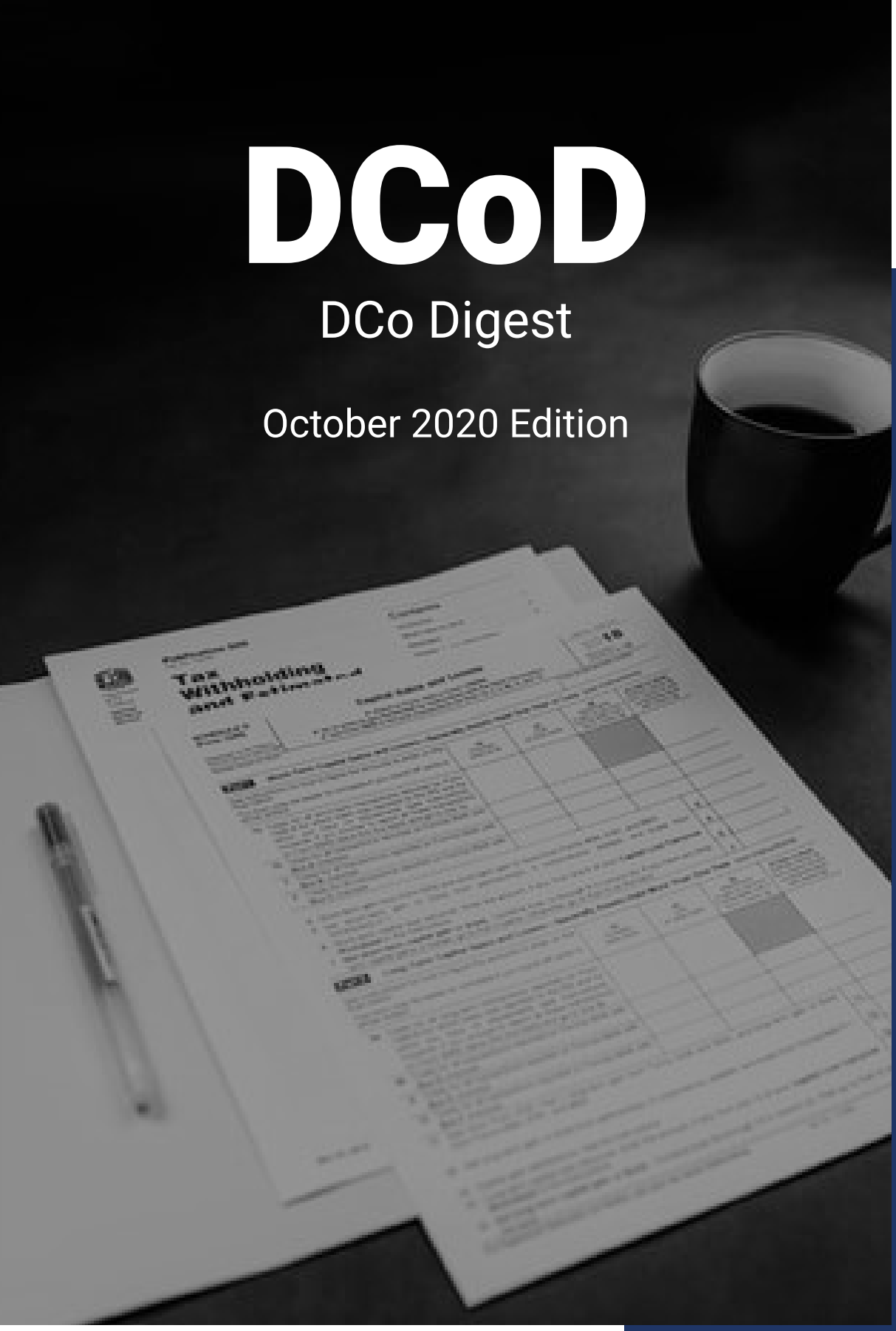
DCoD

DCo Digest

October 2020 Edition



Dhadda & Co.
CHARTERED ACCOUNTANTS

Newsletter

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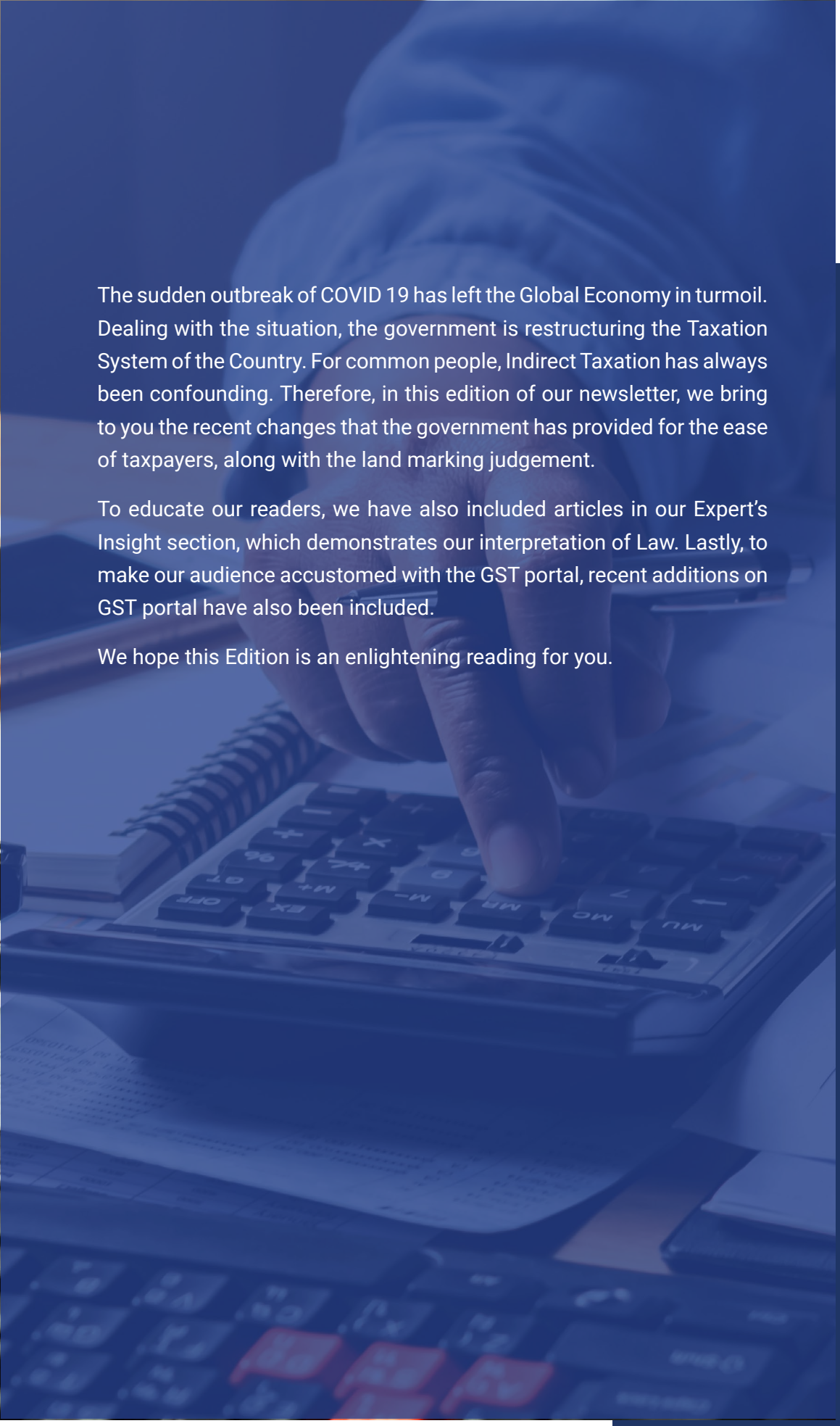


