



# E-commerce - GST Perspective



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## **Preamble**

1. Electronic Commerce has been the fastest growing sector all over the country for quite some time now. With the positive outlook on this sector and the innovative business models emerging continuously, it comes with its fresh set of challenges as regards the tax structure.

Being a law in its nascent stage, the provisions under the GST law have been specifically moulded to suit the requirements of the e-commerce industry particularly. Even after this, there have been innumerable practical issues which have been encountered by this industry due to its dynamic nature.

Before getting into the nitty gritty of this sector, it is important to get a holistic picture of what is covered under e-commerce as per the GST provisions and under which situations provisions of TCS are applicable? Not all websites which are present online can be categorized as electronic commerce operators. On the other hand, it does not mean that any company is not an electronic commerce operator simply because of the reason that it is not visible on the internet.

## **Relevant provisions**

2. For this purpose, the definition of electronic commerce and electronic commerce operator as per Section 2(44) and 2(45) of the CGST Act, 2017, respectively, have been depicted below:

"Electronic commerce means the supply of goods or services or both including digital products over digital or electronic network"

"Electronic commerce operator means any person who owns, operates, manages digital or electronic facility or platform for electronic commerce"

Further, as per Section 52(1) of the CGST Act, 2017, the following have been provided under the provisions of Tax Collected at Source:

"Notwithstanding anything to the contrary contained in this Act, every electronic commerce operator (hereafter in this section referred to as the "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."

Under Section 9(5) of the CGST Act, 2017 which shifts the liability for payment of tax as the supplier on the electronic commerce operator, the following has been stated in the law:

"The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services"

### **3. Various Models of electronic portals:**

**3.1 Information portals** - On these websites, various informations of interest to the viewers are displayed. However, this information is available free of cost to the readers for various purposes. The purposes may include creation of interest on a topic, promotion of the paid goods/services, technical specifications of the goods or services, etc.

It should be noted here that these websites do not engage themselves in supply of goods or services which is an essential requirement as per the definition of e-commerce given above. If the portal does not allow the supply of goods or services over electronic network, then it cannot be regarded as an e-commerce operator. This position remains valid if there is a supply which happens offline, even though the same

is instigated through the information of goods or services displayed online. Since, it is not regarded as an e-commerce operator within the terms of GST law, there are no special provisions for these kinds of persons.

For example, a person selling dried flowers displays the specifications of the products online. A customer approaches the supplier for buying the flowers offline after viewing these specifications online on the portal of the supplier.

**3.2 Supply over own portal** - A person may have its own website through which there is an option of selection of goods/services and also allows the option for payment online. On these portals, a person may not allow any third party to display any information or make any supply. These are solely for the business interest of the website owners enabling them to make the supply of goods or services online.

Since these websites are engaged in the supply of goods or services over electronic network against payment of consideration, it squarely falls within the definition of electronic commerce. Further, the person who owns, operates or manages such websites will be termed as an electronic commerce operator. Since supplies are made directly by the electronic operator and there is no supply 'through' the electronic commerce operator, provisions of Tax Collected at Source or supplies under Section 9(5) will not be applicable to them.

As regards registration, Section 24 mandatorily required every electronic commerce operator to register themselves under the GST law. However, *vide* the CGST Amendment Act with effect from 1st February 2019, only those electronic commerce operators will be required to register themselves compulsorily if they are required to collect TCS. Thereby, this category of electronic commerce operators will be liable to register themselves only if they cross the threshold limit of turnover for registration.

For example, Starmark has its own website wherein a visitor of the website has an option to select the requisite goods and make the payment online. No other supplier other than Starmark can display their goods on the website of Starmark.

**3.3 Supply over marketplace** - In the electronic commerce industry, marketplace is often regarded as the portal through which various suppliers make supply of goods or services. Marketplaces not only allow the display and promotion of goods or services of the supplier online but they are also, supplied over such marketplaces. The supplier issues the invoice in his own name to the recipient in such cases. The invoicing between the operator and supplier is independent of that happening between the supplier and the final recipient, irrespective of the fact that the payment is collected by the operator and the final settlement is made by the operator to the supplier.

Since there is a supply of goods or services occurring over digital or electronic network, the owner or operator of such websites can very well be termed as electronic commerce operators. Further, the suppliers who are supplying goods or services over such marketplaces can be termed as electronic commerce suppliers. Unless such supplies are exempt or are part of the services mentioned under Section 9(5) of the CGST Act, 2017, they will be covered by the provisions of TCS as per Section 52. This means that the electronic commerce operators will deduct TCS at the rate of 2% (1% + 1%) of the net value of taxable supplies (value of taxable supplies made - value of taxable supplies returned) made by the suppliers through the marketplace.

All such electronic operators are required to mandatorily obtain registration under the GST law as per Section 24 of the CGST Act, 2017. Further, the suppliers making such supplies will also require mandatory registration if they are engaged in supply of goods. Supplier of services will not require mandatory registration even if they are supplying through electronic commerce operator, provided they do not exceed threshold limit of turnover for registration.

