TCS, as applicable, pay the same to the Government in accordance with section 52 of CGST Act and also make other compliances under section 52 of CGST Act.

Rate of TCS and Due Date of Depositing TCS to the Government

RATE OF TCS

- The rate is notified by the CBIC in Notification no. 52/2018-CTR under CGST Act and 02/2018-ITR under IGST Act.
- The dealers or traders supplying goods and/or services through e-commerce operators will receive payment after deduction of TCS @ 1%.
- This means for an intra-state supply TCS at 1% will be collected, i.e. 0.5 % under CGST and 0.5% under SGST. Similarly, for a transaction between the states, the TCS rate will be 1%, i.e. under the IGST Act.

Rate	Act
0.5%	SGST Act
0.5%	CGST Act
1%	IGST Act

DUE DATE OF DEPOSITING TCS TO THE GOVERNMENT

- TCS will be deducted during the month in which the supply is made. It will be deposited within 10 days from the end of the month of supply to the credit of the government. Payment of the tax collected will be made in the following manner :
 - a) IGST & CGST will be paid to the central government
 - b) SGST to respective state governments

Registration Requirements

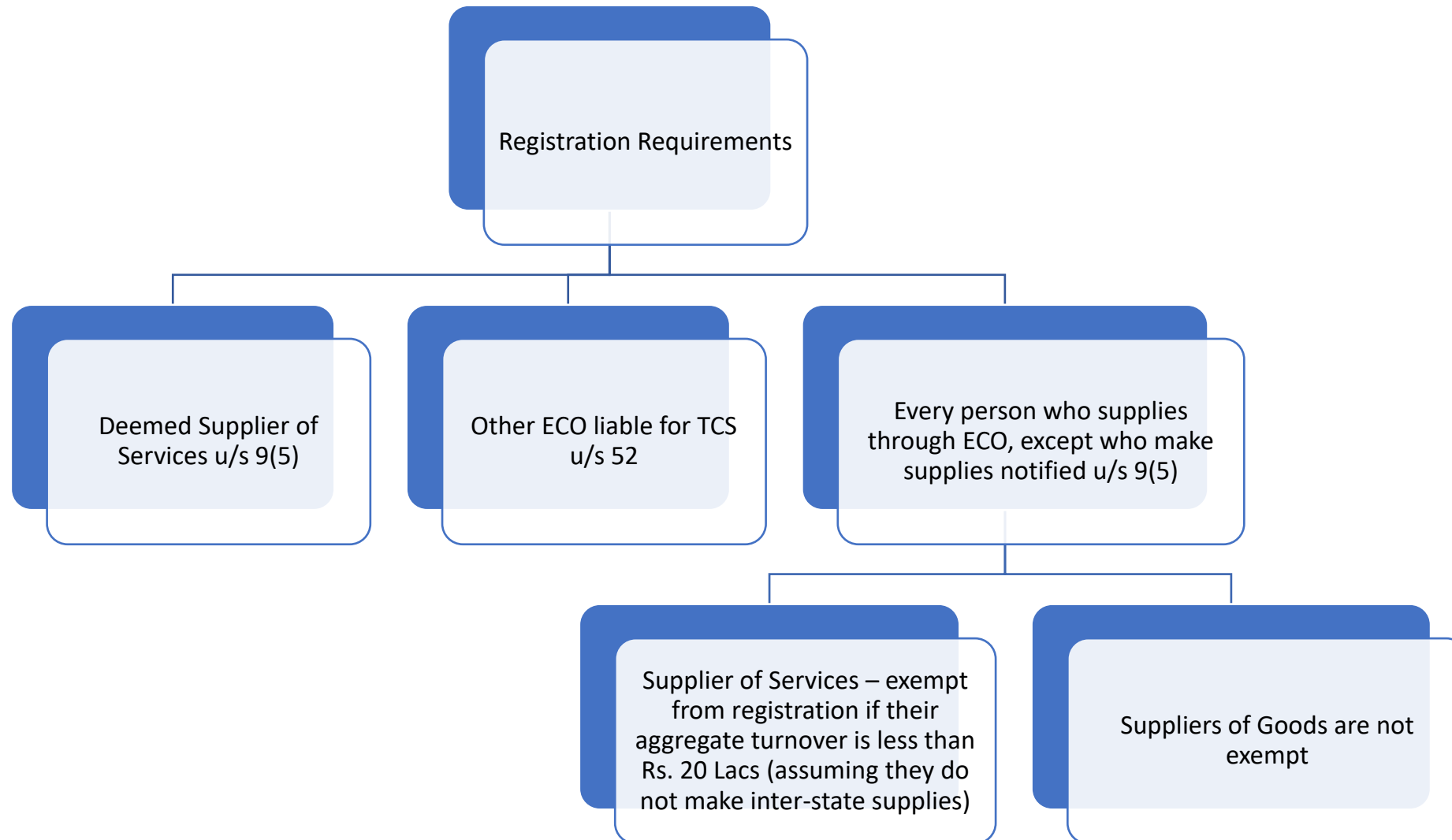
Registration conditions are as follows:

