

# E-commerce (Electronic Commerce)



# Definitions

- The Indian **Foreign Direct Investment (FDI) policy** defines “e-commerce” to mean buying and selling of goods and services including digital products over a digital and electronic network.
- **OECD (Organisation for Economic Co-operation and Development)** defines “e-commerce” as the sale or purchase of goods or services, conducted over computer networks by methods specifically designed for the purpose of receiving or placing orders.
- The **Central GST Act, 2017** defines “electronic commerce” to mean the supply of goods or services or both, including digital products over digital or electronic network.

# Classification of E-commerce

**Business to Customers (B2C)**

**Business to Business (B2B)**

**Government to Customers (G2C)**

**Government to Business (G2B)/  
Business to Government (B2G)**

**Customer to Customer (C2C)**

# Classification of E-commerce

- **Business to Customers (B2C):** In this type of e-commerce, transactions take place between businesses and consumers. In B2C e-commerce, products or services are sold to end-users (i.e. consumers).  
**Example:** Amazon.in, Flipkart.com, Myntra.com, Snapdeal.com etc.
- **Business to Business (B2B):** In B2B e-commerce, transactions take place between two businesses.  
**Example:** IndiaMART, TradeIndia, Wabi2B, Amazon, the US-based ecommerce giant etc.
- **Government to Customers (G2C):** The online platform between a government and its citizens / consumers.  
**Example:** paying taxes, registering vehicles, providing information and services like filing of income tax return.

## Classification of E-commerce (contd.)

- **Government to Business (G2B)/ Business to Government (B2G):** In G2B / B2G ecommerce, an electronic exchange of any information between businesses and the government, usually using internet so the cooperation or communication takes place on the internet. In G2B, government agencies and business use websites, procurement marketplaces, applications, web services.

**Example:** Government e-Marketplace (GeM), a one stop portal to facilitate online procurement of common use Goods & Services required by various Government Departments /Organizations / PSUs.

- **Customer to Customer (C2C):** When goods or services are bought and sold between two consumers, C2C e-commerce business takes place.

**Example:** Olx, eBay etc.

# Types of E-commerce Business Models (FDI)

- **Inventory based model of e-commerce-** Inventory based model of e-commerce means an e-commerce activity where inventory of goods and services is owned by e-commerce entity and is sold to the consumers directly and shall include single brand retailers and multi-channel single brand retailers.

**Example:** Jiomart, etc.

- **Marketplace based model of e-commerce-** Marketplace based model of e-commerce means providing of an information technology platform by an e-commerce entity on a digital & electronic network to act as a facilitator between buyer and seller.

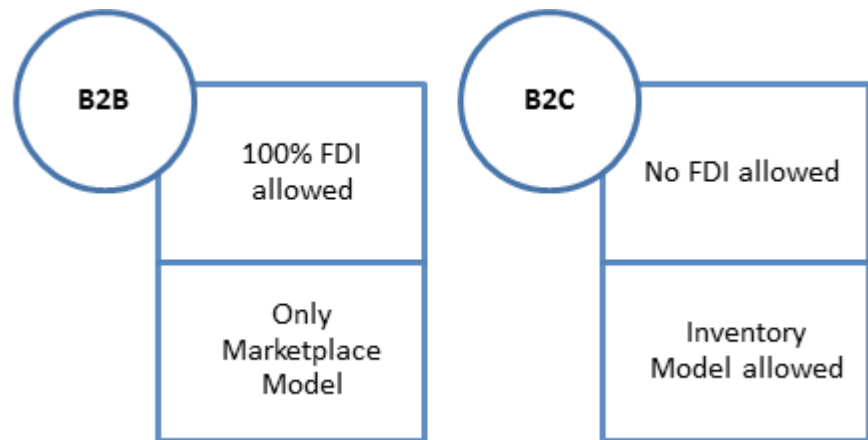
**Example:** Amazon, Flipkart, etc.

# Guidelines for FDI on E-commerce Sector

**E-commerce entities** would engage only in Business to Business (B2B) e-commerce and not in Business to Consumer (B2C) e-commerce.