Preface

The sudden outbreak of COVID 19 has left the Global Economy in turmoil. Dealing with the situation, the government is restructuring the Taxation System of the Country. For common people, Indirect Taxation has always been confounding. Therefore, in this edition of our newsletter, we bring to you the recent changes that the government has provided for the ease of taxpayers, along with the land marking judgement.

To educate our readers, we have also included articles in our Expert's Insight section, which demonstrates our interpretation of Law. Lastly, to make our audience accustomed with the GST portal, recent additions on GST portal have also been included.

We hope this Edition is an enlightening reading for you.

Extension of due date for GSTR 9/9C for F.Y. 2018-19 till October 31, 2020

Earlier, as per Notification No. 41/2020 – Central Tax, the due date of furnishing annual return specified under Section 44 of the CGST Act 2017 read with rule 80 of the said rules for the Financial Year 2018-19 was extended up to 30th September 2020.

Now, the Government has extended the due date till October 31, 2020 vide Notification No. 69/2020 – Central Tax dated September 30, 2020.

Extension of exemption of Export Freight from GST until September 30, 2021

As per the Goods & Services Tax Act 2017, services under the following heads are exempt:-

19A Heading 9965 – Services by way of transportation of goods by an aircraft from the customs station of clearance in India to a place outside India.

19B Heading 9965 – Services by mode of transportation of goods by a vessel from the customs station of clearance in India to a place outside India.

The CBIC vide Notification No. 4/2020 – Central Tax (Rate) dated September 30, 2020 has extended the exemption of above services by way of transportation of goods through aircraft/vessel from Custom Station of clearance in India to a place outside India till September 30, 2021.

Waiver of Late Fee for Non-Filing of Final Return, i.e. GSTR 10

GSTR 10 or Final Return is required to be furnished where registration has been cancelled or surrendered within three months of the date of cancellation or date of order of cancellation, whichever is later.

Keeping the disruption caused by Covid-19, the Central Government vide notification 68/2020 (C.T.) dated September 21, 2020, has waived the late fee in excess of INR 500 for non-filing of GSTR 10 within the prescribed time limit, provided the said return between the period from September 22, 2020, to December 31, 2020.

Updates

Issuing Invoices for Goods Sent on Approval

As per section 31(7) of CGST/SGST Act, 2017, Invoices are required to be issued for goods sent on approval before or at the time of supply or six months from the date of removal, whichever is earlier.

The Government has extended the compliance date for issuing of such invoices if falling between March 20, 2020, and October 30 2020, till October 31 2020.

42nd GST Council Meeting Recommendations

Issuing Invoices for Goods Sent on Approval 42nd GST Council Meeting Recommendations

Levy of Compensation Cess	To be extended beyond the transition period of five years, i.e. beyond June 2022
Due Date for GSTR 1	The quarterly taxpayer - 13th of the subsequent month w.e.f 01.01.2021 The monthly taxpayer - 11th of the subsequent month
Auto Generated GSTR 3B	i. Auto population of liability from own GSTR 1 w.e.f 01.01.2021 ii. Auto population of ITC from supplier's GSTR 1 in the Form GSTR 2B for Monthly/Quarterly filers w.e.f 01.01.2021/01.04.2021 iii. GSTR 1 is mandatorily required to be filed from 01.04.2021 before filing GSTR 3B
HSN/SAC w.e.f 01.04.2021	HSN/SAC 6 digits for supplier having TO > Rs 5 crore HSN/SAC 4 digits for suppliers having TO < Rs 5 Crore
GST Payment TO < Rs. 5 crore	For the first two months, taxpayers have to pay 35% of the net cash liability of the last quarter through auto generated challan
GST Refund	Mandatorily validated the bank account linked with PAN/Aadhar w.e.f 01.01.2021

Compiled by Pallavi Singh Shekhawat

Updates

FAQ's on section 206C(1H) for collection of TCS on sale of GOODS

With effect from 01-10-2020, if your turnover in FY 2019-20 was more than 10 Crores then new section 206C(1H) which deals with the collection of tax @0.1% on sale of goods to parties with whom the transaction value exceeds 50 lakhs shall be applicable. While discharging its liabilities under this provision, an assessee must understand that liability on an outstanding amount which is receivable from a buyer as at September 30, 2020 over and above the limit of 50 lakhs shall also be there. Hence, TCS should be collected from buyers on outstanding amounts also. Procedural compliances are similar to the TDS, though there are different dates for filing a quarterly return. One should also keep in mind that from now onwards while calculating advance tax liability estimated credit of TCS which will be available to it should also be considered, otherwise, one may end up paying higher advance taxes. CBDT has also issued Circular No. 17/2020, dated 29-09-2020 to bring in clarity on some doubts about the applicability of the provisions and the computation mechanism.

