

TAX COLLECTED AT SOURCE (TCS) ON E-COMMERCE TRANSACTIONS IN THE GST REGIME

Author: Pavan Kumar R, B.A LL.B, DCL, LL.M, Advocate at High Court of Karnataka

“The best things in life are free, however the government will eventually find a way to tax them.”

ABSTRACT

The government implemented TDS and TCS under GST to improve tax evasion control. Sections 51 and 52 of the CGST Act cover the provisions of TDS and TCS under GST, respectively. One of the goals of Tax Collected at Source (TCS) under Section 52 of the CGST Act, 2017 is to track all sales made through e-commerce platforms such as Amazon, Flipkart, PayTm, Snapdeal, and others. In the case of GST, tax collection at source refers to the amount of tax collected by e-commerce providers from the revenues transferred to actual sellers. TCS in GST refers to the collection of tax at the point of sale by the e-commerce operator. For the purposes of TCS regulations, E-commerce operators (ECO) must acquire a separate registration. 1 % TCS on GST under the CGST Act and 1 % TCS under the SGST Act equals a total of 2 % TCS on GST. These e-commerce operators are trade giants who are traceable, and it is easy to impose responsibility on them. Hence, the government made them accountable to collect a minimum amount in name of tax before transferring the proceeds to each of these sellers. E-commerce operators (ECO) must deduct 2% TCS from the value of supply made through their platform and pay the TCS amount to the government on or before the 10th of the following month. In this Article the Author examines the implications of TCS under GST Law.

KEYWORDS: TAX COLLECTED AT SOURCE, E-COMMERCE PLATFORM, CGST, SGST.

INTRODUCTION

TAX COLLECTED AT SOURCE (TCS) is payable from some operators that own, operate, and administer e-commerce platforms. Tax Collection at Source (TCS) shares certain characteristics with TDS, but it also has some differences. TDS is a tax that is deducted when

a recipient of goods or services makes payments under a contract, TCS refers to the tax collected by the electronic commerce operator when a provider offers products or services through its portal and the electronic commerce operator collects payment for such supply. TCS is only applicable if the operators collect the consideration from consumers on behalf of vendors or suppliers. In India, like in the rest of the globe, there has been an incredible growth in e-commerce transactions.

E-commerce behemoths such as Amazon, Uber, Ola, Flipkart, and others are conducting massive amounts of online business in India, posing new problems for the country's tax authorities. Orders for the supply of goods/services are placed via an online portal under the e-commerce regime and are passed on to real suppliers of goods and services by the e-commerce operators. As a result, the provision of products and services is made by a third party unbeknownst to the person placing the order.¹

For Illustration: Mr 'A' is a trader who sells his ready-made clothes online on Flipkart. He receives an order for Rs 10,000, inclusive of tax and commission. Flipkart charges a commission of Rs 200. Further, there is a return worth Rs 1,000. Flipkart would, therefore, need to deduct 1% tax (TCS) on the amount, excluding sales returns (Rs 1,000), but including the money paid as a commission (Rs 200) and GST. Flipkart would thus be deducting TCS in GST at Rs 90 (1% of Rs 9,000) on net sales value. Until today, because electronic commerce businesses did not sell products, they were not required to pay VAT (Value Added Tax)/CST. Recently, the services provided through these internet portals have been subjected to service tax. Currently, under the existing taxation framework, e-commerce firms selling items online through portals are required to collect 1% GST at the point of sale.² The requirements for Tax Collected at Source (TCS) for e-commerce transactions came into force on October 1, 2018. The Tax Collected at Source (TCS) is largely for control purposes since the remainder of the GST is to be paid by the actual supplier of the products or services.³ TCS will be collected by e-commerce operators when they pay the vendor. This payment will be the consideration received on behalf of the seller for the supply produced by him through the internet portal. This tax will be levied on the net cost of taxable supplies.

¹ClearTax (2019). TDS and TCS under GST available at: <https://cleartax.in/s/tds-and-tcs-under-gst> [accessed on 21-06-2021]

² The rate is notified by the CBIC in Notification no. 52/2018 under CGST Act and 02/2018 under IGST Act.

³ PTI (2018). E-commerce firms not liable to collect TCS from suppliers with less than ₹20 lakh turnover: CBIC available at: <https://www.livemint.com/Companies/464R3HJKPp6HQL4PRnp1DJ/Ecommerce-firms-not-liable-to-collect-TCS-from-suppliers-wi.html> [Accessed 13 Oct. 2021]

MEANING OF E-COMMERCE AND E-COMMERCE OPERATOR

Prior to delving into the rules relating to TCS on e-commerce transactions, it is essential to grasp the definitions of “e-commerce” and “e-commerce operator” as defined in the applicable GST taxation statutes. “Electronic commerce”⁴ means supply of goods or services or both including digital products over digital or electronic network. Further, ‘Electronic commerce operator’⁵ means any person who owns, operates/manages digital/electronic facility/platform for electronic commerce.