- 100% FDI under automatic route is permitted in marketplace model of e-commerce.
- FDI is not permitted in inventory-based model of e-commerce

**E-commerce entities:** As per the Consolidated FDI Policy 2020, E-commerce entity means a company incorporated under the Companies Act 1956 or the Companies Act 2013 or a foreign company covered under section 2 (42) of the Companies Act, 2013 or an office, branch or agency in India as provided in section 2 (v) (iii) of FEMA 1999, owned or controlled by a person resident outside India and conducting the e-commerce business.



## Conditions of FDI Policy

- Marketplace e-commerce entity will be permitted to enter into transactions with sellers registered on its platform on **B2B basis**.
- E-commerce marketplace may provide **support services** to sellers in respect of warehousing, logistics, order fulfillment, call centre, payment collection and other services.
- E-commerce entity providing a **marketplace will not exercise ownership or control over the inventory** i.e. goods purported to be sold. Such an ownership or control over the inventory will render the business into **inventory-based model**. Inventory of a vendor will be deemed to be controlled by e-commerce marketplace entity if **more than 25% of purchases** of such vendor are from the marketplace entity or its group companies.



## Conditions of FDI Policy (contd.)

- In marketplace model goods/services made available for sale electronically on website should **clearly provide name, address and other contact details of the seller**. Post sales, delivery of goods to the customers and customer satisfaction will be **responsibility of the seller**.
- In marketplace model, **payments for sale** may be facilitated by the e-commerce entity in conformity with the guidelines of the **Reserve Bank of India**.
- In marketplace model, any **warranty/ guarantee** of goods and services sold will be responsibility of the **seller**.
- E-commerce entities providing marketplace **will not directly or indirectly influence the sale price of goods or services and shall maintain level playing field**. Services should be provided to vendors on the platform at **arm's length and in a fair and non-discriminatory** manner. For instance - fulfillment, logistics, warehousing, advertisement/ marketing, payments, financing etc.

## Conditions of FDI Policy (contd.)

- Cash back provided by group companies of marketplace entity to buyers shall be fair and non-discriminatory. **Provision of services to any vendor on such terms which are not made available to other vendors in similar circumstances will be deemed unfair and discriminatory.**
- E-commerce marketplace entity will **not mandate any seller to sell any product exclusively on its platform only.**
- An entity having **equity participation** by e-commerce marketplace entity or its group companies or having control on its inventory by e-commerce marketplace entity or its group companies, **will not be permitted to sell its products on the platform run by such marketplace entity.**
- E-commerce marketplace entity with FDI shall have to obtain and maintain a report of statutory auditor by **30<sup>th</sup> of September every year** for the preceding financial year confirming compliance of the e-commerce guidelines.

# Impact of GST on E-commerce Operator



As per the **Section 52** (Collection of Tax at Source) of Goods & Services Tax (GST) Act, every electronic commerce operator (“operator”), not being an agent, shall collect an amount calculated at one per cent of the **net value of taxable supplies** made through it by other suppliers **where the consideration with respect to such supplies is to be collected by the operator**. The amount so collected is called as Tax Collection at Source (TCS).

# Impact of GST on E-commerce

- **Who is an e-commerce operator?**

Electronic Commerce Operator has been defined in Sec. 2(45) of the CGST Act, 2017 to mean any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

- **What is Tax Collection at Source (TCS)?**

The e-commerce operator is required to collect an amount at the rate of one percent (0.5% CGST + 0.5% SGST) of the **net value of taxable supplies** made through it, where the **consideration** with respect to such supplies is to be **collected** by such operator.

- **What is meant by “net value of taxable supplies”?**

The “net value of taxable supplies” means the aggregate value of taxable supplies of goods or services or both, other than the services on which entire tax is payable by the e-commerce operator, made during any month by all registered persons through such operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

# Impact of GST on E-commerce Operator

- **Is every e-commerce operator required to collect tax on behalf of actual supplier?**

Yes, every e-commerce operator (other than an operator required to pay tax under section 9(5) of the CGST Act, 2017) is required to collect tax **where consideration** with respect to a taxable supply is **collected** by such e-commerce operator.

- **Is it mandatory for e-commerce operator to obtain registration?**

Yes. As per Section 24(x) of the CGST Act, 2017 the benefit of threshold exemption is not available to e-commerce operators and they are liable to be registered irrespective of the value of supply made by them.