Bare reading of the sub-section (1H) of section 206C which has been made effective from October 01, 2020 –

(1H) Every person, being a **seller**, who **receives** any amount as **consideration** for **sale of any goods** of the **value** or aggregate of such value **exceeding fifty lakh** rupees in any previous year, other than the goods being exported out of India or goods covered in sub-section (1) or sub-section (1F) or sub-section (1G) shall, at the time of receipt of such amount, **collect from the buyer**, a sum equal to 0.1 per cent of the **sale consideration exceeding fifty lakh** rupees as income-tax:

Provided that if the buyer has not provided the Permanent Account Number or the Aadhaar number to the seller, then the provisions of clause (ii) of sub-section (1) of section 206CC shall be read as if for the words "five per cent", the words "one per cent" had been substituted:

Provided further that the provisions of this sub-section shall not apply, if the buyer is liable to deduct tax at source under any other provision of this Act on the goods purchased by him from the seller and has deducted such amount.

Explanation.—For the purposes of this sub-section,—

(a) "buyer" means a person who purchases any goods, but does not include,—

(A) the Central Government, a State Government, an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State; or

(B) a local authority as defined in the Explanation to clause (20) of section 10; or

(C) a person importing goods into India or any other person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein;

(b) "seller" means a person whose total sales, gross receipts or turnover from the business carried on by him exceed ten crore rupees during the financial year immediately preceding the financial year in which the sale of goods is carried out, not being a person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein.

In this note, we have tried to cover most of the questions generally asked by any of the assessee about the requirement to collect TCS on sale of goods with effect from 01-10-2020 and related compliances.

1. Who is liable to collect tax on the sale of Goods?

Tax is required to be collected by a person carrying on business whose total sales, gross receipts or turnover exceeds Rs. 10 crores in the financial year immediately preceding the financial year of sale. Hence, one need to check turnover of previous financial year to come to know whether this section shall be applicable or not. For Eg. Turnover of FY 19-20 needs to be checked for checking applicability of this section.

2. From whom shall it be collected?

Tax shall be collected from a buyer where the seller receives any amount as consideration for the sale of any goods of the value or aggregate of such value exceeding Rs. 50 lakhs in any previous year.

Exceptions-

The tax shall not be collected in case of –

- export sales; or
- if tax is already deducted or collected under any other provision of the act.

Further, the tax shall not be collected if the buyer is:

- Central Government;
- State Government;
- An Embassy, High Commission, a Legation, a Commission, a Consulate or Trade Representation of a Foreign state;
- Local Authority;
- A person importing goods into India; and
- Any other notified person.

3.When do I collect tax (at the time of raising invoice or at the time of realization)?

Though language of Section 206C(1H) seems to be ambiguous, however most realistic interpretation is that Tax is to be collected when the amount received as sale consideration exceeds Rs. 50 lakhs irrespective of the amount of sale made during the previous year. However, to ensure administrative convenience one may take a call to deposit tax upon raising sales invoice also.

On the doubt of applicability of the TCS provision on the consideration received before 01-10-2020, the CBDT in Circular No. 17, dated 29-09-2020, at Para 4.4.2(ii) has clarified that "this provision applies on receipt of sale consideration, thus the provision of this sub-section shall not apply on any sale consideration received before 01-10-2020. Consequently, it would apply on all sale consideration (including advance received for sale) received on or after 01-10-2020 even if the sale was carried out before 01-10-2020". Though the clarification has been given in respect of another issue, but the language of the CBDT's circular indicates that the tax should be collected when the consideration received during the previous year exceeds the threshold limit.

4.Does my foreign supplier is also liable to collect TCS?

The definition of a buyer in Explanation to Section 206C(1H) specifically excludes 'any person importing goods into India' from its ambit. Hence, the obligation to collect tax at source is not triggered in the hands of the supplier based out of India.

5.What about the transitional provision?

Since, this section is applicable on consideration received over and above 50 lakhs from a buyer. Hence, in case if any balance is outstanding in the account of buyer as at 30-09-2020, then TCS should be collected on such outstanding amount also, whenever realized.

6.What about the tax collected from me by the suppliers?

Credit of Tax collected by the suppliers shall be available to the buyer and can even be tracked through 26AS, similar to how we do it for TDS. Moreover, to check there is no excessive cash outflow on account of payment of TCS to supplier and payment of advance tax to government, one should always consider estimated credit of TCS which will be available to it while paying off advance taxes.

7.Whether TCS is to be collected on the sale of immovable property?

There is a specific provision in Section 194IA for the deduction of tax on purchase of immovable property, wherein TDS is required to be deducted on sale of immovable property above 50 lakhs, hence this kind of transaction won't be covered here again.

However, for transactions having value less than 50 lakhs TCS should not be collected since this section is applicable only in case of sale of goods and 'Goods' means every kind of movable property subject to certain exceptions and inclusions. Therefore, the immovable property shall not be treated as 'goods'. Consequently, the TCS shall not be collected from the sale of immovable property.

8.Whether TCS shall be collected on the sale of a motor vehicle?

There is a specific provision in Section 206C(1F) for the collection of tax on the sale of a motor vehicle of value exceeding Rs. 10 lakhs. The Finance Act 2020 has introduced a general provision for collection of TCS on sale of goods under section 206C(1H).

Vide Circular No. 22/2016, dated 8-6-2016, the CBDT has clarified that the provisions of Section 206C(1F) will not apply on sale of motor vehicles by manufacturers to dealers/distributors. The CBDT vide Circular No. 17, dated 29-09-2020 now clarifies that the tax shall be collected under Section 206C(1F) in the case of sale of a motor vehicle to a consumer (B2C), and sub-section (1H) shall apply for the sale of motor vehicle to the dealers or distributors (B2B).