LIABILITY OF ELECTRONIC COMMERCE TO COLLECT TAX AT SOURCE UNDER THE ACT

According to the Act, "notwithstanding anything in the Act to the contrary, every electronic commerce operator" (hereinafter referred to in this section as the "operator"), not being an agent, shall collect a sum determined at a rate not exceeding 1% of the net value of taxable supplies made via it by other suppliers if the consideration for such supplies is to be collected by the operator.”⁶ As a result, the preceding clause clarifies Electronic Commerce's need to collect tax at the point of sale. In this case, it is also important to examine the Model GST Law's definition of "E-commerce." E-commerce is defined as “the supply or receipt of goods and/or services, or transmitting of funds or data, over an electronic network, primarily the internet, by using any of the applications that rely on the internet, like but not limited to e-mail, instant messaging, shopping carts, web services, universal description Discovery and integration (UDDI), File Transfer Protocol (FTP) and Electronic Data Interchange (EDI) whether or not the payment is conducted online and whether or not the ultimate delivery of the goods and/or services is done by the operator.”⁷As a result, regardless of whether it is specifically mentioned in the Act, it is widely known that under the scope of e-commerce operators, an individual selling goods/services on his own account is not included. It may be deduced that e-commerce operators that operate as facilitators for real suppliers of goods are covered by the act; however, suppliers who sell their own items through their own websites are not considered e-commerce operators for the purposes of this provision.⁸

⁴ Section 2(44) of CGST Act

⁵ Section 2(45) of CGST Act

⁶ Section 52 CGST Act (2017)

⁷ Section 43 B(d) of the Model GST Law (“Model Laws”)

⁸ CBI&C, FAQ on GST Chapter 8 Q No.15

The following illustrations help to clarify the above statement:

- Amazon is an e-commerce operator because it works as a facilitator for numerous suppliers to sell their items, but Huawei is not an e-commerce operator since it sells gadgets through its own website.
- Furthermore, if ABC Departmental Stores (a sole proprietorship) sells clothing through Amazon, Amazon, as an e-commerce operator, will be required to deduct TCS before making payment of consideration collected on behalf of ABC.

However, because the Act supersedes the Model Laws, all people who own, control, or manage a digital or electronic facility or platform for electronic commerce are deemed “electronic commerce operators.”

TAX COLLECTION AT SOURCE (TCS) BY AN E-COMMERCE OPERATOR — TAX RATES APPLICABLE

According to the relevant announcements, which are also given below, the TCS rate is 1% for IGST (inter-state goods and services tax) for inter-state taxable supply.⁹ In contrast, the Central Commodities and Services Tax (CGST) rate is 0.5 percent for taxable supplies of goods inside the state.¹⁰ The SGST/UTGST rate will be 0.5 percent as well. As a result, the total tax collected at source is 1%. After the e-commerce operator has paid the TCS, the real provider can claim credit for it. As a result, there is no increase in tax burden. However, there are some items on which GST is not payable, such as agricultural produce, books, and fruits. In this case, the 1% tax collected by e-commerce would be considered as cost because the real provider of such goods will not be able to claim credit for the TCS paid by e-commerce businesses. There are some specific services, such as taxi and hotel booking services, for which the e-commerce operator would be obliged to pay the whole IGST/CGST/SGST.¹¹ As a result, it is expected that taxi companies such as Uber and Ola would be required to pay the full GST. Their GST has not increased. They are responsible since they are required to pay service tax even now.

⁹ Notification No. 02/2018-IT (20 Sep. 2018)

¹⁰ Notification No. 52/2018-CT (20 Sep. 2018)

¹¹ Section 5(5) IGST Act; Section 9(5) CGST Act, (2017)

NET VALUE OF TAXABLE SUPPLIES – According to section 52(1) of the CGST Act, “net value of taxable supplies” means the aggregate value of taxable supplies of goods or services, or both made during any month by all registered taxable persons through the operator, less the aggregate value of taxable supplies returned to the suppliers during the same month.¹² The net supplies are to be calculated for each supplier separately.¹³ If the sale of returns exceeds the supply made in a given month, there will be no TCS for that month. Such a negative amount, however, will not be carried forward. As a result, such a shortfall cannot be made up in the next month.¹⁴

For illustration: ABC Limited, a registered supplier, sells items via an e-commerce operator. In September of 2018, supplies of INR 55,00,000 are made. During September 2018, ABC received items worth INR 5,00,000 that were returned. The net value of taxable supply for TCS must be INR 50,00,000, with TCS @ 1%, i.e. INR 50,000, deducted by the e-commerce operator. As a result, the total payment to the provider is INR 49,50,000.

