

# GST Implications on E-commerce sector

## Introduction:

E-commerce transaction is increasing rapidly in the view of this even government introduced some new provisions through GST which was not there in Pre GST laws, **E-commerce** transactions look a bit complicated because many transactions are happening at the same time. Thus, when a person is buying goods on Amazon, two transactions are happening at the same time. The supplier is supplying goods through Amazon and Amazon is supplying services to the supplier. Both the transactions are different transactions and subject to GST in its own nature and this article covers all the relevant aspects of **E-commerce transaction under GST**.

## 1) What is Electronic Commerce (e-commerce)?

**Electronic Commerce** means the supply of goods or services or both, including digital products over digital or electronic network.

**Electronic commerce operator** defines as “Electronic Commerce Operator means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce”

## 2) What is OIDAR?

**Online Information Database Access and Retrieval services** (hereinafter referred to as **OIDAR**) is a category of services provided through the medium of internet and received by the recipient online without having any physical interface with the supplier of such services. E.g. downloading of an e-book online for a payment would amount to receipt of **OIDAR** services by the consumer downloading the e-book and making payment.

## Difference between **OIDAR** and **E-commerce**

- Electronic commerce provides platform for others to sell and buy goods whereas **OIDAR** itself provides services with least human intervention
- Electronic commerce involves buying and selling of goods and services whereas **OIDAR** deals only in services

### 3) There are 6 basic types of e-commerce:

SR no	Types of ecommerce	Meaning	Examples
1	Business-to-Business (B2B)	Business-to-Business (B2B) e-commerce encompasses all electronic transactions of goods or services conducted between companies.	Indiamart ,Walmart , Alibaba
2	Business-to-Consumer (B2C)	The Business-to-Consumer type of e-commerce is distinguished by the establishment of electronic business relationships between businesses and final consumers.	Amazon, Dmart , Flipkart .
3	Consumer-to-Consumer (C2C)	Consumer-to-Consumer (C2C) type e-commerce encompasses all electronic transactions of goods or services conducted between consumers.	Ebay, OLX, Quickr
4	Consumer-to-Business (C2B).	A large number of individuals make their services or products available for purchase for companies seeking precisely these types of services or products. This type of e-commerce is very common in crowdsourcing based projects.	Odesk work, Freelancer.in
5	Business-to-Administration (B2A)	This part of e-commerce encompasses all transactions conducted online between companies and public administration.	Accela.com
6	Consumer-to-Administration	The Consumer-to-Administration model encompasses all electronic transactions conducted between individuals and public administration	Education – distance learning ,Filing taxes, health services

### 4) Registration requirement for ECO (Amazon, Flipkart, etc.)

- **Compulsory Registration for ECO:** Every electronic commerce operator irrespective of his turnover, has to compulsorily register.
- **Compulsory Registration for person supplying through ECO:** Persons who supply goods or services or both, other than supplies specified u/s 9(5), through such electronic commerce operator who is required to collect tax at source under section 52 has to compulsorily register as per provisions of section 24(ix).However, the persons making supplies of services, other than supplies specified under subsection (5) of section 9 is allowed to take benefit of threshold limit vide Notification No.

65/2017 – Central Tax dated 15/11/2017. **Such benefit is not given to person supplying goods through ECO, he is liable to be registered irrespective of turnover.**

{Explanation: Person supplying services other than transportation via radio taxi, motor cab, maxicab through such ECO who is required to collect tax at source are required to register only if their turnover exceeds limit of 20 lakhs/10 lakhs, the person specified above are not required to register irrespective of their turnover. **The person supplying goods is required to register irrespective of their turnover.**}