Hence, the sale of Motor vehicles to dealers which is not covered in section 1(F) shall be subject to TCS under this new provision. Further, sales to consumer where the consideration for a single vehicle is less than Rs. 10 lakhs but the aggregate value of which exceeds Rs. 50 Lakhs during a previous year, it shall be subject to TCS under this new provision.

9.Whether TCS is liable to be collected on Sale of Jewellery?

The Finance Act 2020 has introduced a general provision for collection of TCS on sale of goods. Jewellery, being a movable property, is covered within the term goods. There is no specific exclusion under Section 206C(1H) for collection of TCS on sale of jewellery. Thus, a Jeweller shall be liable for the collection of tax if other conditions are also fulfilled.

10.What about out-of-pocket or any other incidental expenses?

Out-of-pocket expenses or any other incidental expenses charged from buyer may may or may not be treated as sale consideration. Where separate invoice hasn't been issued for these items then it should form part of the sale consideration. However, if separate invoice is issued for these items then it should not form part of the sale consideration.

11.At what rate tax is to be collected?

TCS should be collected @ 0.1% of the sale consideration exceeding Rs. 50 lakhs from resident buyer. If resident buyer doesn't furnishes PAN then TCS @ 1% should be collected.

However, owing to COVID-19 pandemic, the rates of TCS for the specified receipts have been reduced by 25% for the period from 14-05-2020 to 31-03-2021. Hence, the rate of TCS on sale of goods shall be 0.075% till 31-03-2021. However, if the resident buyer does not submit the PAN the benefit of the reduced rate shall not be available.

From which date the threshold limit of Rs. 50 lakhs will be computed?

The Finance Act 2020 inserted sub-section (1H) in section 206C, with effect from 01- 10-2020, to provide for the collection of tax on certain sales. The TCS has to be collected if the value or aggregate of the value of the sale consideration received during the previous year exceeds Rs. 50 lakhs.

The CBDT vide Circular No. 17, dated 29-09-2020, has clarified that since the threshold of Rs. 50 lakhs is with respect to the previous year, calculation of sale consideration

for triggering TCS under this provision shall be computed from 01-04-2020. Hence, if a seller has already received Rs. 50 lakhs or more up to 30-09-2020 from a buyer, TCS under this provision shall apply on all receipts of sale consideration on or after 01-10- 2020.

13.Whether TCS is to be collected on the total invoice value including the GST?

Section 206C(1H) provides that TCS shall be collected on the consideration for "sale of any goods". Further, CBDT vide Circular No. 17, dated 29-09-2020, has clarified that TCS should be calculated on total amount i.e. including GST.

14.Whether TCS has to be collected on advance received from the buyer?

Yes, since section 206C(1H) provides that tax is required to be collected where the amount is received as consideration for the sale of goods. Further, the CBDT vide Circular No. 17, dated 29- 09-2020, has also clarified that TCS is required to be collected under this provision from the advance received for sale. However, advance received before 01-10-2020 won't attract this section.

15.Whether the amount received as loan from buyer shall come within the ambit of this provision?

No, since the requirement to collect TCS under this provision arises only if the sale consideration is received.

16.Whether tax to be collected on the transfer of goods from one branch to another?

No, since the existence of two distinct parties as 'seller' and 'buyer' is must in a transaction of sale. However, this condition isn't fulfilled in case of branch transfer. Therefore, the provisions of this section would not apply.

17.What shall be the treatment of credit note for computation of TCS?

If any credit note is issued by the supplier, the amount of sale consideration already received by the supplier shall not be reduced with the amount so adjusted through credit note for calculation of TCS

18. If the buyer has multiple units, whether sales made to different units need to be aggregated?

Yes, the collector is required to calculate the threshold limit of Rs. 50 lakhs in respect of each PAN i.e. amount received from all units of buyer shall be aggregated to compute the limit of Rs. 50 Lakhs.

19. What is the due date to deposit TCS?

Tax collected during the month should be deposited by 7th day of the following month.

20.What shall be consequences for failure to collect or pay TCS?

If any person, fails to collect TCS as per the provision of this sub-section then he shall be deemed to be assessee-in-default and shall be liable to pay interest at the rate of 1% for every month or part thereof on the amount of tax he failed to collect or pay.
Moreover, there is no reference of Section 206C(1H) under the provision providing the relief from being treated as an assessee in default. Hence, the seller shall continue to be deemed as assessee-in-default even if the buyer has taken in to account the purchase amount while computing his income and has paid tax due on the income declared in the return.

Updates

21.What is the due date for filing of TCS return?

