ELECTRONIC COMMERCES

For the sake of brevity, the terms electronic commerce operator, input tax credit and CGST Act have been referred to as ECO, ITC and GST Act respectively in this Chapter.

LEARNING OUTCOMES

After studying this Chapter, you will be able to–

- comprehend and describe the terms electronic commerce and electronic commerce operator in the context of GST regime.
- explain the various aspects relating to taxation of E-commerce transactions, and various other provisions and compliances which the industry needs to follow.
- understand and explain the concept of Tax Collection at Source (TCS) on the E-commerce transactions.
1. INTRODUCTION

Electronic commerce (e-commerce) has become a buzzword for businesses over the past few years, with increased awareness about the use of computer and communication technologies to simplify business procedures and increase efficiency. E-commerce is more than a technology, it is a business model built around the application of information and communication technologies to cover any aspect of the value chain for products and services. Perhaps the clearest indication of the growing importance of e-commerce in the global economy is the rapidity with which internet use has grown and spread during the last decade. The boom in e-commerce also includes increased use of other media for trade, such as the telephone, television, fax, and electronic payment.

In recent years, e-commerce in India has managed to capture the eye-balls and also the mind-space of the consumers at large such as never before and with this unprecedented growth, India has become the second largest market for e-commerce.

MEANING OF E-COMMERCE

Electronic commerce (e-commerce) means the supply of goods and/or services including digital products over digital or electronic network. In common parlance, e-commerce is the buying and selling of goods and services on the Internet electronically, especially the World Wide Web and making payment electronically or via any other mode.
ELEMENTS OF E-COMMERCE TRANSACTION

In an e-commerce transaction, all the traditional elements of commerce exist though with some differences. The following elements are ordinarily present in an e-commerce transaction:

- A product or service;
- A place, namely, a website, that displays the products/services and where a business transaction takes place;
- A way for the people to visit the place (website);
- A way to accept orders, e.g., an on-line form;
- A way to accept money – normally through credit cards. Alternatively, the companies may use more traditional billing techniques either on-line or through the mail or cash on delivery;
- A facility to ship products to customers (often, outsourced). In the case of software and information, the product can be transferred over the Web through a file download mechanism;
- A way to accept rejected/returned goods and services;
- A way to handle warrantee claims, if necessary; and
- A way to provide customer service [often through e-mail, on-line forms, on-line knowledge bases and frequently asked questions (FAQs)].

These elements are not exhaustive considering the continuous changes in the domain of e-commerce. Apart from the above elements of e-commerce transactions, certain facilities are also provided on the website, for example, information of the exact status of an order may be provided to the customer.

VARIOUS BUSINESS MODELS FOR E-COMMERCE

In the most basic sense, a business model is the method of doing business by which an organization can sustain itself i.e., generate revenue. The need for e-commerce companies to adopt and innovate in the light of technological challenges and rising competition, has led to the evolution of multiple business models resulting into a very crowded and complex market.
PICTORIAL VIEW OF VARIOUS E-COMMERCE MODELS

(i) Principal to Principal [P2P]

Example: Urban ladder

(ii) Principal to Agents [P2A]

Example: Flipkart, Snapdeal, Amazon

(iii) Aggregator

Example: Trivago.com, Ola Cabs, Uber etc.
TAXATION OF ELECTRONIC COMMERCE TRANSACTIONS

The erstwhile regime posed several issues for the E-commerce sector. Under the Erstwhile laws, State government had the power to tax sale of goods and Centre government used to levy tax on services. VAT which was levied on sale of goods was levied by the originating state, thereby causing loss to state where goods were actually consumed. Hence, some states started levying Entry tax on entry of goods into the State. This resulted into multiple levies across states with multiple registrations and state compliances.

The large e-commerce companies having Pan-India operations faced several issues in the tax structure with increased compliances across the states and having the cascading impact of taxes resulting into higher costs. Renowned E-Commerce operators like Flipkart and Amazon had to suffer the heat of endless litigation under the CST and VAT laws.

The GST regime specifically recognizes the E-commerce operator and promises seamless credit on goods and services across the entire supply chain. It also makes a much needed shift from multiple taxes to a single tax regime, making the structure simpler.

Sections 9(5) and section 52 of the CGST Act stipulate the provisions relating to electronic commerce. State GST laws also prescribe identical provisions in relation to electronic commerce. Further, section 5(5) of the IGST Act also stipulate the provisions relating to electronic commerce.

Provisions of electronic commerce under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.
2. RELEVANT DEFINITIONS

- **Electronic Commerce** means the supply of goods or services or both, including digital products over digital or electronic network [Section 2(44)].

