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CBDT PROVIDES GUIDELINES IN RELATION TO TDS ON PAYMENTS BY E-COMMERCE OPERATORS

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The Central Board of Direct Taxes (CBDT), the apex body for direct tax administration in India has issued guidelines vide Circular No. 20 of 2023 dated 28 December 2023 (CBDT Guidelines) to provide clarity in relation to certain nuances pertaining to the 1% TDS applicable on e-commerce operators facilitating online sale of goods or provision of services.

Background

Section 194-O of Income-tax Act, 1961 (IT Act), introduced wef 1 October 2020, provides that where sale of goods / provision of services of a resident 'e-commerce participant' is facilitated by an 'e-commerce operator' (ECO) through its digital or electronic facility or platform, such ECO is required to deduct income-tax at source (TDS) at the rate of 1% of the "gross amount" of consideration received for such sales or services or both (Gross Amount). There were certain practical difficulties relating to quantification of the Gross Amount and the person who would be required to comply with such TDS obligation in multiple ECOs facilitating the same transaction. To provide clarity with respect to such difficulties, the CBDT Guidelines have been issued – key aspects of the same are summarised below.

Sr No.	Particulars	CBDT Guidelines and Khaitan Comments
1.	Multiple ECOs facilitating the same transaction	The CBDT has clarified that in a transaction facilitated by multiple ECOs, the seller-side ECO who finally makes the payment to the seller / service provider shall be liable to comply with this TDS. This clarification should resolve the ambiguity surrounding compliance with this TDS trigger where multiple ECOs are facilitating the same transaction.
2.	Treatment of discounts	(A) <u>Discounts offered by the seller / service provider:</u> Where the seller / service provider gives the discount, tax would be deductible on the net amount only. For instance, if the price of a product is INR 100 and the seller offers a discount of 15% ie INR 85 is receivable by the seller from the buyer, tax is deductible on INR 85. (B) <u>Discounts offered by ECO:</u>

		Conversely, where the discount is offered by an ECO, usually the seller / service provider receives full consideration for the product / service, ie discounted price amount from the buyer and the balance by the ECO. By way of illustration, if the price quoted by the seller is INR 100, and the ECO gives a discount of INR 10, (i) INR 90 (ie 100 *minus* 10) will be collected from the buyer and the ECO will remit the same to the seller, and (ii) INR 10 (ie the discount amount) will be paid by ECO to the seller. For such a scenario, the CBDT has clarified that tax would be deductible on entire INR 100 which is Gross Amount of sales. In summary, any discount offered by ECOs will not be reduced while computing the TDS liability in terms of section 194-O of the IT Act.
3.	Inclusion of convenience fees, delivery fees and commission in the Gross Amount	The CBDT has clarified that such charges / fees will be covered within the scope of Gross Amount. That said, it has also been clarified that where a seller / service provider makes any lumpsum payment to a network provider and such payment is not linked to a specific transaction, then such payment will not be included in the ambit of Gross Amount. The CBDT has further clarified that these payments (ie commission, convenience fee, etc) shall not be subject to TDS under any other provisions of the IT Act.
4.	Adjustment in relation to purchase returns	In case of purchase returns where the purchase has already been subject to TDS, the CBDT has clarified as follows: where the seller / service provider has refunded the money against purchase return, tax deducted by the ECO 'may be' adjusted against the next transaction by the ECO with that seller in the same financial year. where purchase return is replaced by goods, no adjustment is required. This is in line with the approach provided for section 194Q of the IT Act (which deals with tax deductible by a buyer on purchase of goods). It is further clarified that credit for such TDS shall be allowed to the seller / service provider.
5.	Treatment of GST or various state levies and taxes	The CBDT has clarified that tax shall be deducted on the Gross Amount excluding GST or tax component, where such tax is deducted at the time of credit of the amount in the account of the seller and the component of GST / state levies and taxes is indicated separately in the invoice. However, if tax is deductible on a payment basis because the payment is made earlier than the credit, tax is deductible on the whole amount. This is in line with the approach provided for section 194Q of the IT Act (which deals with TDS obligation on a buyer for purchase of goods)

COMMENTS

These clarifications should certainly help to resolve the practical issues and challenges faced by ECOs in complying with the 1% TDS obligation in terms of section 194-O of the IT Act.

That said, with respect to the clarification relating to purchase return, where the purchase return falls in another financial year (which maybe the case especially where purchases are made towards the end of a financial year), the issue of excess tax deduction at source and mismatch in turnover reported in Form 26AS vis-à-vis seller's financial statements may continue to exist – it would be helpful if the CBDT can provide some guidance to correct this anomaly as well.

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