

EY Tax Alert

CBDT issues further guidelines on withholding tax on e-commerce transactions involving multiple e-commerce operators and other issues

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Executive summary

This Tax Alert summarizes Circular No. 20/2023 dated 28 December 2023 (Circular) issued by the Central Board of Direct Taxes (CBDT)¹, which provides further guidelines for removing certain difficulties on application of tax deduction at source (TDS) on e-commerce transactions.

In the wake of representations received from stakeholders, the Circular provides the following additional clarifications on applicability of withholding tax on single transactions involving multiple e-commerce operators (EOPs) and other issues:

- (i) Where a single transaction of sale of goods involves multiple EOPs, the EOP which is ultimately responsible for making payment to the seller of goods or the provider of services, is required to comply with TDS obligation.
- (ii) TDS on e-commerce shall be applicable on: (a.) Logistics, delivery fees or packaging fees which are charged by sellers from the buyer. (b.) Commission or convenience fees recouped by seller from the buyer, provided such amounts are part of gross sale price and included in the invoice raised on the buyer. If TDS on e-commerce is undertaken on such charges, the seller is not obligated to undertake TDS under any other provision of the Indian Tax Laws (ITL), except for TDS on virtual digital assets.
- (iii) If the platform fee is not linked to a specific transaction but is paid on a lump sum basis, then the EOP is not required to undertake TDS on e-commerce on the said transaction and the seller shall be required to undertake TDS under other applicable provisions of the ITL.

¹ Apex direct tax administrative tax body in India

(iv) In respect of goods and services tax (GST) and indirect taxes (like value added tax /sales tax/excise etc.) which are applicable on transactions of sale of goods or provision of services through e-commerce:

- ▶ If TDS occurs at the time of credit to the account of the seller and the component of GST or indirect tax is indicated separately in the invoice, then TDS is to be made on the amount credited excluding such indirect tax.
- ▶ If TDS occurs at the time of payment, then TDS is applied on the entire value of the amount paid as it is not possible to identify payment towards GST/indirect tax component for which invoice shall be raised in the future.

(v) In case of purchase returns, the excess TDS on e-commerce already deducted on past transactions from which goods are returned by the buyer can be adjusted against future sales to be made by the same seller within the same financial year. No adjustment is required if the purchase return goods are replaced by fresh goods.

(vi) Where the seller provides a discount on sale of goods and raises invoice on the net amount, TDS on e-commerce shall be undertaken on such net amount of the sale price. Where the EOP provides a discount to the buyer, TDS on e-commerce shall be undertaken on gross amount of the sale of goods or service, which includes the discount amount as the amount payable to the seller is the gross amount inclusive of such discount.

Background

- (i) Section 194-O of the ITL requires an EOP to withhold tax at source at the rate of 1% on the gross amount of sale or service paid or payable to a resident e-commerce participant (EP) or seller if the sale of goods or services is facilitated by the EOP through its digital or electronic facility or platform (TDS on e-commerce).
- (ii) Notably, TDS on e-commerce is applicable even if the payment is made by the purchaser of goods or recipient of services directly to the EP or seller where such sale is facilitated by the EOP. Furthermore, the EOP is deemed to be the person responsible for paying the EP or seller.
- (iii) The provision empowers the CBDT to issue guidelines, with the approval of the central government, for the purpose of removing difficulties arising from giving effect to the above provisions. Such guidelines are required to be laid before each House of Parliament.

They are binding on both the tax authorities and the EOP.

- (iv) In the past, the CBDT issued Circular No. 17/2020² dated 29 September 2020 and Circular No. 20/2021³ dated 25 November 2021 for removing certain difficulties and clarifying doubts on application of TDS on e-commerce on various transactions like e-auction platforms, payment gateways, insurance aggregators etc.
- (v) The CBDT received additional representations from stakeholders on the difficulties/ambiguities, which remained unaddressed in the earlier circulars. Hence, the CBDT has issued further guidelines vide the Circular, with the objective of addressing and removing practical difficulties associated with TDS on e-commerce, primarily for transactions of sale of goods or provision of services undertaken on Open Network for Digital Commerce (ONDC)⁴ platforms.