- **Electronic Commerce Operator** means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce [Section 2(45)].

- **Taxable person** means a person who is registered or liable to be registered under Section 22 or section 24 [Section 2(107)].

  As per section 24 of the Act,
  Clause (ix), persons supplying goods or services or both other than supplies specified under section 9(5) through electronic commerce operator who is required to collect tax at source under section 52 of the Act.
  Clause (x) specifically requires every electronic commerce operator to get registered, irrespective of threshold.

- **Taxable supply** means a supply of goods or services or both which is leviable to tax under this Act [Section 2(108)].

3. LEVY OF GST ON E-COMMERCE TRANSACTIONS [SECTION 9(5) OF CGST ACT & SECTION 5(5) OF IGST ACT]

As per Section 9(5) of the CGST Act and Section 5(5) of the IGST Act, the Central Government is empowered to specify the categories of services on which tax shall be paid by the electronic commerce operator (ECO) if such services are supplied through it. Therefore, if any service is specified by the Government, the tax on such service shall be paid by the E-Commerce operator. Further, the E-Commerce operator shall be treated as the person liable to pay tax and all the compliances need to be done by him.
Notification No. 17/2017 CT (R) dated 28.06.2017/Notification No. 14/2017 IT(R) dated 28.06.2017, as amended has notified the following categories of services supplied through ECO for this purpose –

(a) services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle

(b) 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 GST law.

(c) 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 GST law.

### Meaning of various terms

(i) **Radio taxi:** means a taxi including a radio cab, by whatever name called, which is in two-way radio communication with a central control office and is enabled for tracking using Global Positioning System (GPS) or General Packet Radio Service (GPRS).

(ii) **Maxicab/ Motorcab/ Motor cycle:** shall have the same meanings as assigned to them respectively in clauses (22), (25) and (26) of section 2 of the Motor Vehicles Act, 1988. As per Motor Vehicles Act, 1988,

**Maxicab:** means any motor vehicle constructed or adapted to carry more than 6 passengers, but not more than 12 passengers, excluding the driver, for hire or reward.

**Motorcab:** means any motor vehicle constructed or adapted to carry not more than 6 passengers excluding the driver for hire or reward.

**Motor car:** means any motor vehicle other than a transport vehicle, omnibus, road-roller, tractor, motor cycle or invalid carriage.
It is important to understand that there are two separate provisions under the CGST Act by which an E-Commerce operator is liable to pay tax. These are as follows:

(a) **When the E-Commerce operator is made the taxable person** – If the services supplied through E-Commerce operator are notified by the Government, then the E-Commerce operator has to pay GST on such services as the person liable to pay tax;

(b) **By mechanism of Tax Collection at Source** – If the services have not been notified under Section 9(5) of CGST Act or Section 5(5) of IGST Act, the E-Commerce operator is still liable to collect tax at source for the value of taxable supplies made through it by other suppliers. This is analyzed in subsequent paragraph:
4. COLLECTION OF TAX AT SOURCE (TCS) [SECTION 52]

Every electronic commerce operator has to collect tax known as TCS\(^1\), when a supplier supplies some goods or services through its portal and the payment for that supply is collected by the electronic commerce operator. The nature of working of electronic commerce operator can be better understood with the following example.

There are many e-Commerce operators [hereinafter referred to as an Operator], like Amazon, Flipkart, Jabong, etc. operating in India. These operators display on their portal products as well as services which are actually supplied by some other person to the consumer.

The goods or services belonging to other suppliers are displayed on the portals of the operators and consumers buy such goods/services through these portals. On placing the order for a particular product/service, the actual supplier supplies the selected product/service to the consumer.

The price/consideration for the product/service is collected by the Operator from the consumer and passed on to the actual supplier after the deduction of commission by the Operator.

Let us now have a look at the statutory provisions relating to TCS.

**Who is liable to collect TCS?**

Every Electronic Commerce Operator (ECO), not being an agent, has been mandated to collect tax at source (TCS) from the net value of taxable supplies made through it by other suppliers, whenever the ECO collects the consideration on behalf of the supplier. This has been done to shift the compliance from small scale vendors/service providers to E-commerce operators.

**Rate of TCS**

Not exceeding 1% as may be notified by the Government on the recommendations of the Council, of the net value of taxable supplies.

Suppose a certain product is sold at ₹ 1000/- through an Operator by a supplier. The operator would collect tax @ 1% of the net value of taxable supply of ₹ 1,000/- i.e. ₹ 10/-.  