REGISTRATION MANDATE ON THE ELECTRONIC COMMERCE OPERATORS AND SUPPLIERS

Electronic commerce operators, regardless of their revenue, are obliged to get the GSTIN Registration. The aforementioned registration is in addition to and separate from the registration obtained as a regular supplier. In the event that the internet commerce operator has suppliers in many states, he must obtain GST Registration in each of those states. If there is no place of business in that State, the electronic commerce operator might demonstrate his head office as the place of business. All returns can thereafter be submitted through the main office in this manner.¹⁵

When a person is required to collect TCS in a State/Union Territory where no physical person exists, he must make reference to the name of that State in application form GST REG-07 (Part A) and mention the name of the State on Union territory where he has his principal place of business in part B of form GST REG 07. This may differ from the State/Union Territory listed in Part A.¹⁶ After thorough verification, the registration may be authorised by

¹² Explanation to section 52(1) of CGST Act (2017)

¹³ Sr. 10 and 11, FAQ released by Law Committee of GST Council (2018)

¹⁴ Ibid Sr. 20

¹⁵ ibid Sr No. 5 to 7

¹⁶ Rule 12(1A) of CGST Rules

the proper official, and a certificate of registration in form GST REG-06 is issued. The aforementioned certificate is granted within three working days of the application's submission.¹⁷ After notification, inquiry, and hearing, the registration can even be terminated. The cancellation must be conveyed to the individual via electronic means using form GST REG-08.¹⁸ The Superintendent of Central Tax is the "proper officer."¹⁹

FOREIGN ELECTRONIC COMMERCE OPERATORS- REGISTRATION

Foreign Electronic Commerce Operators must get registration under the GST scheme. They would be required to register in each state or union territory and would be obliged to collect TCS on such supplies. If a foreign e-commerce operator does not have a physical presence in a specific State or Union territory, he may designate an agent to act on his behalf.²⁰

REGISTRATION OF SUPPLIERS

Regardless of annual profit, suppliers that provide products or services through an e-commerce operator must register (except in case of supply of services). The provider is unable to deliver under the composition plan. He must only supply goods/services through the usual arrangement.²¹

OTHER KEY PROVISIONS

- TCS provisions do not apply if GST is paid in reverse charge.
- The TCS through electronic commerce must not be collected but rather billed.
- The supplier that delivered the products or services, or both, through the electronic commerce operator should claim credit in his electronic cash ledger for the amount collected and reflected in the operator's statement provided under section 52(4), in the manner prescribed.²²
- In the case of exempt supply, TCS requirements do not apply.

¹⁷ Rule 12(2) of CGST Rules

¹⁸ Rule 12(3) of CGST Rules

¹⁹ CBI&C circular No. 1/1/2017 (26th June 2017)

²⁰ Supra note 13 Sr No 8

²¹ ibid Sr No. 6 and 16

²² Section 52(7) of CGST Act (2017)

- TCS rules do not apply to goods or services imported.
- The amount collected by an e-commerce operator under section 52(1) must be paid to the Government's credit within ten days of the end of the month in which such collection is made, in the manner stipulated.²³
- The payment of tax collected at source must be paid through an electronic cash ledger within 10 days of the month's end. TCS payments cannot be done using an electronic credit ledger.
- In a multiple e-commerce model, the customer books a service (for illustration, a hotel) through ECO-1, which is integrated with ECO-2, which has an agreement with the service supplier (e.g., hotelier). In this situation, ECO-1 will not contain any GST information about the service provider (hotelier in this case). Under such conditions, TCS's obligation will be that of the e-Commerce operator who is paying the supplier for the specific supply occurring via it, which in this case will be ECO-2.
- Within ten days after the end of a calendar month, every operator shall furnish an electronic statement of all amounts collected towards outward supplies of goods or services or both effected through it, including supplies of goods or services or both returned to it, and the amount collected under section 52(1) of the CGST Act during such calendar month - Section 52(4) of the CGST Act. GSTR-8 is the kind of statement. TCS by electronic commerce operator in form GSTR-8 under section 52 of the CGST Act to be filed on or before 7th February 2019 -Explanation to section 52(4) of the CGST Act inserted vide removal of Difficulties Order No. 04/2018 dated 31-12-2018. TCS by electronic commerce operator in form GSTR-8 under section 52 of the CGST Act to be filed on or before 7th February 2019.
- The e-commerce operator can correct the statement. In this instance, he must pay the tax plus interest. However, under Section 52(6) of the CGST Act, such correction is not feasible after the due date of furnishing statement for the month of September after the end of the financial year or the actual date of submitting relevant annual statement, whichever is sooner.
- TCS provisions will apply exclusively to sales performed using the Aggregator model. There is no obligation to subtract TCS from inventory model sales.

