

GST Guidance Note -7

Electronic Commerce

What this Guidance Note contains?

- 7.01 *Electronic commerce*
- 7.02 *Electronic commerce operator (ECO)*
- 7.03 *Supply of own goods and/or services over internet*
- 7.04 *Registration & electronic commerce*
- 7.05 *Eligibility for composition levy*
- 7.06 *Need to have special provisions for supplies through Electronic commerce operator*
- 7.07 *Special provisions for electronic commerce operators dealing in services*
- 7.08 *Tax collection at source (TCS)*
- 7.09 *Manner of deposit of tax to appropriate government*
- 7.10 *Liability to make TCS on supplies made on one's own portal*
- 7.11 *ECO and supply between principal & agent*
- 7.12 *Matching of monthly returns filed by an ECO and its suppliers*
- 7.13 *Information to be provided by ECOs*
- 7.14 *Special Provisions for 'online information and database access or retrieval services'*
- 7.15 *Meaning of 'online information and database access or retrieval services'*
- 7.16 *Meaning of 'non-taxable online recipient'*
- 7.17 *Person responsible for payment of tax for 'online information and database access or retrieval services'*
- 7.18 *Manner of determination of location of recipient in case of online information and database access or retrieval services.*
- 7.19 *Manner of payment of tax on online information and database access or retrieval services*

7.01 Electronic commerce

Electronic commerce is defined under section 2(44) of the CGST Act to mean supply of goods or services or both, including digital products over digital or electronic network.

7.02 Electronic commerce operator (ECO)

Electronic commerce operator is defined under section 2(45) of the CGST Act to mean any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

7.03 Supply of own goods and/or services over internet

Goods and/or services supplied over digital or electronic network are covered in the definition of 'electronic commerce'. A website created and owned by a person for supply of own goods and/or services is also covered under the definition of 'electronic network operator'. For instance, Amazon and Flipkart are e-commerce operators because they are facilitating actual suppliers to supply goods through their platform. Titan supplying watches and jewels through its own website would also be considered as an e-commerce operator going by the definition of electronic commerce and electronic commerce operator in GST ACT.

7.04 Registration & electronic commerce

Section 24 of the CGST Act makes it compulsory for every e-commerce operator and the persons making supplies through e-commerce operator to obtain registration.

However, the Government vide Notification No. 65- Central Tax dated 15.11.2017 has exempted persons from registration making supplies of services through an e-commerce operator and having an aggregate turnover not exceeding Rs. 20 lacs (Rs. 10 lacs in case of special category states)

7.05 Eligibility for composition levy

E-commerce operators (ECO), suppliers of goods/services through ECO are not eligible to opt for composition levy. However, a person making intra-State supply of own goods over own digital or electronic facility or platform can opt for composition levy.

7.06 Need to have special provisions for supplies through electronic commerce operator

Technology enables supplier and recipient of supply to contact each other over electronic platform. In case of supply of goods, it is not easy to track unregistered suppliers spread across the country. In case of supply of services through digital channels, such as internet, it is virtually impossible for any regulator to track the transaction at supplier's or recipient's end. In such a situation, fastening of liability of tax on electronic commerce operator, even by way of a tax collected at source (TCS), brings the supplier as well as the recipient on the radar of tax authorities and ensures that they do not escape tax liability.

7.07 Special provisions for electronic commerce operators dealing in services

It is provided that the Central or a State Government may, on the recommendation of the Council, by notification, specify certain categories of services, the tax on which shall be paid by the electronic commerce operator if such services are supplied through it. Notification Nos. 17/2017-Central Tax (Rate) 14/2017-Integrated Tax (Rate) both dated 28th June, 2017 have been issued for this. Once notification is issued, such electronic commerce operator will be deemed to be taxable person despite the fact that it is neither supplier nor recipient of service. In case such ECO does not have physical presence in the taxable territory then his representative or a person appointed by ECO will be liable to pay tax.

7.08 Tax collection at source (TCS)

Every electronic commerce operator (ECO), who is not an agent and is responsible for collection of consideration for intra-State supplies (other than supplies for which it is a deemed supplier) made through it, has to collect an amount at notified rate not exceeding one percent for Central Tax and one percent for State Tax of 'the net value of such supplies'*. In case of inter-State supplies tax at source need to be collected at notified rate not exceeding two percent. This is known as TCS.

*'net value of taxable supplies' shall mean the aggregate value of taxable supplies of goods or services or both [other than reverse charge services as per section 9(5) of CGST Act] made during any month by all registered persons and net of returns.

Every ECO responsible to collect tax at source has to take a mandatory registration under GST Act, whether or not separately registered under GST Act. ECO has to deposit this amount (TCS) with the appropriate government within 10 days of next month and has to file a monthly return containing the details of outward supplies made through it by 10th of next month. Subsequently the supplier of such supplies, for which tax has been collected at source by the ECO, can claim credit of such amount (TCS) in his electronic cash ledger. The provisions for TCS has not come into force yet. These will be brought into force once a notification specifying rate of TCS is issued.

