Government of India

INCOME TAX DEPARTMENT

Report of the Committee

TDS on E-Commerce and Aggregators

TDS ON E-COMMERCE

AND

AGGREGATORS

A STUDY REPORT

Preface

This committee was constituted by the CBDT vide order dated 18.10.2019 to look into issues of TDS on E-Commerce and Aggregators. The committee since had wide ranging discussions with all the stake holders including tax payers, e-commerce platforms, tax professionals and tax officers in various meetings held in Mumbai, Delhi and Jaipur. This report is prepared after considering their suggestions, views and opinions.

While drafting this report and proposed legislation, we have kept in mind the fact that law should be simple, easy to understand, easy to comply with no additional costs to the taxpayers and easy to monitor and enforce. The proposed law serves twin objectives of broadening the tax base and mobilisation of revenue.

The committee is grateful for the valuable inputs, views, opinions and help rendered by the officers of the Income Tax Department, E-commerce Platforms, Tax payers and Tax professionals.

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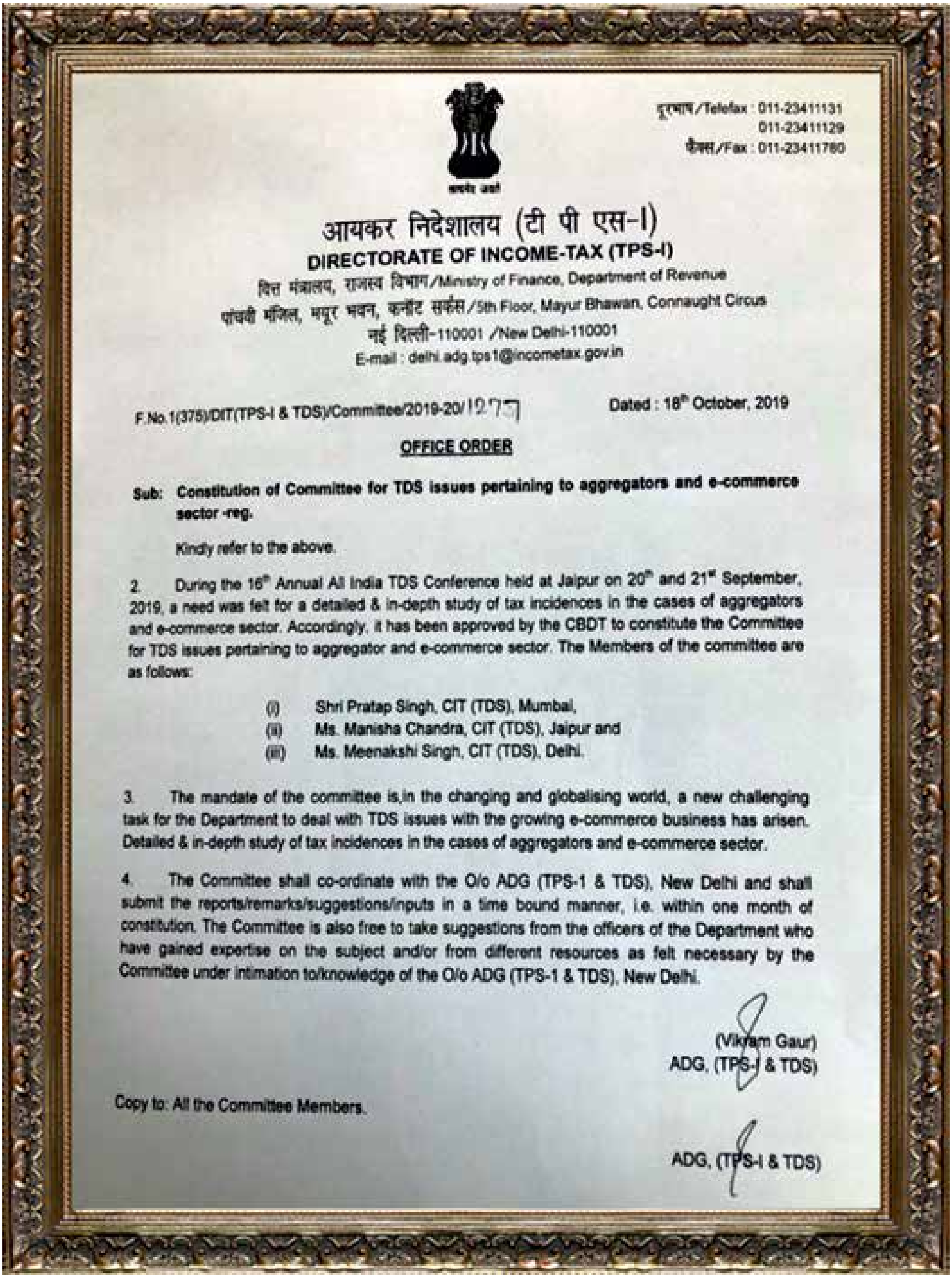

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F.No.1(375)/DIT(TPS-I & TDS)/Committee/2019-20/1277 Dated : 18th October, 2019

OFFICE ORDER

Sub: Constitution of Committee for TDS issues pertaining to aggregators and e-commerce sector -reg.