²³ Section 52(3) of CGST Act (2017)

- Location of supply for e-commerce operator for recharge of Telecom Operator's talk time/recharge of DTH/regarding convenience fee collected by consumers on purchase of air tickets, rail supplied through its online platform.
- Platform - Place of supply in the context of section 12(11) of the IGST Act, 2017, the customer's address on record with the supplier of services is the place of supply.
- The amount shown in GSTR-8 for each supplier will be recorded in the credit of that supplier. The provider can use that credit to make a payment of his tax obligations He can also file a claim for a refund of that sum.
- Section 52(5) of the CGST Act requires e-commerce operators to file an Annual Statement by the 31st of December of the following fiscal year, providing specific data.
- Every e-commerce operator who is required to collect tax at source under Section 52 of the CGST Act must submit an annual statement in Form GSTR-9B - Rule 80(2) of the CGST and SGST Rules, 2017.
- Matching of e-commerce operator's statement and credit taken by supplier - The details of supplies and the amount collected furnished by the e-commerce operator must be matched with the corresponding details of outward supplies furnished by the concerned supplier registered under CGST, in prescribed GSTR.
- Any inconsistency discovered when matching and reconciling supply data and GSTR 2A will be reported to the operator and the supplier. If the discrepancy is not resolved within the specified time frame, the tax amount will be added to the supplier's liability. The provider must pay the difference, as well as any interest.²⁴
- Form to be use for TCS return:E-commerce firms must submit GSTR-8 by the 10th of the month following the month in which the tax was collected. This return will be made only when the tax collected has been paid to the government's credit. For example, the GSTR-8 due date for March 2021 is April 10th, 2021.

THE IMPACT OF E-INVOICING ON TCS AND E-COMMERCE OPERATORS

E-commerce operators (ECO) can also use the e-invoicing system to record bills produced on behalf of their online suppliers to the Invoice Registration Portal (IRP).To link their ERP system with the IRP sandbox, e-commerce businesses must follow a thorough protocol. Read

²⁴ V.S. Datey, GST Ready reckoner with New GST Scheme for real estate/Construction sector Taxmann 10th ed.

our post on “e-Invoicing Impact on TCS and e-commerce Operators Under GST” for more information.

CONCLUSION

According to my understanding, the primary rationale for the inclusion of TCS provisions in the GST regime is to ensure the inclusion of a larger base within the GST system regime, as well as rapid and efficient tax collection. In the current scenario, the tax payable passes through several contours; therefore, tax evasion will be significantly reduced because the tax will now be collected at each transaction. The government's revenue will increase as well. TCS, on the other hand, would result in an ever-increasing number of compliances and, as a result, greater costs/expenses for electronic commerce operators. Cost increases would occur because of more month-to-month compliance and, more importantly, because of the necessity for a solid IT (ERP) system that is efficient enough to deduct 1% of tax on every sales transaction that occurs. For a medium-sized company, implementing and maintaining such strong IT infrastructure represents a significant cost increase that might jeopardise its daily working capital. An e-commerce operator who is obligated to deposit tax collected at the point of sale cannot pay it using the applicable Input Tax Credit. It is critical to note that the productive significance of TCS arrangements is only feasible when the ERP frameworks are extremely well coordinated to simply use these arrangements in daily businesses. Furthermore, the suppliers offering through an internet business administrator's operating capital will be hampered till they record their arrival and guarantee the overabundance charges. This may deter SMEs merchants from selling goods or offering services via the online gateway. TCS in GST regime on e-commerce transactions adds to compliance costs not just for e-commerce operators, but also for suppliers/vendors. With an ever-increasing number of vendors selling their items through online platforms, such tax laws ensure that merchants pay their taxes on time. However, because offline vendors are excluded from such agreements, this may demoralise merchants from selling their products through online platforms, encouraging a growing number of online sellers to migrate to the offline marketplaces. As a result, from a broader viewpoint, it may be seen as a conflict among the most sought-after programmes initiated by the government, such as digitalization and the reduction of tax evasion.