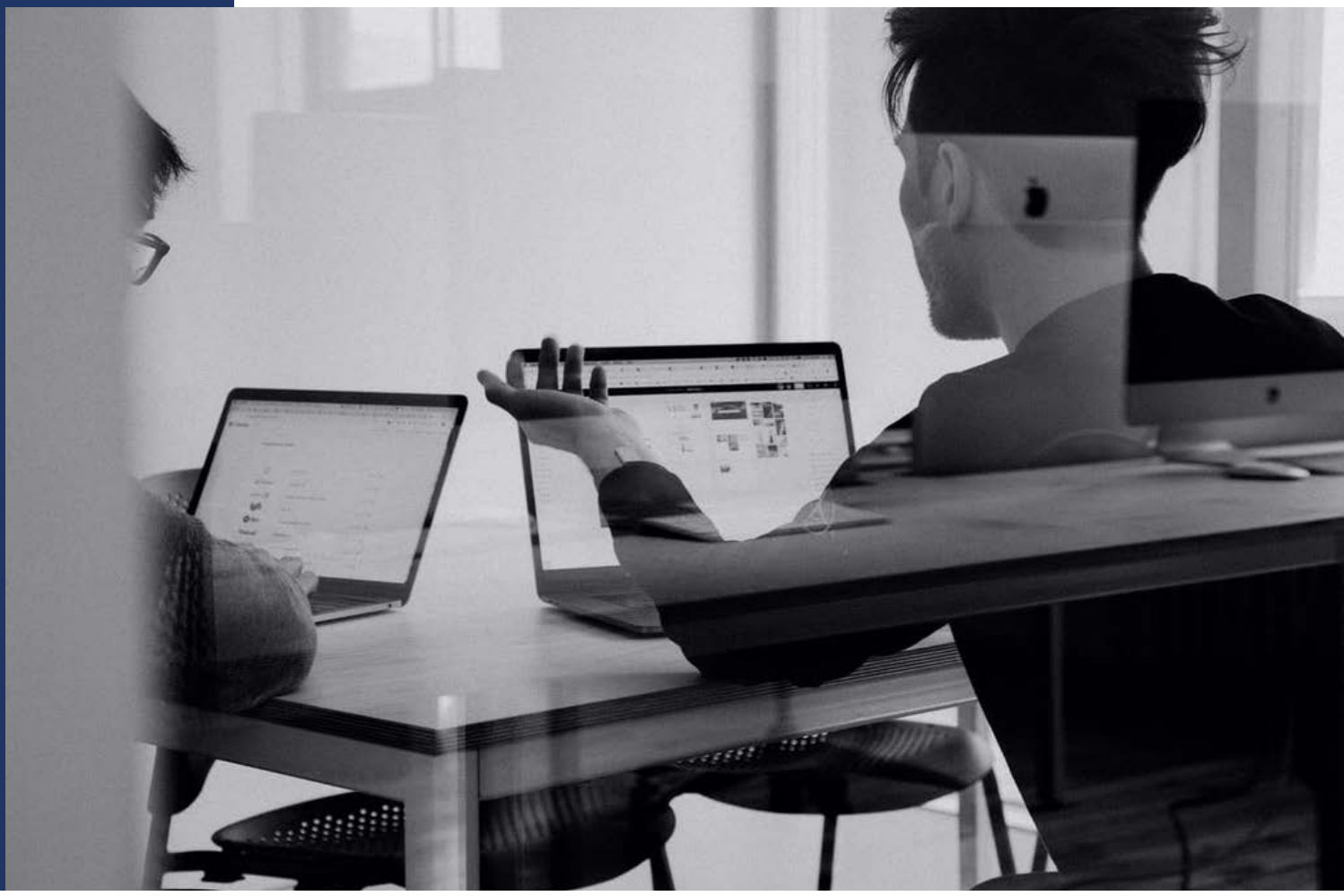
The statement of tax collected at source shall be filed with the Income-tax Department in Form 27EQ on a quarterly basis.

Quarter	Due Date
April- June	15th July
July- September	15th October
October- December	15th January
January- March	15th May

22.What shall be consequences of non-filing of TCS return?

The late filing fee shall be payable under Section 234E. The fee for default in furnishing the TDS/TCS Statement shall be levied at the rate of Rs. 200 per day during which such failure continues subject to the maximum of total amount deductible or collectable, as the case may be and is to be paid before submission of the belated TDS/TCS Statement.

If a person fails to file the TCS return or does not file it by the due dates, he shall be liable to pay penalty under Section 271H. The penalty under Section 271H is also levied in case of furnishing of inaccurate information under TCS return. The minimum amount of penalty for failure to furnish TCS return or providing inaccurate information therein is Rs. 10,000 which can go up to Rs. 100,000.



Judicial Pronouncements

Case 1: Levy of IGST on Ocean freight on Import of Goods and refund of Tax paid thereof

a)Mohit Minerals Pvt Ltd Vs Union of India

Issue:

The levy of IGST under Reverse Charge basis by the importer of goods in India on estimated component of the Ocean Freight paid for transportation of goods by the foreign seller challenged.

Analysis:

The writ-applicant could be said to have neither availed the services of transportation of goods in a vessel nor, he is liable to pay the consideration of such service. Hence, the writ-applicant is not the 'recipient' of the transportation of goods in a vessel service as per Section 2(93) of the CGST Act.

Having paid the IGST on the amount of freight which is included in the value of the imported goods, the impugned notifications levying tax again as a supply of service, without any express sanction by the statute, are illegal and liable to be struck down.

Held:

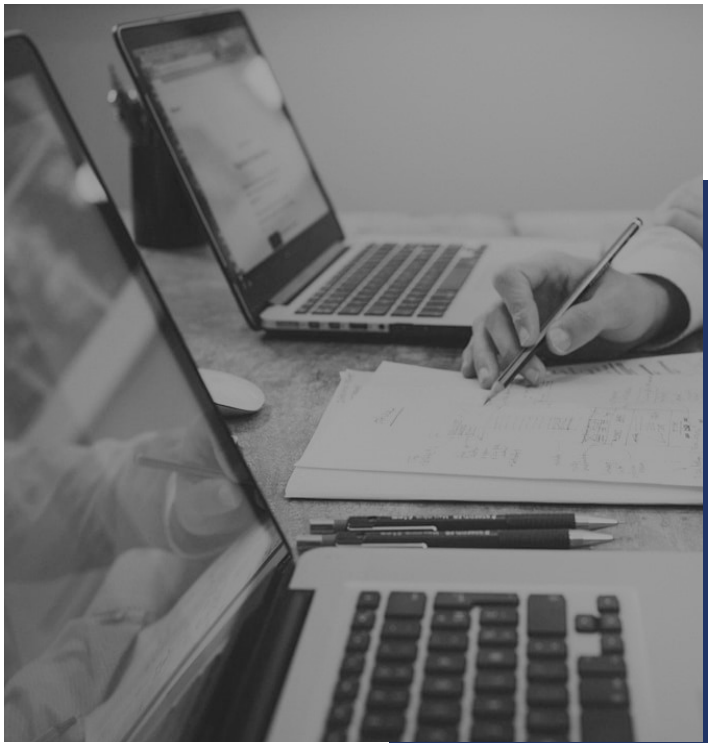
No tax is leviable under the IGST Act, 2017, on the ocean freight for services provided by a person located in a non-taxable territory by way of transportation of goods by a vessel from a place outside India upto the customs station of clearance in India, and the levy and collection of tax of such ocean freight under the impugned Notifications is not permissible in law. The impugned Notification No.8/2017 – IT (Rate) and Entry 10 of Notification No.10/2017 – IT (Rate) dated 28.06.2017 are declared as ultra vires the IGST Act, 2017, as they lack legislative competency. Both the Notifications are hereby declared to be unconstitutional.

b)Gokul Agro Resources Ltd. v. Union of India [2020] 116 taxmann.com 1 (Gujarat)

Since the Notification has been struck down as ultra vires, as a consequence of the same, the writ noticee seeks refund of the IGST paid. If any such application is preferred for the refund, the authority shall immediately look into the same and pass an appropriate order in accordance with law keeping in mind the decision of this Court in case of Mohit Minerals (P.) Ltd. (supra). The competent authority shall not raise any technical issue with regard to the claim for refund of the IGST amount.