Guidelines provided in the Circular

i. *TDS obligations in case of multiple EOPs for a single transaction:*

- ▶ With the rapid evolution of the e-commerce industry, e-commerce transactions may be carried out on a platform or network wherein multiple EOPs participate in a single transaction. The Circular illustrates the case of ONDC platform on which, in a single transaction of sale of goods or provision of services, "buyer-side EOP" may provide an interface to the buyer and a "seller-side EOP" may provide an interface to the seller on a common platform.
- ▶ The CBDT explains the manner in which TDS on e-commerce is to be undertaken in two situations, as under:

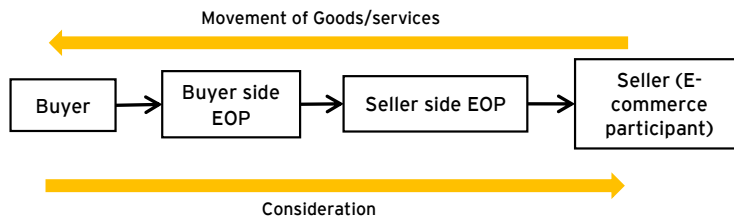
² Refer our Tax Alert dated 30 September 2020, "CBDT issues guidelines on provisions dealing with withholding tax on e-commerce operator and tax collection on sale of goods".

³ Refer our Tax Alert dated 26 November 2021, "CBDT issues further guidelines on withholding of taxes for sale and purchase of goods and e-commerce platforms".

⁴ ONDC was established by the Department for Promotion of Industry and Internal Trade (DPIIT) of Government of India (GOI) to develop open e-commerce. For further information about ONDC, one may access official website - [All About Open Network for Digital Commerce \(ondc.org\)](https://www.ondc.org)

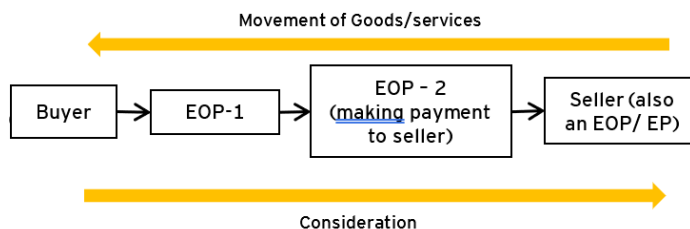
- ▶ Situation 1: Multiple EOPs are involved in a single transaction of sale of goods and seller-side EOP is not the actual seller of goods or provider of services, but a facilitator to the actual seller (EP):

The Circular clarifies that TDS on e-commerce is to be complied with by seller-side EOP which is ultimately responsible or deemed to be responsible for payment to EP on the "gross amount" of sale of goods or provision of services.



- ▶ Situation 2: Multiple EOPs are involved in a single transaction of sale of goods and actual seller of goods or provider of services also uses their own electronic or digital platform for sale:

The Circular clarifies that TDS on e-commerce is required to be complied with by the intermediary EOP which is ultimately responsible for making payment to the EP which uses their own electronic or digital platform for sale, on the "gross amount" of sale of goods or provision of services.



ii. **TDS on e-commerce for (a.) Convenience fees/commission charged by EOP (b.) Logistics, delivery fees, packaging fees charged by seller (c.) Platform charges to be paid to the EOP by the seller:**

- ▶ The Circular clarifies on how "gross amount of sale or service" on which TDS on e-commerce is required to be computed when additional charges are paid by the buyer on account of: (a.) Convenience fees/commission charged by EOP. (b.) Logistics, delivery fees, packaging fees charged by the seller. (c.) Platform charges paid to the EOP (e.g., ONDC) by the seller. On principle, any amount invoiced to the buyer by the seller forms part of "gross amount of sale or services", regardless of the manner in which any part of such proceeds is shared between the intermediaries. On the other hand, the amount which is not invoiced to the buyer by the seller does not form part of "gross amount or sale or services".