- **Registration of foreign Electronic Commerce Operator:** Foreign Electronic Commerce Operator is required to obtain registration under GST. Such foreign e-commerce operator would be liable to collect TCS on such supply and would be required to obtain registration in each State or union territory (UT). If the foreign e-commerce operator does not have physical presence in a particular State or UT, he may appoint an agent on his behalf.
- **State wise Registration:** Electronic Commerce Operator is required to obtain GST Registration in each State If he has suppliers in different States. However, he can indicate his head office as place of business and file all the returns through Head office, if he does not have place of business in that State. Application Form for Registration: E Commerce operator need to file **Form GST REG 07**.
- **Certificate of Registration:** The proper officer may grant registration after due verification and issue a certificate of registration in **Form GST REG-06** within a period of three working days from the date of submission of the application – rule 12(2) of CGST Rules.
- **Cancellation of Registration:** If the proper officer enquires or ascertains through a proceeding that a person is no longer liable to deduct TDS or collect TCS, then the officer will cancel the registration. The cancellation shall be communicated to the said person electronically in **Form GST REG-08**.

The officer will follow the same procedure for cancellation as for normal taxpayers

## 5) Time of supply

Types of transaction:

- **Between Seller & Buyer**
    - A) Time of **supply of goods** is the earliest of:
      1. Date of issue of invoice
      2. Last date on which invoice should have been issued
      3. The date on which payment is entered in his books of accounts
- Or
- The date on which the payment is credited to his bank account.

B) Time of **supply of services** is the earliest of:

1. Date of issue of invoice (to be issued within 30 days from provision of service)
2. The date on which payment is entered in his books of accounts

Or

The date on which the payment is credited to his bank account.

3. Date of provision of services (if invoice is not issued within prescribed period)

Time of issue of **invoice** for supply

As per section 31 of the CGST Act, **an invoice for supply of goods** needs to be issued before or at the time of removal of goods for supply to the recipient, where the supply involves movement of goods. However, in other cases, an invoice needs to be issued before or at the time of delivery of goods or while making goods available to the recipient.

Similarly, an **invoice for supply of services** needs to be issued before or after the provision of service but not later than thirty days from the date of provision of service.

- **Between Seller & ECO** – 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 example, if the supply has taken place through the e-commerce operator on 30th October, 2018 but the consideration for the same has been collected in the month of November, 2018, then TCS for such supply has to be collected and reported in the statement for the month of October, 2018.

## 6) Place of supply

The transaction involves 3 parties

- A). Buyer
- B). Seller
- C). ECO

Types of transaction:

- Between Seller & Buyer

For **Goods**

- Supply involving movement of goods: the place of supply is location of goods at the time when movement of goods terminate for delivery to recipient.
- Bill to Ship to Model: When goods are delivered by supplier to recipient on instruction of original buyer, then **place of supply is principal place of business of such original buyer** and not recipient.

- Supply not involving movement of goods: The place of supply is location of goods at the time of delivery to the recipient.
- If supply involve installation, then the place of installation is the place of supply of goods
- If goods are supplied on board a conveyance (train, motor vehicle) the place of supply is location of goods from where the goods have been taken on board

#### For Services

As per **general rule** the place of supply of **services** made to a registered person is the location of the person receiving the services. Since the supplier has GSTIN of person receiving the services, the location of such GSTIN is the place of supply

However, if services are supplied to an unregistered person, the place of supply is:

- a) Location of unregistered person if address is available
- b) Location of supplier in other cases

#### ➤ **Between Seller & ECO**

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.

## 7) VALUE OF SUPPLY

Types of transaction:

- **Between Seller & Buyer** – The value of supply will be as per section 15 and will include
  - 1) Taxes other than GST
  - 2) Third party payment made by recipient which were to be paid by supplier and not included in invoice value
  - 3) Subsidies linked to price other than by the government
  - 4) Interest late fee and penalty for delay in consideration
  - 5) Discount given before or at the time of supply (to be reduced from invoice value)
- **Between Seller & ECO** The value of supply for goods and services provided through ECO which are not mentioned in sec 9(5) shall be the net value of taxable supplies. 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. **[NET VALUE OF TAXABLE SUPPLIES = AGG VALUE OF SUPPLIES THROUGH ECO - Supplies returned- Supplies under section 9(5)]**