When a supplier is selling exempted or zero-tax rate goods like printed books through it, the supply itself is not taxable and therefore the question of TCS does not arise.

7.09 Manner of deposit of tax to appropriate government

The manner in which tax is to be deposited by the ECO is still in an area of doubt. It is not clear as to whether ECO will need to take registration in every such state where a supplier, conducting business through such ECO, is located and supplies goods / services directly to the buyer.

7.10 Liability to make TCS on supplies made on one's own portal

As stated above, supplier selling/supplying its own goods/services on portal owned by it also falls in the ambit of definition of ECO. However as per the provisions, an ECO is required to make TCS on supplies made through it. As a logical corollary, person selling own goods on its own portal is not be liable to make TCS. In any case there cannot be TCS on own supplies as tax has to be discharged on entire value of the supply by the same person.

7.11 ECO and supply between principal & agent

The GST Act provides that supply of goods by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal, will be treated as supply without consideration. Therefore ECOs who are working as an agent of supplier will be liable to pay tax. This provision may affect the working of 'Fulfilment' model' in the e-commerce sector.

7.12 Matching of monthly returns filed by an ECO and its suppliers

- i. The details relating to supplies made through an ECO, declared in GSTR 8 return of an ECO, shall be matched with corresponding details declared by the supplier in his outward supply return. The comparison shall be based on following two parameters
 - State of place of supply
 - Net Taxable value
- iii. Mismatch of any parameter to be communicated to both supplier and ECO.
- iv. In case of non-rectification of mismatch, tax liability along with interest to be added to the output tax liability of the supplier for the month, next to the month in which mismatch was communicated.

7.13 Information to be provided by ECOs

- i. A senior tax authority (Joint commissioner & above) may seek information from an ECO relating to
 - a. Supplies of goods/services effected through him during any period
 - b. Stock of goods held by those suppliers, who has declared godown/warehouse of ECO as additional place of business, in the godowns/warehouse of ECOs
- ii. ECO to provide such info in 15 days of the service of notice.
- iii. Failure in providing the information will result in penalty upto Rs.25000.

7.14 Special Provisions for ‘online information and database access or retrieval services’

Special provisions have been provided in IGST Act regarding payment of tax where online information and database access services are provided to non-taxable online recipients in India. There is need to provide for such special provisions making the overseas service provider as liable to pay tax as the place of provision of such services is in India and a non-taxable online recipient cannot be expected to fulfil compliance formalities. Further in such online information services it is very easy to manipulate the location of service

provider by simply operating from a server located overseas to escape tax liability.

7.15 Meaning of online information and database access or retrieval services

Online information and database access or retrieval services means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as. –

- i. advertising on the internet;
- ii. providing cloud services;
- iii. provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;
- iv. providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;
- v. online supplies of digital content (movies, television shows, music and the like);
- vi. digital data storage; and
- vii. online gaming;

Place of supply for online information and database access or retrieval services is location of recipient of services.

7.16 Meaning of ‘non-taxable online recipient’

‘Non-taxable online recipient’ means Government, a local authority, a government authority, an individual or any person not registered under GST and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.

7.17 Person responsible for payment of tax for ‘online information and database access or retrieval services’

A person located in non-taxable territory and supplying ‘online information and database access or retrieval services’ to non-taxable online recipient shall be the person liable for paying Integrated Tax. If such supply is arranged or

facilitated through an intermediary located in non-taxable territory, then such intermediary will be the person liable for paying Integrated Tax. However, if the intermediary is working only as a conduit between actual service provider and actual service recipient, the service provider will continue to be liable to pay tax. For example: A USA based company ABC provides online video services to Indians. To watch the video an individual has to pay some money electronically ABC has neither any office /representative nor any equipment in India. In this case, company ABC has to discharge the Integrated Tax liability.

7.18 Manner of determination of location of recipient in case of online information and database access or retrieval services.

It is difficult to determine the location of the recipient in case of online information and database access or retrieval services as such recipients normally access the services online and are not required to disclose their location. On the lines of the 'non contradictory evidence rule' followed in OECD VAT, it has been prescribed in IGST Act that person receiving online information and database access or retrieval services shall be deemed to be located in taxable territory if any two of the following non contradictory conditions are satisfied, namely any of the following two are located in the taxable territory-

- a) Location of address presented by the recipient
- b) Place of issue of credit card or debit card or charge card or any such card by which the recipient settles payment
- c) Billing address of the recipient
- d) IP address of the device used by recipient
- e) Bank of the recipient from where payment is made
- f) Country code of the SIM used by the recipient
- g) Location of fixed line through services received by recipient.

7.19 Manner of payment of tax on online information and database access or retrieval services

If the online information and database access or retrieval service provider is located outside India and the services are provided to registered tax payer in India, the tax would be payable as import of service under reverse charge mechanism. In case services are provided to a non-taxable online recipient then the onus has been placed

on the service provider to pay Integrated tax on such supply of services and such service provider is obliged under law to take registration in India through a Simplified Registration Scheme to be notified by the Government. The registration can be taken by such service provider or by person representing such service provider or a person appointed by such service provider.