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\(^1\) The provisions relating to TCS have not been made effective as of now. Further, the detailed provisions relating to TCS have been discussed in Unit-II of Chapter-12.
**Net Value of Taxable Supplies**

It may be noted that Section 20 of IGST Act provides that in case of tax collected at source, the operator shall collect tax at such rate not exceeding two per cent, as may be notified on the recommendations of the Council, of the net value of taxable supplies:

Further, the value of a supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier:

Further, the power conferred on the e-commerce operator to collect tax at source, is without prejudice to other modes of recovery from operator. The powers of e-commerce operator is restricted only to the extent of tax collection at source under circumstances specified therein and nothing more.

**Deposit of TCS by ECO to Government**

The TCS amount collected by the ECO has to be remitted to the Government Treasury within 10 days after the end of the month in which the collection was made.

If the TCS has been collected in the month of July, the amount has to be remitted into the Government Treasury on or before 10th August.
Mr. X is a supplier selling his own products through a web site hosted by him. Does he fall under the definition of an “electronic commerce operator”? Whether he is required to collect TCS on such supplies?

As per the definitions in Section 2(44) and 2(45) of the CGST Act, 2017, Mr. X 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.

If 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?

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 we purchase the goods from the vendors, and where we sell it through our website. For the first transaction, GST is leviable, and will need to be paid to our vendor, on which credit is available for us. The second transaction is a supply on our 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.

5. OTHER COMPLIANCES AND PROVISIONS

Registration

As per Clause (x) of Section 24 of CGST Act, E-commerce operator is specifically required to take registration irrespective of its turnover. The benefit of threshold limit is not available to e-commerce operator (refer definition of Taxable person).

Also, supplier who supplies through an e-commerce operator needs to be mandatorily registered irrespective of its turnover [clause (ix) of Section 24 of CGST Act]. Section 24(ix) of the CGST Act, 2017 lays down that the threshold exemption is not available to such persons and they
would be liable to be registered irrespective of the value of supply made by them. This requirement is, however, applicable only if the supply is made through such electronic commerce operator who is required to collect tax at source under section 52 of the CGST Act, 2017. 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.

Compliances

Filing of Statement of Supplies effected through an e-commerce operator (TCS Statement) [Section 52(4) read with rule 60(7) and rule 67 of CGST Rules, 2017]

Monthly return

ECO shall furnish a monthly return in Form GSTR-8 electronically through the common portal. Form GSTR-8 contains the details of supplies of goods or services or both effected through ECO, including the supplies of goods or services or both returned through it and the amount of tax collected at source.

Last date of filing return

The details in GSTR-8 should be furnished **on/before 10th of the month succeeding the calendar month** in which tax has been collected at source.

Further, the amount of tax collected by ECO (TCS amount) is required to be deposited by the 10th of the month succeeding the calendar month in which tax has been collected at source.

TCS details made available in GSTR-2A

The details of TCS furnished by the ECO in Form GSTR-8 shall be made available electronically to each of the suppliers in Part C of Form GSTR-2A on the common portal after the due date of filing of Form GSTR-8. Such suppliers may include the same in their Form GSTR-2.
Return to be filed by Supplier

In return, the supplier is also required to furnish the details of outward supplies made though e-commerce operator in Table 4C as also in Table 10 of GSTR-1 (which is also required to be filed within 10 days of the next month).

The details of supplies furnished by every e-commerce operator in his statement for the month will be matched with the corresponding details of outward supplies furnished by the concerned supplier in his valid return for the same month or any preceding month.

Annual Statement to be filed

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.

Matching of details furnished by the e-commerce operator with the details furnished by the supplier [Section 52(7) and (8) read with rule 78]

TCS amount claimed by the supplier: The supplier who has supplied the goods or services or both through the e-commerce operator shall claim credit, in his electronic cash ledger, of the amount collected and reflected in TCS Statement (viz. the TCS amount) furnished in GSTR-8 by such operator.

Matching: The details of supplies furnished by every operator in TCS Statement (Form GSTR-8) shall be matched with the
corresponding details of outward supplies furnished by the concerned registered supplier in Form GSTR-1.

**Details to be matched:** The following details shall be matched:

(a) State of place of supply; and

(b) Net taxable value

However, where the time limit for furnishing Form GSTR-1 under section 37 has been extended, the date of matching of the above mentioned details shall be extended accordingly.

Further that the Commissioner may, on the recommendations of the Council, by order, extend the date of matching to such date as may be specified therein.

**Communication and rectification of discrepancy in details furnished by the e commerce operator and the supplier [Section 52(9), (10) and (11) read with rule 79]**

**Communication of discrepancy:** Where the details of outward supplies furnished by the operator do not match with the corresponding details furnished by the supplier, the discrepancy shall be communicated to the supplier electronically in Form GST MIS-3 and to the e-commerce operator electronically in Form GST MIS-4.