- 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) Person who are required to pay tax under sub-section (5) of section 9; [OLA/UBER, OYO Rooms, Urban Clap]

Note –

- The suppliers of services making a supply through an e-commerce platform are exempt from registration if their aggregate turnover is less than Rs 20 Lakhs (assuming they do not make inter-state supplies).
- Suppliers of goods supplying through an e-commerce platform are not exempt from registration.
- An e-commerce company must register itself in GST in every state it supplies goods or services to.

Registration Requirements



Computation of Taxable Value of the Supplies For TCS

The value for the collection of the tax will be the 'Net Value Of Taxable Supplies.' This net taxable value will be calculated as under :

The total value of taxable supplies of goods and/or services (other than notified services under GST law by all registered persons)
Less: Taxable supplies returned to the suppliers through the e-commerce operator
=Net value of Taxable Supplies

For eg – XYZ Ltd, a registered supplier is supplying goods through an e-commerce operator. It has made supplies of Rs. 55,00,000 in the month of Sep 2018. The goods returned were worth Rs. 5,00,000 to XYZ Ltd. during the month of Sep 2018.

Here, the net value of taxable supplies for TCS collection will be Rs. 50,00,000 and TCS @ 1%, i.e Rs. 50,000 will be deducted by the e-commerce operator. Hence, the final payment to be made to the supplier is Rs 49,50,000.

FORM USED FOR TCS RETURNS

- E-commerce operators have to file GSTR-8 by 10th of the next month in which the tax was collected.
- This return will only be filed once the tax collected has been deposited to the respective credit of the government. For instance, the due date for GSTR-8 for September 2018 is on the 10th of October 2018.
- Additionally, the ECO is also mandated to file an Annual Statement on or before 31st day of December following the end of the financial year.
- Also, two new provisos are being inserted in sub-section (4) and (5) of section 52 of the CGST Act so as to empower the Commissioner to extend the due date for furnishing of monthly and annual statement by the person collecting tax at source.

USING GSTR-8 DATA BY E-COMMERCE SELLERS IN INDIA

- The details submitted by the operators in GSTR 8 will be available to all the suppliers in 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 the operator and the supplier. If the discrepancy is not rectified within the given time period, then the tax amount will be added to the liability of the supplier. The supplier will have to pay the difference along with the interest if any.

Notice to the Operator and Clarification by Department

- An officer not below the rank of Deputy Commissioner can issue notice to an operator, asking him to furnish details relating to volume of the goods/services supplied, stock of goods lying in warehouse/godown.
- The operator is required to furnish such details within 15 working days.
- In case an operator fails to furnish the information, besides being liable for penal action under section 122, it shall also be liable for penalty up to ₹ 25,000.

LATE FEES

A penalty of Rs. 200 per day is levied if the GSTR-8 is not filed.
The maximum late fees that can be charged is Rs. 5,000.