Impact of High Court judgment

Supreme Court of India in **M/s Kusum Ingots & Alloys Ltd vs Union of India as reported in 2004 (168) ELT 3 (S.C.)** held that ***"An order passed on writ petition questioning the constitutionality of a Parliamentary Act*** keeping in view the provisions contained in Clause (2) of Article 226 of the Constitution of India, ***will have effect throughout the territory of India*** subject of course to the applicability of the Act."



DCO Excerpts

-The levy of IGST on ocean freight on import of goods has been held as unconstitutional by Gujarat High Court.

-Gujarat High Court has also held that the officers should not question the refunds claimed by applicant for IGST paid on ocean freight on technical grounds and pass orders.

-As per legal jurisprudence, decision of a High Court on constitutionality of a provision in a Central law has territorial nexus across the country.

-In cases where IGST has been paid under RCM by the importer of goods on ocean freight and ITC of same is either not available or cannot be completely used then option of filing a refund claim can be explored.

-However in cases where the IGST under has been and ITC has also been availed due to revenue neutral situation, the revenue cannot be recover the said ITC availed.

Issue 2: Invocation of Section 79 for recovery of tax liability reported in GSTR-1

Kabeer Reality Pvt Ltd Vs Union of India And Others [2019-TIOL-2813-HC-MP-GST]

Relevant provisions of law:

Section 79(1)(c) lays down a provision in the Act empowering the proper officer to initiate recovery of tax dues of a taxable person by issuing notice to any other person from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person.

Issue:

The petitioner company challenged a notice issued by the department to its tenants initiating recovery against the company on account of tax, cess, interest etc. payable under the provisions of Section 79 of CGST Act 2017.

The petitioner/Company has raised various grounds before this Court and it has been stated that department has not followed the prescribed procedure relating to demand and recovery, as provided under the Act of 2017. It has also been contended that without determination of tax payable by taxable person, no recovery could have been initiated under Section 79 (1)(c) of the Act of 2017.

Analysis:

The petitioner has filed GSTR-1 Return under Section 37 of the Act, however, the petitioner has not filed GSTR-3B Returns, which are to be paid on GST portal based on self-assessed transaction value shown in GSTR-1 Returns by the petitioner.

It is noteworthy to mention that GSTR-1 is declaration of tax liability and GSTR-3B is evidence of actual payment.

The petitioner has stated that GSTR-1 cannot be termed or classified as self-assessed liability, it is

only a declaration made for limited purpose. The amendment in Rule 61 of CGST Rules, 2017 referred by the Court in this regard, according to which filing GSTR-3B is mandatory.

Held:

This Court is of the considered opinion that the tax determination has already been done in the present case, as the petitioner itself has quantified its tax liability under the GSTR-1 Returns. The petitioner's contention that in absence of determination of tax under Section 73 no recovery can be made, is unfounded.

The petitioner cannot escape his liability of payment of GST under Act of 2017, especially when he has filed GSTR-1 and has quantified the tax payable by him while submitting the GSTR-1.

DCO Excerpts

-The Court has laid down that tax liability reported in GSTR-1 is to be considered as self-assessed liability.

-Recovery proceedings can be initiated under Sec. 79 for tax liability reported in GSTR-1 but not paid through GSTR-3B directly without any adjudication procedure under Section 73 or 74.

-GSTR-1 is an important statement and the disclosure therein must be cross verified with books and tax liability accounted and reported therein must be paid in due dates.

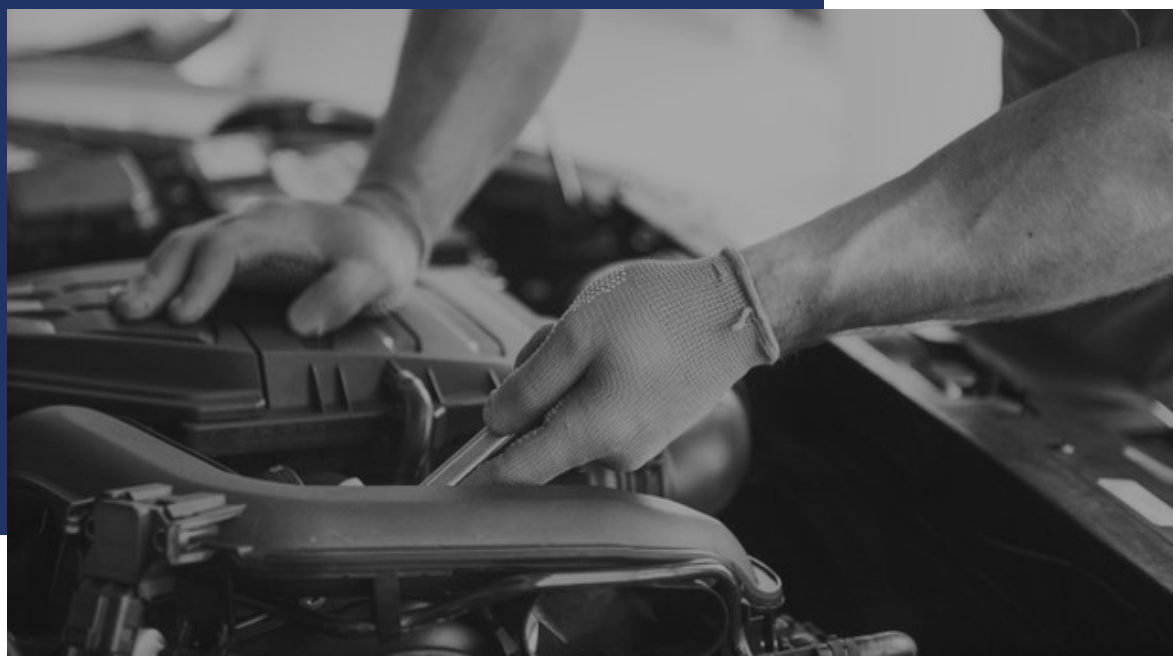
-Since last year, the filing of GSTR-1 is being done before filing of GSTR-3B hence any difference or short reporting in liability of outward supplies in GSTR-3B in comparison with reporting already made in GSTR-1 may not a wise approach. Any correction which is required to be made should be first made in subsequent GSTR-1 to be followed by necessary changes in GSTR-3B.