## 8) Levy and collection

- **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))
- **Between Seller & ECO** GST on commission value/other charges earned by ECO for providing market platform to seller. (GST shall be paid by the ECO)
- **Specified Services u/s 9(5) of CGST Act:** In respect of specified services, tax shall be paid by the ECO on behalf of the service suppliers if such services are supplied through it and all the provisions of the Act shall apply to such ECO as if he is the supplier liable to pay tax in relation to the supply of such services. The Government has notified following categories of services, the tax on intra-State/ inter-state supplies shall be paid by the ECO –

Sr. no	Description of service	Supplier of service	Person liable to pay GST
A	Transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle	Any person	Eco
B	Providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes	Any person except who is liable for compulsory registration under the law	Eco
C	Services by way of house- keeping, such as plumbing, carpentering etc.	Any person except who is liable for compulsory registration under the law	Eco

**above mentioned suppliers of services covered u/s 9(5) are exempted from compulsory registration and can take benefit of threshold limit.**

## 9) TCS UNDER GST

- Every electronic commerce 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.

- **Monthly Return**– ECO should make the tax collection during the month in which the consideration amount is collected from the recipient. The amount of TCS collected by the ECO is to be deposited to the Government and ECO is required to furnish a statement in **Form GSTR-8**, electronically within 10 days after the end of the month in which amount was so collected.
- **Annual Return** – The e-commerce operator is required to file Annual Statement before 31st December of following financial year. Every e-commerce operator required to collect tax at source under section 52 of CGST Act shall furnish annual statement in **Form GSTR-9B**. The payment of tax collected at source is to be made through electronic cash ledger only within 10 days from close of month. Payment of TCS amount cannot be made through electronic credit ledger

### Non Applicability of TCS Provisions:

- TCS provisions are not applicable where GST is payable under reverse charge. TCS provisions also do not apply in case of exempt supply
- TCS provisions do not apply on import of goods or services
- There is no TCS if you are selling your own products through electronic portal
- Every person supplying goods or services through an ecommerce operator is mandatorily required to register. However, vide Notification 65/2017-Central Tax dated 15th November, 2017 a person supplying services, other than supplier of services under section 9 (5) of the CGST Act, 2017, through an e-commerce platform were 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. Since such suppliers are not liable for registration, ecommerce operators are not required to collect TCS on supply of services being made by such suppliers through their portal.

### Credit of TCS

The amount of TCS deposited by the operator with the appropriate Government will be reflected in the electronic cash ledger of the actual registered supplier (on whose account such collection has been made) 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 tax liability by the actual supplier.

**10) Penalty – for non-collection of TCS** Interest is applicable on omission as well in case of incorrect particulars noticed. In such a case, interest is applicable since it is a case of omission. Further Penalty will be as follows

For any reason, **other than the reason of fraud** or any wilful misstatement or suppression of facts to evade tax, shall be liable to a **penalty of ten thousand rupees or ten percent of the tax due from such person, whichever is higher** – As per section 52(6) of CGST Act.

For reason of **fraud or any wilful misstatement** or suppression of facts to evade tax, shall be liable to a **penalty equal to ten thousand rupees or the tax due from such person, whichever is higher.**

An officer not below the rank of Joint Commissioner may require the operator to furnish details relating to (i) supplies of goods / services effected through the operator during any period;(ii) stock of goods held by actual supplier making supplies through such operator in the godowns or warehouses belonging to the operator and registered as additional place of business by the actual supplier. The operator is required to furnish the above information within 5 working days from the date of service of notice asking such information. In case of failure to furnish such information, the penalty could be extended to **Rs. 25,000/-**

## **11) CONCLUSION**

With the increase in opportunities in this sector as mentioned above there is a huge amount of revenue for the government through the growth of this industry. Though the ecommerce as a business has become versatile and huge transactions take place day in and day out, these transactions have been brought under the ambit of GST without any ambiguity relating to any provisions of the act. All in all, GST is expected to be a mixed bag for electronic commerce, with the benefits outweighing the concerns.

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**20.05.2021**

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