FAQ 194-O TDS: Ecommerce Operator (w.e.f. 01/04/2020) :

A. Who is responsible to deduct TDS U/s 194-O?

Any person, being E-commerce operator facilitating sale of good or provision of services of an E-commerce Participant through its digital or electronic Facility or platform (by whatever name called).

B. Is there any definition for Ecommerce, Ecommerce Operator and Ecommerce Participant?

Yes, Explanation to 194-O have specifically defined below terms

a. **Electronic Commerce** means the supply of goods or services or both, including digital products over digital or electronic network.

b. **E-commerce operator:** means a person who owns, operates or manages digital or electronic facility or platform for electronic commerce and is responsible for paying to e-commerce participant.

Its mandatory to fulfil both precondition which are conjunctive and not dis conjunctive i.e. person must own, operates or manage Digital/Electronic Facility or Platform.

c. **E-commerce participant** means a person resident in India selling goods or providing services or both, including digital products, through digital or electronic facility or platform for electronic commerce.

C. What is the point of deduction of TDS u/s 194-O?

Tax should be deducted either ***at the time of credit of amount*** *of sale or services or both to the account of an e-commerce participant* ***OR at the time of payment*** *thereof to such e-commerce participant by any mode,* ***whichever is earlier.***

D. At what rate TDS has to be deducted u/s 194-O?

TDs is to be deducted at 1% on the **gross amount of sales or services or both.**

In Absence of Pan/Aadhaar, TDS is to be deducted @5% (Section 206AA have been amended accordingly).

It is pertinent to note that proposed section uses word ***"Gross amount of such Sales"*** *which means e-commerce operator will require to deduct TDS on GST portion of sales and as well as on Commission and affiliation portion also which e-commerce operator himself will withheld*

E. **Under what circumstances TDS u/s 194-O is not deductible?**

No TDS is to be deducted, were **ecommerce Participant is Individual or HUF** and gross amount of such sale or services or both during the previous year **does not exceed five lakh** rupees **AND** e-commerce participant furnished **Permanent Account Number or Aadhaar number** to the e-commerce operator.

F. **Whether the TDS is to be deducted for Non-Resident Selling good trough Ecommerce Portal u/s 194O?**

   Ecommerce Participant is defined a **person resident in India** selling goods or providing services or both, including digital products, through digital or electronic facility or platform for electronic commerce. And thus No TDS is required to be deducted when Participant is Non Resident.

G. **Whether TDS is to be deducted if amount is directly collected by Ecommerce Participant?**

   For all transaction which have been facilitated by E-commerce participant, TDS has to be deducted by Ecommerce operator irrespective of mode of payment to Ecommerce participant.

H. **Whether Ecommerce Participant can apply for Lower deduction/No Deduction certificate u/s 197?**

   Yes, Consequent amendment have been made in Section 197. Ecommerce Participant can make application before TDS AO who has a jurisdiction over his/her/its case.

CA Saurabh Anokhchand Jain
saurabhajain@ymail.com
https://www.linkedin.com/in/saurabhajain/

CA Ashok Vyas
vyas.ashokca@gmail.com

Extract from The Finance Bill, 2020

*(84) 194 – O (1) "Notwithstanding anything to the contrary contained in **any of the provisions of Part B** of this Chapter, where sale of goods or provision of services of an e-commerce participant **is facilitated** by an e-commerce operator through its digital or electronic facility or platform (by whatever name called), such e-commerce operator shall, **at the time of credit of amount of sale or services or both to the account of an e-commerce participant or at the time of payment** thereof to such e-commerce participant by any mode, whichever is earlier, deduct income-tax at the rate of one per cent. of the gross amount of such sales or services or both."*

Explanation

*"For the purposes of this sub-section, **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 subsection."*

(2) No deduction under sub-section (1) shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of an e-commerce participant, being an individual or Hindu undivided family, where the gross amount of such sale or services or both during the previous year does not exceed five lakh rupees and such e-commerce participant has furnished his Permanent Account Number or Aadhaar number to the e-commerce operator.

*(3) Notwithstanding anything contained in Part B of this Chapter, a transaction in respect of which tax has been deducted by the e-commerce operator under sub-section (1), or which is not liable to deduction under sub-section (2**), shall not be liable to tax deduction at source under any other provision of this Chapter***

Provided that the provisions of this sub-section shall not apply to any amount or aggregate of amounts 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 referred to in sub-section (1)

Explanation. For the purposes of this section

a. **Electronic Commerce** means the supply of goods or services or both, including **digital products over digital or electronic network**.
b. **E-commerce operator:** means a person who owns, operates or manages digital or electronic facility or platform for electronic commerce and **is responsible** for paying to e-commerce participant.
c. **E-commerce participant** means a person resident in India selling goods or providing services or both, including digital products, through digital or electronic facility or platform for electronic commerce.
d. **Services** includes 'fees for technical services' and fees for 'professional services', as defined in the Explanation to section 194J.'.

(89) In section 197 of the Income-tax Act, in sub-section (1), for the figures and letter "194M", the figures and letters "194M, 194-O" shall be substituted.

(91) In section 204 of the Income-tax Act, after clause (iv) and before the Explanation, the following clause shall be inserted, namely

(92) In section 206AA of the Income-tax Act, in sub-section (1), the following proviso shall be inserted, namely:

'Provided that where the tax is required to be deducted under section 194-O, the provisions of clause (iii) shall apply as if for the words "twenty per cent.", the words "five per cent." had been substituted.'