-Further benefit of Circular No 26/26 dated 14.11.2017 regarding adjustment if wrong reporting in GSTR 1 or GSTR 3B or both should be resorted only to the extent when it relates to wrong punching of figures in the returns. However if any document has been reported in GSTR-1 then its tax effect should also be given in GSTR-3B of the corresponding tax period rather than resorting to the options given under specified circular.

-It is also relevant in given context that as per Section 73(11) of the Act, penalty can be imposed if self-assessed tax is not paid within period of 30 days from the due date. Further the relaxation in levy of such penalty has been given vide circular number 76/50/2018 dated 31.12.2018 only when such self-assessed tax has been paid along with appropriate interest before issuance of any notice by the revenue. Hence tax declared in GSTR-1 should be paid in GSTR-3B and if said reporting in GSTR-3B or filing of GSTR-3B is done after the due date, then necessary interest as applicable should be also be paid along with it to avoid penal actions.

Compiled by Shuchi Sethi

Expert's Insight



ITC on Repairs and Maintenance of Motor Vehicles

Section 17(5) of CGST/SGST Act 2017 specifies certain goods and services in respect of which Input Tax Credit cannot be claimed by a registered tax payer. This article grapples with one of the component of blocked credit i.e. ITC on relation on repairs and Maintenance of Motor vehicles.

Bare Provision

Section 17(5)

(a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely:—

(A) further supply of such motor vehicles; or

(B) transportation of passengers; or

(C) imparting training on driving such motor vehicles;

(aa) vessels and aircraft except when they are used—

(i) for making the following taxable supplies, namely:—

(A) further supply of such vessels or aircraft; or

(B) transportation of passengers; or

(C) imparting training on navigating such vessels; or

(D) imparting training on flying such aircraft;

(ii) for transportation of goods;

(ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):

Provided that the input tax credit in respect of such services shall be available—

(i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;

(ii) where received by a taxable person engaged—

(I) in the manufacture of such motor vehicles, vessels or aircraft; or

(II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;

Form the above, it is clear that ITC in respect of passenger vehicles having seating capacity of less than thirteen people is ineligible, unless they are further supplied, or used either for transportation of passengers, or for imparting training. With this, most of the taxpayers have adopted the view, that since ITC in respect of passenger vehicles having seating capacity of less than thirteen people is ineligible, therefore, ITC on goods and services used for repairs and maintenance of such passenger vehicles in also ineligible.

In this context, it is important to interpret meaning of the term "in respect of". In case of State Of Madras vs M/S. Swastik Tobacco Factory, reported in 1966 AIR 1000, 1966 SCR (3) 79 it was held by the Hon'ble Supreme Court that "in respect of" should be read as "on" in context of an exemption entry under Madras General Sales Tax (Turnover and Assessment) Rules 1939. It was held that in Indian Laws "in respect of" is synonymous to "on". Hence with given interpretation under clause (a) of Section 17(5) of the Act, ITC on supply of motor vehicle only is required to be reversed. But the ITC on maintenance and repair of such motor vehicle is not covered by said clause.

Further with effect from 1-2-2019, vide amendment in the CGST Act 2017, clause (ab) of section 17(5) has been inserted which states certain specified supplies of services shall be treated as blocked ITC. It is read as

*"**SERVICES** of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa)".*

It can be drawn that only services of Repairs and Maintenance relating to passenger vehicles are ineligible for availing credit and not goods being utilised for such vehicles. Hence, ITC relating to goods used for Repairs and Maintenance of Motor Vehicles are eligible for credit irrespective of type of Motor Vehicle.

Also, Circular No. 47/21/2018-GST issued by GST department on 8th June 2018 (prior to the amendment). The circular addressed the issue of taxation of "servicing of cars", as below

Q. How is servicing of cars involving both supply of goods (spare parts) and services (labour), where the value of goods and services are shown separately, to be treated under GST?

The taxability of supply would have to be determined on a case to case basis looking at the facts and circumstances of each case.

Where a supply involves supply of both goods and services and the value of such goods and services supplied are shown separately, the goods and services would be liable to tax at the rates as applicable to such goods and services separately

The circular suggests that such supply of goods and services by a service centre of vehicles is NOT a composite supply, and since they are showing the goods and services separately, they would be liable to rates as applicable to such goods and services, thus meaning that the goods and services should be deemed to be supplied individually.

In line of the above, it is reasonable to interpret that ITC of goods used for repair and maintenance of such vehicles can be availed irrespective of type of vehicle. Thus ITC on tyres, oil, spares, accessories received during course of maintenance or repair of vehicle is not blocked.

-Written by Shefali Jain Bang

Expert's Insight

TDS on Sale through E-Commerce Operators

Finance Act, 2020 inserted a new section 194-O in the Income Tax Act, 1961 which mandates that with effect from 1st October 2020, an e-commerce operator shall deduct income tax @ 1% (which is reduced to @0.75% up to 31st March 2021) of the gross amount of sale of goods or provision of services or both facilitated through its digital or electronic facility or platform. This deduction is required to be made at the time of credit of amount of such sale or service or both to the account of an e-commerce participant or at the time of payment thereof to such e-commerce participant, whichever is earlier.