- ▶ This is illustrated by the Circular with the following examples:

- ▶ Situation 1:

- ▶ Buyer purchases goods worth INR100 from the seller and opts for home delivery.

- ▶ Seller charges the buyer for packaging fee of INR5, shipping fee of INR10 and convenience fee of INR3 (which represents recoupment of convenience fees of buyer-side EOP of INR1 and seller-side EOP of INR2). Seller invoices buyer for total amount of INR118.

- ▶ The Circular clarifies that total amount charged from the buyer, being INR118, would be "gross amount of sale or services" on which seller-side EOP shall be required to undertake TDS on e-commerce.

- ▶ It also clarifies that once TDS on e-commerce is undertaken on the transaction, no other TDS provision under the ITL shall be applicable on the convenience fee which, otherwise, would have been applicable if the transaction were not an e-commerce transaction⁵. Importantly, the Circular states that the provision of service by way of convenience fees by an EOP is in connection with the main transaction of sale of goods or provision of services by seller/EP and, hence, the

⁵ However, in case of transactions involving sale of virtual digital asset, TDS on virtual digital asset prevails over TDS on e-commerce transactions. For instance, in crypto transactions, if the convenience fees are collected in the form of crypto assets,

there will be corresponding TDS on the barter transaction of virtual digital asset involving payment of commission through crypto assets.

exclusion will apply to the amount received by the EOP in this regard.

- ▶ Generally, TDS on commission is applicable on convenience fees constructively paid by the seller to the EOP. However, since tax is withheld as per TDS on e-commerce by the EOP on the entire consideration, the convenience fees shall not be subjected to TDS by the seller under any other provision of the ITL (barring TDS on virtual digital asset, if applicable).
- ▶ The Circular further clarifies that where payment for platform fees is made on a lump-sum basis and not linked to a specific transaction, then TDS on e-commerce is not applicable, which implies that they will be subjected to TDS by the seller as per other applicable TDS provisions.

▶ Situation 2:

- ▶ Buyer purchases goods with label price of INR85 from seller.
- ▶ Buyer-side EOP, enabling buyer to discover goods and place an order, charges convenience fee of INR5 and raises invoice for such amount on seller-side EOP.
- ▶ Seller-side EOP charges convenience fees of INR10 for listing sellers' catalogs and facilitating transactions of seller.
- ▶ Seller charges and invoices buyer for total amount of INR100 (i.e., INR85 + INR10 + INR5).
- ▶ The Circular states that, in this case, total amount charged from the buyer, being INR100, shall be subject to TDS on e-commerce in the hands of seller-side EOP. Once TDS is undertaken on INR100, no other TDS provision under the ITL shall be applicable, say TDS on commission (barring TDS on virtual digital asset, if applicable).

iii. **Exclusion of GST and other indirect tax levies for TDS on e-commerce transactions**

- ▶ In the context of TDS on purchase of goods⁶, the CBDT had issued guidelines⁷ to clarify that TDS on purchase is to be made on the amount credited to the seller, without considering GST or any other indirect tax component if such taxes have been indicated separately in the invoice. However, in case tax is deducted on

payment where it is earlier than credit, then tax is to be deducted on the whole of the amount, as it is not possible to identify GST or any other indirect tax component of the amount to be invoiced in the future.