Discrepancy shall be communicated on the common portal on or before the last date of the month in which the matching has been carried out.

**Suitable rectification of discrepancy:**

<table>
<thead>
<tr>
<th>Rectification by Supplier</th>
<th>Rectification by e-commerce operator</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supplier may make suitable rectifications in the Statement of Outward Supplies to be furnished for the month in which the discrepancy is made available.</td>
<td>E-commerce operator may make suitable rectifications in the TCS Statement to be furnished for the month in which the discrepancy is made available.</td>
</tr>
</tbody>
</table>

**Non-rectification of discrepancy, addition of amount of discrepancy to output tax liability of supplier:** The amount in respect of which any discrepancy is communicated and which is not rectified by the supplier in his valid return or the operator in his TCS...
statement for the month in which discrepancy is communicated, shall be added to the output tax liability of the said supplier in his return in Form GSTR-3, 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.

Such addition to the output tax liability and interest payable thereon shall be made available to the supplier electronically on the common portal in Form GST MIS-3.

**Interest payable on amount added to the output tax liability of the supplier:** The concerned supplier, in whose output tax liability any amount has been added, shall pay the tax payable in respect of such supply along with interest, @ 18% per annum [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.

**Notice to the Operator**

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 warehouses/godowns etc. [Section 52(12)]

The operator is required to furnish such details within 15 working days. [Section 52(13)]

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. [Section 52 (14)]

**LET US RECAPITULATE**

The provisions relating to electronic commerce have been summarised by way of table and diagrams to help students remember and retain the provisions in a better and effective manner:-
**Electronic Commerce**

- **means**
  - supply of goods
  - supply of services
  - supply of goods and services

- **including digital products over**
  - digital network
  - electronic network

**Electronic Commerce Operator**

- Any person who
  - owns
  - operates
  - manages digital/electronic facility/platform for electronic commerce
**Rate of TCS**

- **Rate of TCS**
  - **under CGST**: not exceeding 1%
  - **under IGST**: not exceeding 2%

**Electronic Commerce Operator**

- **Person liable to collect tax at source**: Electronic commerce operator
- **Threshold limit**: Nil
- **Rate of collection under CGST**: Not exceeding 1%
- **Value for collection of tax at source**: Net value of taxable supply
- **Due date of payment of TCS to Government**: Within 10 days from the end of month

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**Net Value of Taxable Supplies**

- Aggregate value of taxable supplies of goods and/or services
- Taxable supplies returned to supplier

**Net value of Taxable Supplies**

Other than notified services under section 9(5) by all registered persons through operator

**Filing of Statements by Electronic Commerce Operator**

- **Statements**
  - **Monthly**
    - by 10th of succeeding month
  - **Annual**
    - by 31st December of succeeding financial year
**KEY POINTS RELATING TO ELECTRONIC COMMERCE OPERATOR**

(a) Every e-commerce operator is required to collect tax on behalf of actual supplier, where consideration with respect to the supply is being collected by the e-commerce operator.

(b) The e-commerce operator should make the collection during the month in which supply was made.

**CONTENT OF MONTHLY & ANNUAL STATEMENTS FURNISHED BY ELECTRONIC COMMERCE OPERATOR**

- Details of outward supplies of goods and/or services through it
- Supplies of goods and/or services returned through it
- Amount collected as TCS
TEST YOUR KNOWLEDGE

1. Is it mandatory for e-commerce operator to obtain registration?
2. Whether a supplier of goods or services supplying through e-commerce operator would be entitled to threshold exemption?
3. Will an e-commerce operator be liable to pay tax in respect of supply of goods or services made through it, instead of actual supplier?
4. Will threshold exemption be available to electronic commerce operators liable to pay tax on notified services?
5. Is every e-commerce operator required to collect tax on behalf of actual supplier?

ANSWERS /HINTS

1. Yes. The benefit of threshold exemption is not available to e-commerce operators and they would be liable to be registered irrespective of the value of supply made by them.
2. No. The threshold exemption is not available to such suppliers and they would be liable to be registered irrespective of the value of supply made by them. This requirement, however, is applicable only if the supply is made through such electronic commerce operator who is required to collect tax at source.
3. Yes, but only in case of certain notified services. In such cases tax shall be paid by the electronic commerce operator if such services are supplied through it and all the provisions of the Act shall apply to such electronic commerce operator as if he is the person liable to pay tax in relation to supply of such services.
4. No. Threshold exemption is not available to e-commerce operator who are required to pay tax on notified services provided through them.
5. Yes, every e-commerce operator is required to collect tax where consideration with respect to the supply is being collected by the e-commerce operator.