

TDS u/s 194 O – E-Commerce Transaction

Intro to TDS:

As per the Income Tax Act, 1961 (“the Act”) any company or **person making a payment** is required to deduct tax at source if the payment exceeds certain threshold limits. TDS has to be deducted at the rates prescribed by the tax department. It is the deductor’s responsibility to deduct TDS before making the payment and deposit the same with the government.

Section 194O has been introduced in the Union Budget 2020. According to Section 194O, an **E-Commerce Operator** is required to deduct TDS for facilitating any sale of goods or providing services through an **E-Commerce Participant**. TDS on E-Commerce Operators under section 194-O is applicable from **1st October 2020**.

Why this New Section

Many companies are using e-commerce to reach out to customers worldwide and increase their sales. As we all are aware about the fact that now a days everyone prefer to purchase / sell the products over the digital platform because it requires less cost in terms of setup or advertisement or less efforts in search of a buyer (**from seller point of view**) or many options are available at one platform or comparison of product is easy or we get the accessibility of product/ service on the mode of any time / from anywhere basis (**from buyer point of view**). So the number of users are increasing day by day. Now there was a problem with revenue that they were not able to identify the small seller of goods/services who were not filing their return of Income and transacting over the e-commerce platforms. So tax department came up with the new idea and imposed the liability of **Tax deduction of source** on e-commerce operator i.e. on the mediator between the buyer and seller of goods or services. Eg: Amazon, Myntra etc.

Understanding the Terms used:

Electronic Commerce: The term E-Commerce means the supply of goods or services or both, including digital products over a digital or electronic network.

E-Commerce Operator: An e-Commerce operator is a person who owns, operates, or manages a digital/electronic facility for the sale of goods and services. He is responsible for making payments to the e-Commerce participant on such sales. The operator could be a resident or non-resident. The person is also required to be responsible for paying to the e-commerce participant the amounts in respect of sale of goods or provision of services. Eg: Amazon, Flipkart, etc

E-Commerce Participant: An e-Commerce participant is a person who sells goods, services, or both through an electronic facility provided by an e-Commerce operator. He must be a resident of India.

Rate of TDS:

E-Commerce operators should **deduct TDS @1%** at the time of credit of the amount of sale of goods, services, or both to the account of an **e-commerce participant** or at the time of making payment to an e-Commerce participant by any other mode, whichever is earlier. (0.75% upto March 31st 2020, as per Press Release dated 13th May 2020).

If the E-Commerce participant does not furnish his PAN or Aadhaar, TDS must be deducted at the rate of 5%, as per provisions of Section 206AA.

Quantum:

Any amount directly paid by the purchaser of goods to the E-Commerce Participant, is also deemed to be amount paid by E-Commerce Operator and liable to TDS deduction.

Where GST component is indicated separately in the sale invoice, it is not included for the purpose of calculation of TDS otherwise it is included.

Exemption:

E-Commerce operator is not required to deduct TDS for an individual/ HUF alone, if the gross amount of sale of goods, services, or both during the previous year does not exceed Rs 5 lakh and if the e-Commerce participant has furnished his PAN or Aadhaar.

Further for FY 2020-21, it is important to note that if the gross amount of sale or services or both facilitated during the previous year 2020-21 (including the period up to 30th Sept 2020) in relation to such an individual/ HUF exceeds five lakh rupees, the provision of section 194-O shall apply on any sum credited or paid on or after 1st October, 2020.

An E-Commerce participant must be a resident of India. Thus, no TDS will be deducted if the participant is a non-resident.

Important Clarifications:

Where a transaction in respect of which tax has been deducted by the Operator under section 194-O or which is not liable for deduction under sub-section (2) shall not be liable for deduction of tax at source under any other provision of Chapter XVII-B of the Act [section 194-O(3)]. *This provision is intended to ensure that the same transaction is not subjected to TDS more than once.*

In e-commerce transactions, the payments are generally facilitated by payment gateways. In those circumstances there may be applicability of section 194-O twice i.e. once on E-Commerce operator who is facilitating sell of goods or provision of services or both and once on payment gateway who also happens to qualify as e-commerce operator for facilitating service. In order to remove this difficulty, *it is provided that the payment gateway will not be required to deduct tax under section 194-O of the Act on a transaction, if the tax has been deducted by the ecommerce operator under section 194-O of the Act, on the same transaction.*

Insurance agent or insurance aggregator having no involvement in transactions between insurance companies and the buyer of insurance policy would *not be liable to deduct tax under section 194-O*. This relaxation does not apply for the first year and applies from the subsequent years.