An explanation is inserted further after the provisions of this section wherein it has been explained that any payment made by a purchaser of goods or recipient of services directly to an e-commerce participant for the sale of goods or provision of services or both, facilitated by an e-commerce operator, shall be deemed to be the amount credited or paid by the e-commerce operator to the e-commerce participant and shall be included in the gross amount of such sale or services for the purpose of deduction of income-tax under this sub-section.

Various provisions of this newly inserted section 194-O can be understood with following simple pointers:

1. Section 194-O is applicable w.e.f. 1st October, 2020.
2. E-commerce operators are liable to deduct tax under this section on payments made or credit to the account of e-commerce operators.
3. No tax is to be deducted, in case of Individual and HUF where gross amount of such sale or services or both during the previous year does not exceed Rs. 500000/- and such e-commerce participant has furnished his Permanent Account Number or Aadhaar number to the e-commerce operator.

4. A transaction in respect of which tax has already been deducted by the e-commerce operator under this section shall not be liable to deduct tax at source under any other provision of this Chapter. However, it is to be noted that this provision shall not apply to any amount received or receivable by an e-commerce operator for hosting advertisements or providing any other services which are not in connection with the sale or services as per this section.

Central Board of Direct Taxes has also issued Guidelines through Circular No. 17 of 2020 vide F.No.370133/22/2020-TPL dated 29th September 2020 for removing certain difficulties which can be summarized as:

1. **Applicability on payment gateways:**

   In e-commerce transactions, the payments are generally facilitated by payment gateways, in these transactions, there may be applicability of section 194-0 twice i.e. once on e-commerce operator who is facilitating selling of goods or provision of services or both and once on payment gateway who also happen to qualify as e-commerce operator for facilitating service.

   For Example, a buyer buys goods worth 5 Lakh rupees on e-commerce website "Myntra". He makes payment of 5 lakh rupees through digital platform of "Razorpay". On these facts liability to deduct tax under section 194-0 may fall on both "Myntra" and "Razorpay".

   In order to remove this difficulty, it is provided that the payment gateway will not be required to deduct tax under section 194-0 of the Act on a transaction, if the tax has been deducted by the e-commerce operator under section 194-0 of the Act, on the same transaction. Hence, in the above example, if "Myntra" has deducted tax under section 194-0 on 5 lakh rupees, "Razorpay" will not be required to deduct tax under section 194-0 of the Act on the same transaction. For better compliance, "Razorpay" may take an undertaking from "Myntra" regarding deduction of tax.

2. **Applicability of on insurance agent or insurance aggregator:**

   It is very common that insurance agents or insurance aggregators in many cases have no involvement in transactions between insurance company and the buyer for subsequent years. In subsequent years, the liability to deduct tax may arise on the insurance agents or insurance aggregators even if the transactions have been completed directly with the insurance company. This may result into hardship for the insurance agents/aggregators.

   Guideline has been issued in this respect that in years subsequent to the first year, if the insurance agent or insurance aggregator has no involvement in transactions between insurance company and the buyer of insurance policy, he would not be liable to deduct tax under section 194-0 of the Act for those subsequent years. However, the insurance company shall be required to deduct tax on commission payment, if any, made to the insurance agent or insurance aggregator for those subsequent years under the relevant provision of the Act.

3. **Calculation of threshold for the financial year 2020-21:**

   It hereby clarified that since the threshold of 5 lakh rupees for an individual/ Hindu undivided family (being ecommerce participant who has furnished his PAN/ Aadhaar) is with respect to the previous year, calculation of amount of sale or services or both for triggering deduction under section 194-0 of the Act shall be counted from 1st April, 2020. Hence, 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, Hindu undivided family exceeds 5 lakh rupees, the provision of section 194-0 shall apply on any sum credited or paid on or after 1st October, 2020.

-Written by Saket Sharma

New On GSTN Portal

Offline Tool to compare ITC auto drafted in Form GSTR-2B with Purchase Register

An offline tool has been made available to the taxpayers to match Input Tax Credit (ITC), as auto populated in their Form GSTR-2B, with their purchase register. This tool will help the taxpayer to compare their ITC as per their Purchase Register, with the ITC as shown available in their auto drafted Form GSTR-2B and thus helping them to claim correct ITC, while filing Form GSTR-3B.

GSTN has also issued a Frequently Asked Question ("FAQ") and User Manual for Matching Offline Tool of Form GSTR-2B with the Purchase Register for the ease of understanding of the Taxpayers.

Briefly, the matching tool involves following steps:
-Download and install the Offline tool
-Download the Form GSTR-2B JSON file from the GST portal
-Prepare purchase register in the template provided with offline tool

Once matching is complete, taxpayer can:
-Refine matching result
-View summary of the matching result
-Export the matching details to CSV file
-Download the matching result details in excel format from offline utility.

Blocking of E-Way Bill (EWB) generation facility for taxpayers with AATO over Rs 5 Cr., after 15th October, 2020

GST Council decided to restrict the E Way Bill generation facility, in case the person fails to file their GSTR-3B returns, for a consecutive period of two months or more, as per Rule 138 E (b) of the CGST Rules, 2017, for the taxpayers whose Aggregate Annual Turn Over (AATO, PAN based) is more than Rs 5 Crores.

Thus, if any GSTIN associated with a PAN (with AATO over Rs 5 Cr.) has failed to file their GSTR-3B Return for 02 or more tax periods, up to the month of tax period of August, 2020, their EWB generation facility will be blocked on the EWB Portal after 15th October, 2020.

New On GSTN Portal

"RESEND OTP" Option for same OTP again

GSTN has enabled the "RESEND OTP" option on the portal to request the same OTP again. Resend request can be made maximum three times. This will help taxpayers and ease the compliance.

Shifting of navigation of "Comparison of liability declared and ITC claimed" from the Returns Dashboard to Services dropdown

The functionality **"Comparison of liability declared and ITC claimed"** has been removed from Return Dashboard. It has now been made available on the main page to make it more user friendly and for ease of access by the taxpayers as per the following navigation

Home > Services > Returns > Tax liabilities and ITC comparison

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Thank You

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