- **How can actual suppliers claim credit of this TCS?**

The amount of TCS deposited by the operator to the government can be claimed by filing a return named “TDS and TCS Credit Received” on GST portal after accepting the TCS credit amount. The TCS amount would thereby be transferred to Electronic cash ledger and can be used by the supplier at the time of discharging the tax liability in GSTR 3B.

# Impact of GST on E-commerce Operator

- **What is the time within which such TCS is to be remitted by the e-commerce operator to Government?**

The amount collected by the operator is to be paid to the government within 10 days after the end of the month in which amount was so collected.

- **What time should the e-commerce operator make such collection?**

The e-commerce operator should make the collection during the month in which the consideration amount is collected from the recipient.

- **Is the e-commerce operator required to submit any statement? What are the details that are required to be submitted in the statement?**

Yes, every operator is required to furnish a statement, electronically, containing the details of outward supplies of goods or services effected through it, including the supplies of goods or services returned through it, and the amount collected by it as TCS during a month within ten days after the end of such month. The statement will be filed in **FORM GSTR-8**. The operator is also required to file an annual statement by 31st day of December following the end of the financial year in which the tax was collected.

# Taxation of E-commerce transactions

## Section 194-O (1) of the **Income Tax Act**

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 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.

**Income-tax Act** defines "e-commerce operator" as a person who owns, operates or manages digital or electronic facility or platform for electronic commerce;

Further, 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.

# Taxation of E-commerce transactions

- **Non-applicability of TDS under section 194-0**

No tax is required to be deducted under section 194-0 in case of any sum credited or paid to an e-commerce participant, being an individual or HUF, where the gross amount of such sale or services or both during the previous year **does not exceed 5 lakh** and such e-commerce participant has furnished his **PAN/ Aadhaar** number to e-commerce operator.

- **Non-applicability of TDS under any other section**

A transaction in respect of which tax has been deducted by the e-commerce operator under this section or which is not liable to tax deduction under this section on account of the exemption discussed in point above, would not be liable to tax deduction at source under any other provision of Chapter XVII-B of the Act. However, this exemption from TDS under Chapter XVII-B would 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 of goods or services.**



# Taxation of E-commerce transactions

## **Applicability on Payment Gateway**

In e-commerce transactions, the payments are generally facilitated by payment gateways. Consequently, it is possible that there may be applicability of section 194-O twice i.e., once on the main e-commerce operator who is facilitating sale 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. To illustrate, a buyer buys goods worth one lakh rupees on e-commerce website "XYZ". He makes payment of one lakh rupees through digital platform of "ABC". On these facts, liability to deduct tax under section 194-O may fall on both "XYZ" and "ABC".

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 e-commerce operator under section 194-O of the Act, on the same transaction. Hence, in the above example, if "XYZ" has deducted tax under section 194-O on one lakh rupees, "ABC" will not be required to deduct tax under section 194-O of the Act on the same transaction. To facilitate proper implementation, "ABC" may take an undertaking from "XYZ" regarding deduction of tax.

# Equalisation Levy

## **Meaning of “Equalisation Levy” [Section 164(d) of the Finance Act, 2016]:**

Equalisation levy means the tax leviable on consideration received or receivable for any specified service or e-commerce supply or services.

## **Charge of Equalization levy on E-commerce supply or services [Section 165A of the Finance Act, 2016]**

**Chargeability of Equalization levy on E-commerce supply or services:** Equalization levy @ 2% would be chargeable on the amount of consideration received or receivable by an e-commerce operator from e-commerce supply or services made or provided or facilitated by it—

- a) to a person resident in India; or
- b) to a non-resident in the specified circumstances as provided below; or
- c) to a person who buys such goods or services or both using internet protocol address located in India.

# Equalisation Levy

- **Meaning of "specified circumstances":**

1. sale of advertisement, which targets a customer, who is resident in India or a customer who accesses the advertisement through internet protocol address located in India; and
2. sale of data, collected from a person who is resident in India or from a person who uses internet protocol address located in India.