For example, Supplier X is engaged in the business of supply of books online through Amazon. Since supplier X is using the platform of Amazon for selling to the final customer, Amazon will deduct TCS @ 2% of the value of supplies made by such supplier X through the marketplace. Further, both Amazon and Supplier X require mandatory registration under the GST law.

**3.4 Supply under fulfilment model** - Under this model, the seller at the market place packages and hands over the goods for sale to the electronic commerce operator. Such electronic commerce operator gets the title to such goods transferred in their own name. Further, the sale happens in the name of the electronic commerce operator to the final customer. Unlike point (c) given above, the invoice is issued with the name of the e-commerce operator itself. This is because, in effect, the first supply takes place between the supplier and e-commerce operator through the transfer of title to the operator. The next leg of the transaction takes place between the operator and the recipient wherein the operator sells such goods to the final recipient. The invoicing also takes place according to such transfer of title.

The owner or the operator of the platform will continue to fall within the definition of electronic commerce operator, as supply of goods or services takes place over digital or electronic network. However, the provisions of Tax Collected at Source are not applicable to the given case. This is because the supply does not happen 'through' electronic commerce operator but 'to' electronic commerce operator. This basically is a Principal-to-Principal model wherein tax charged by the supplier will be available as Input tax credit to the electronic commerce operator. Further, such ITC can be used for payment of taxes when the same is charged on the outward supply by the electronic commerce operator to the recipient.

The original supplier of goods is not engaged in supply through the operator but to the operator. For the supplier, the operator is simply one of the customers. So, there is no clause which requires mandatory registration for such supplier under Section 24 of the CGST Act, 2017. Only threshold based turnover registration is applicable to such supplier.

For example, Mr. A sells mobile covers to Flipkart. Flipkart packages such mobile covers and sells the same in their own name to the final customer. Here, Mr. A will charge GST to Flipkart which will be available as ITC to Flipkart. Such ITC can be used by Flipkart for charging taxes on the goods sold to the final customer.

**3.5 Supply of services under Section 9(5)** - There are specified category of services which are enumerated under Section 9(5) of the CGST Act, 2017. In respect of the specified category of services, the service provider provides services using the platform of the electronic commerce operator. However, the service provider is considered as too small an entity to be able to register on their own and make payment of taxes. So, the responsibility for complying with the provisions of GST as the supplier and for the purpose of payment of taxes is cast upon the electronic commerce operator.

The services specified within this category are:

- (a) Transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle (*e.g.*, Ola, Uber)
- (b) Providing of accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places for residential or lodging purposes, except where the person supplying such service is liable for registration u/s 22(1) (*e.g.*, Oyo rooms)
- (c) Services by way of house-keeping, such as plumbing, carpentering, etc., except where the person supplying such service is liable for registration u/s 22(1) (*e.g.*, Urban clap)

In respect of the said services, the electronic commerce operator is deemed to be the supplier of services for the purpose of payment of taxes. The invoice is issued by the operator as if the said supply has been made by the operator itself, even though the actual service provider may be separate.

In respect of the services specified under (b) and (c) in this point, the operator is liable for making payment of taxes only if the original supplier is below the threshold limit of turnover for registration. In such cases, if the supplier exceeds the threshold limit, the actual service provider will be liable to register itself and pay taxes. Under point (a)

above, the operator will always be the person liable for making payment of taxes as the supplier, irrespective of the turnover of the actual service provider. So, the suppliers will not be liable to register themselves or make payment of taxes in such cases.

As regards registration of the e-commerce operator, it has been stated that operators under Section 9(5) are compulsorily required to register themselves under the GST law.

For example, even though a driver of Uber may be providing services to the passenger only after using the platform of Uber, the supplier liable to make payment of taxes will be deemed to be Uber.

Section 9(5) is restricted in respect of specified services. It is not applicable to other non-specified services. For instance, food and beverage services supplied by a restaurant through Swiggy will not be governed by Section 9(5). So, the supplier liable to pay taxes will continue to be the restaurant and not Swiggy.

### **Conclusion**

**4.** The above models of the electronic commerce operator are only illustrative in nature. With the evolving nature of businesses for e-commerce, there are various business models which are being tested under the purview of the GST law. It is pertinent here that one evaluates the nature of the business very diligently before coming to the conclusion on the coverage under the definition of electronic commerce provisions of TCS services under Section 9(5), etc.

Even businesses which are not over the internet but are part of the digital network (*e.g.*, automatic booking of cabs through telephone) through which supplies are made can be evaluated to find whether they are covered within the ambit of electronic commerce.



It is of extreme importance that rather than accepting the coverage under electronic commerce on a *prima facie* basis, a deeper analysis of the structure of the business should be made to determine the tax structure of the business.



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