- ▶ In the present Circular, the CBDT has clarified that similar principles are applicable on TDS on e-commerce. Accordingly, if TDS is made at the time of credit of the amount in the account of the seller and the component of GST or any other indirect taxes is indicated separately, then TDS is to be made on the amount credited without including such GST or indirect tax component, as the case may be. However, if the tax is deducted on payment, if it is earlier than credit, the tax is to be deducted on the whole amount since it will not be possible to identify GST or any other indirect tax component of the payment to be invoiced in the future.

iv. **Adjustment of TDS on purchase returns:**

- ▶ The CBDT has applied principles applied to transactions covered by TDS on purchases in its earlier Circular No. 13 of 2021 dated 30 June 2021 to TDS on e-commerce transactions.
- ▶ Accordingly, the present Circular states that, before purchase return happens, the EOP would have already deducted TDS on the e-commerce transaction on the amount credited to the seller. In such a case, if the money is refunded by the seller, then TDS on the e-commerce transaction so deducted may be adjusted against a subsequent transaction from the same seller in the same financial year. No adjustment is required if the purchase return is in the form of replacement of goods by the seller as, in that case, sale of goods on which TDS on e-commerce transaction is made is completed with goods replaced.

v. **Treatment of discount provided by EP and multiple EOPs for TDS on e-commerce transaction:**

- ▶ It is customary to provide discounts by EP/sellers or EOPs on transactions taking place on digital platform or networks. The Circular explains the treatment to be provided for discounts granted by EP and EOPs while complying with TDS on e-commerce transactions.
- ▶ **EP/seller's discount:** If the discount is provided by the EP itself, the gross amount on which TDS on e-commerce transaction is to be undertaken shall be reduced by such discount. To illustrate, if the label price of a product is INR100 and the EP offers a discount of INR10, then INR90 shall be receivable from the buyer. In such a case, the EP will raise invoice of INR90 on the buyer and, hence, the EOP shall undertake TDS on INR90.

⁶ Section 194Q of the ITL

⁷ Para 4.3.2 of Circular No. 13/2021 dated 30 June 2021 and Para 5.2.3 of Circular No. 20/2021 dated 25 November 2021

- ▶ **Buyer EOP or seller EOP's discount:** If the discount is given by the buyer or the seller EOP, usually the EP receives full consideration on sale of product i.e., part of it is received from the buyer and part from the buyer EOP or the seller EOP. In such case, TDS on e-commerce transaction shall be undertaken on gross sale price credited or paid to the EP. To illustrate, if the price of goods quoted by the EP is INR100 and the buyer EOP gives a discount of INR10, then the buyer EOP will collect INR90 from the buyer and remit to the EP. Separately, the buyer EOP will pay balance INR10 to the EP. The EP will raise invoice of INR100 on the buyer. Hence, tax will be deducted on such gross amount of sale of INR100 by the seller side EOP.

Comments

The third tranche of guidelines issued on TDS on e-commerce brings clarity on application to e-commerce transactions taking place on platforms involving multiple EOPs, for instance ONDC. ONDC, backed by various government institutions, aims to foster interoperability between various EOPs and increase the reach of small sellers or e-tailers. It reflects the accommodative stance of the CBDT to bring tax certainty on new models of business.

In case of transactions involving multiple EOPs, the Circular casts withholding obligation on the EOP which actually makes or is deemed to make payment to the seller/EP. Earlier, in case of payment gateways, the CBDT had clarified that payment gateways shall be relieved from TDS obligation if the main EOP undertakes TDS and the payment gateway obtains a declaration/undertaking to that effect. The present guidelines do not impose such additional compliance for other EOPs to obtain undertaking or declaration from the EOP complying with the withholding obligation.

The clarifications on exclusion of GST, indirect taxes and adjustment of purchase returns are on expected lines, in line with clarifications provided in the past in the context of TDS on purchase of goods. It also implies that it perpetuates the practical challenges associated with the past circular on purchase returns. The Circular allows EOPs to adjust TDS on purchase returns against subsequent sale transactions with the same seller within the same financial year. This may increase the compliance burden on the EOPs to maintain records of transactions of purchase returns qua each seller. Also, it may create difficulty for EOPs to adjust purchase returns which take place after the cut-off date of 31 March where the returns are spilled over to the next financial year.