**Non-chargeability of equalization levy:** The equalization levy shall not be charged

1. where the e-commerce operator making or providing or facilitating e-commerce supply or services has a **permanent establishment** in India) and such **e-commerce supply** or services is **effectively connected** with such PE;
2. where the equalization levy is leviable under section 165; or
3. (sales, turnover or gross receipts), as the case may be, of the e-commerce operator from the e-commerce supply or services made or provided or facilitated is less than Rs. 2 crore} during the previous year.

# Equalisation Levy

## **E-Commerce Supply or Services**

- i. online sale of goods owned by the e-commerce operator; or Supply — or
- ii. online provision of services provided by the e-commerce Services operator; or
- iii. online sale of goods or provision of services or both, facilitated by the e-commerce operator; or
- iv. any combination of activities listed in (i), (ii) or (iii) above.

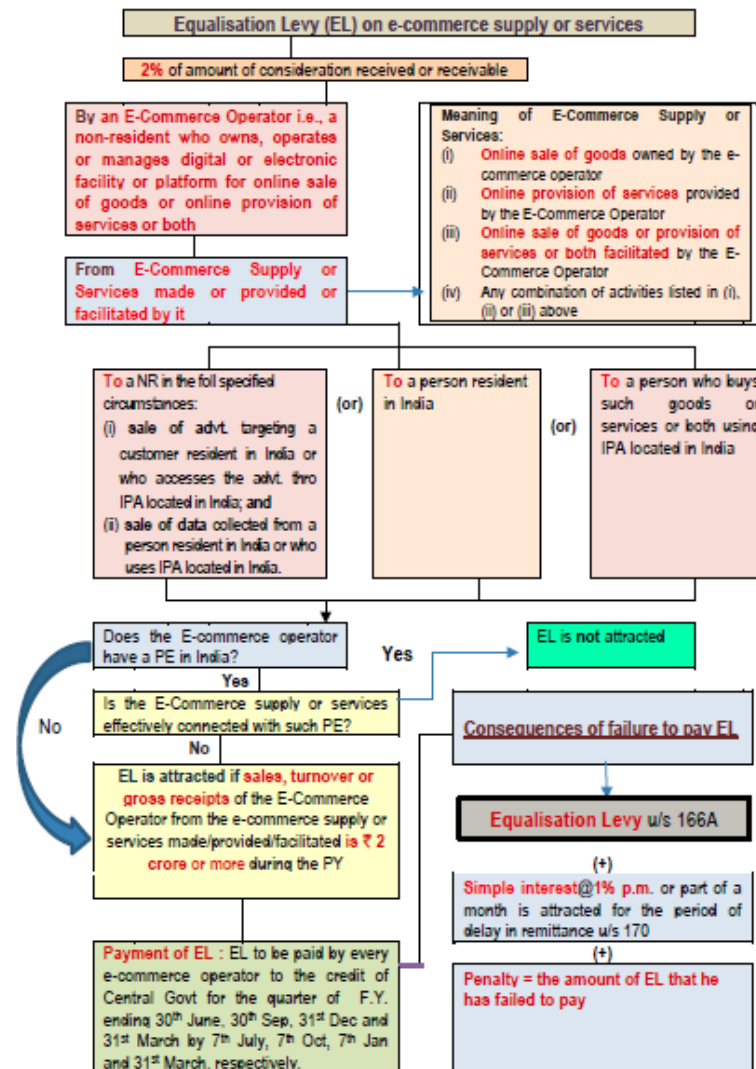
**“Online sale of goods”** and **“online provision of services”** would include one or more of the following online activities

- a) acceptance of offer for sale; or
- b) placing of purchase order; or
- c) acceptance of the purchase order; or
- d) payment of consideration; or
- e) supply of goods or provision of services, partly or wholly.

# Equalisation Levy

- **Consideration received or receivable from e-commerce supply or services” would include:**
  1. consideration for sale of goods irrespective of whether the e-commerce operator owns the goods. However, it shall not include consideration for sale of such goods which are owned by a person resident in India or by a permanent establishment in India of a person non-resident in India, if sale of such goods is effectively connected with such permanent establishment;
  2. consideration for provision of services irrespective of whether service is provided or facilitated by the e-commerce operator. However, it shall not include consideration for provision of services which are provided by a person resident in India or by permanent establishment in India of a person non-resident in India, if provision of such services is effectively connected with such permanent establishment.

# Equalisation Levy



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