[This late fees has been inserted vide The Finance Act, 2022, w.e.f. 1-10-2022]

AMENDMENT OF RETURN (Sec 52(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:

Further that no such rectification of any omission or incorrect particulars shall be allowed after the [30th day of November] following the end of the financial year or the actual date of furnishing of the relevant annual statement, whichever is earlier.

[The last date of amendment of return has been modified vide The Finance Act, 2022, w.e.f. 1-10-2022, it earlier stated “due date for furnishing of statement for the month of September”]

Q. Whether e-commerce operator is required to obtain registration in every State/UT in which supplier listed on their e-commerce platform are located to undertake the necessary compliance as mandated under the law??

Ans. 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 at its place of business for obtaining registration in that State/UT where it does not have physical presence.

Q. Foreign e-commerce operator do not have place of business in India since they operate from outside. But their supplier and customer are located in India. So, in this scenario will the TCS provision be applicable to such e-commerce operator and if yes, how will foreign e-commerce operator obtain registration?

Ans. 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.

Q. It is necessary for e-commerce operators who are already registered under GST and have GSTIN, to have separate registration for TCS as well?

Ans. E-commerce operator has to obtain separate registration for TCS irrespective of the fact whether e-commerce is already registered under GST as a supplier or otherwise and has GSTIN.

Q. At what time should the e-commerce operator collect TCS?

Ans. TCS is to be collected once supply has been made through the e-commerce operator and where the business model is that the consideration is to be collected by the e-commerce operator irrespective of the actual collection of the consideration.

For Eg - If the supply has taken place through the e-commerce operator on 30th Oct.2018 but the consideration for the same has been collected in the month of Nov.2018, then TCS for such supply has to be collected and reported in the statement for the month of Oct. 2018.

Q. Whether TCS to be collected on exempt supplies?

Ans. No, TCS is not required to be collected on exempt supplies.

Q. Whether TCS to be collected on supplies on which the recipient is required to pay tax on reverse charge basis?

Ans. No, TCS is not required to be collected on supplies on which the recipient is required to pay tax on reverse charge basis.

Q. Whether TCS is to be collected in respect of supplies made by the composition taxpayers?

Ans. As per sec 10(2)(d) 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 taxpayers does not arise.

Q. Is there any exemption on Gold, owing to the fact that rate of GST is only 3% and TCS on it would erode the margin for the seller?

Ans No such exemption from TCS has been granted.

Q. Under Sec 52, e-commerce operator collects TCS at the net of returns. Sometimes sales return is more than the sales and hence can negative amount be reported?

Ans Negative amount cannot be declared. There will be no impact in the next tax period also. In other words, if returns are more than the supplies made during any tax period, the same would be ignored in current as well as future periods.

Q. It is very common that the customers of e-commerce companies return goods. How these sales returns are going to be adjusted?

Ans An e-commerce company is required to collect tax only on the net value of taxable supplies made through it. In other words, value of the supplies which are returned (supply return) may be adjusted from the aggregate value of taxable supplies made by each supplier (i.e, on GSTIN basis). In other words, if two suppliers “A” and “B” are making supplies through an e-commerce operator, the “net value of taxable suppliers” would be calculated separately in respect of “A” and “B”.

If the value of returned supplies is more than supplies made on behalf of any of such supplier during any tax period, the same would be ignored in his case.

Q. Whether interest would be applicable on non-collection of TCS?

Ans As per sec 52(6), of the CGST Act, interest is applicable on omission as well as in case of incorrect particular noticed. In such a case, interest is applicable since it is a case of omission. Further penalty under sec 122(vi), of the CGST Act would also be leviable.

Q. What will be the place of supply for e-commerce operator for recharge of talk time of the Telecom Operator/recharge of DTH/ in relation to convenience fee charged from the customers on booking of air tickets, rail supplied through its online platform?

Ans As per sec 12(11), of the IGST Act, the address on record of the customer with the supplier of services is the place of supply.

Q. 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?

Ans 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.