The Circular clarifies that trade discount offered by a seller is to be reduced for TDS purposes, but any cash discounts or special discounts offered by EOPs are not reduced since the seller's income is not reduced by such discounts.

The Circular relieves sellers from separate TDS obligation on convenience fees payable to EOPs if the same is recouped from the buyer, since the same is now factored as part of "gross amount" and TDS on e-commerce would be applicable. This may require sellers to maintain documentation of transactions where fees are recovered from buyers, in order to avoid the consequences of non-deduction of tax at source.

The present Circular is different from conventional CBDT circulars issued under other provisions of the ITL, which are well-recognized to be binding only on tax authorities and not on taxpayers or courts and not required to be laid before both Houses of Parliament. The present Circular is issued under a specific power to remove difficulties and statutorily provided to be laid before both Houses of Parliament and binding on both tax authorities and taxpayers.

Stakeholders would do well to continue engaging with the CBDT to highlight persisting issues of practical difficulties on TDS on e-commerce, like responsibility to withhold tax even if the payment is not routed through the EOP, non-availability of exemption for sale of goods by farmers, charities etc.

Our offices

Ahmedabad

22nd Floor, B Wing, Privilon
Ambli BRT Road, Behind Iskcon
Temple, Off SG Highway
Ahmedabad - 380 059
Tel: + 91 79 6608 3800

Bengaluru

12th & 13th floor
"UB City", Canberra Block
No. 24, Vittal Mallya Road
Bengaluru - 560 001
Tel: + 91 80 6727 5000

Ground Floor, 'A' wing
Divyasree Chambers
11, O'Shaughnessy Road
Langford Gardens
Bengaluru - 560 025
Tel: + 91 80 6727 5000

Chandigarh

Elante offices, Unit No. B-613 & 614
6th Floor, Plot No- 178-178A
Industrial & Business Park, Phase-I
Chandigarh - 160 002
Tel: + 91 172 6717800

Chennai

Tidel Park, 6th & 7th Floor
A Block, No.4, Rajiv Gandhi Salai
Taramani, Chennai - 600 113
Tel: + 91 44 6654 8100

Delhi NCR

Ground Floor
67, Institutional Area
Sector 44, Gurugram - 122 003
Haryana
Tel: +91 124 443 4000

3rd & 6th Floor, Worldmark-1
IGI Airport Hospitality District
Aerocity, New Delhi - 110 037
Tel: + 91 11 4731 8000

4th & 5th Floor, Plot No 2B
Tower 2, Sector 126
Gautam Budh Nagar, U.P.
Noida - 201 304
Tel: + 91 120 671 7000

Hyderabad

THE SKYVIEW 10
18th Floor, "SOUTH LOBBY"
Survey No 83/1, Raidurgam
Hyderabad - 500 032
Tel: + 91 40 6736 2000

Jamshedpur

1st Floor, Fairdeal Complex
Holding No. 7, SB Shop Area
Bistupur, Jamshedpur - 831 001
East Singhbhum Jharkhand
Tel: + 91 657 663 1000

Kochi

9th Floor, ABAD Nucleus
NH-49, Maradu PO
Kochi - 682 304
Tel: + 91 484 433 4000

Kolkata

22 Camac Street
3rd Floor, Block 'C'
Kolkata - 700 016
Tel: + 91 33 6615 3400

Mumbai

14th Floor, The Ruby
29 Senapati Bapat Marg
Dadar (W), Mumbai - 400 028
Tel: + 91 22 6192 0000

5th Floor, Block B-2
Nirlon Knowledge Park
Off. Western Express Highway
Goregaon (E)
Mumbai - 400 063
Tel: + 91 22 6192 0000

Pune

C-401, 4th floor
Panchshil Tech Park, Yerwada
(Near Don Bosco School)
Pune - 411 006
Tel: + 91 20 4912 6000

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