Kindly refer to the above.

2. During the 16th Annual All India TDS Conference held at Jaipur on 20th and 21st September, 2019, a need was felt for a detailed & in-depth study of tax incidences in the cases of aggregators and e-commerce sector. Accordingly, it has been approved by the CBDT to constitute the Committee for TDS issues pertaining to aggregator and e-commerce sector. The Members of the committee are as follows:

(i) Shri Pratap Singh, CIT (TDS), Mumbai,
(ii) Ms. Manisha Chandra, CIT (TDS), Jaipur and
(iii) Ms. Meenakshi Singh, CIT (TDS), Delhi.

3. The mandate of the committee is,in the changing and globalising world, a new challenging task for the Department to deal with TDS issues with the growing e-commerce business has arisen. Detailed & in-depth study of tax incidences in the cases of aggregators and e-commerce sector.

4. The Committee shall co-ordinate with the O/o ADG (TPS-1 & TDS), New Delhi and shall submit the reports/remarks/suggestions/inputs in a time bound manner, i.e. within one month of constitution. The Committee is also free to take suggestions from the officers of the Department who have gained expertise on the subject and/or from different resources as felt necessary by the Committee under intimation to/knowledge of the O/o ADG (TPS-1 & TDS), New Delhi.

(Vikram Gaur)
ADG, (TPS-I & TDS)

Copy to: All the Committee Members.

ADG, (TPS-I & TDS)

ACKNOWLEDGEMENTS

The Committee is grateful to the CBDT particularly Shri P.K. Das, Member (A&J) in reposing so much faith and entrusting this task to us. Special thanks are due to Shri Vikram Gaur, ADG(TPS)-1 for helping the Committee from time to time in conducting the business and drafting this report.

E-commerce is relatively new area for taxation, more importantly implementing the TDS mechanism. The present legislation is not able to take care of TDS on such transactions effectively and was giving rise to a lot of avoidable disputes. Therefore, it was felt necessary to draft a new legislation. While drafting this report, the Committee received inputs and suggestions from various experts within the department and from industry and tax professionals. The committee is thankful to each one of them. The Committee is particularly grateful to Shri Pramod Jain, Tax Head, Flipkart India, Shri Amit Bansal, Tax Head, Uber India Systems Pvt. Ltd. and Shri Mitesh Shah, CFO, Book My Show for their immense contribution and bringing out industry perspective. The Committee is also grateful to Mohd. Rizwan, Addl.CIT(TDS), Mumbai, Ms. Bharti Singh, Addl.CIT(TDS), Mumbai, Shri Suman Kumar, Addl.CIT (ReAC), Mumbai, Shri Abdul Hakeem, Jt.CIT, Mumbai, Dr Sohail Malik DCIT TDS Delhi and Shri Rakesh Kumar, ITO(HQ)(TDS)-2, Mumbai for valuable inputs and suggestions.

The Committee wishes to express its thanks to Shri Sandeep Bhalla and Shri Rishi Shukla, C.As. from Dhruva Advisors, Shri Vishnu Agarwal, C.A. Past President WIRC, Ms. Preeti Savala, President-WIRC ICAI, Shri Jaideep Kulkarni, Senior Partner E&Y and Sri Sachin from E&Y. Finally the committee expresses its gratitude to everybody who directly or indirectly contributed and helped us in completing this report.

Manisha	Meenakshi 4/12/2019	Pratap 4/12/19
(MANISHA CHANDRA)	(MEENAKSHI SINGH)	(PRATAP SINGH)
CIT(TDS), Jaipur	CIT(TDS)-1, Delhi	CIT(TDS)-2, Mumbai

Executive Summary

E- commerce has transformed the way business is done in India not only for sale-purchase of goods and services but also for making and receiving payments . Online market-platforms like Amazon, Flipkart, Zomato, Swiggy, Uber, Make-my-trip, Yatra Online, Paytm, e-wallet, Rupay etc. have come into play in last few years. As per Goldman Sachs and Nasscom, the Indian e-commerce market is expected to grow to US$ 200 billion by 2026 from US$ 50 billion as of now. Much growth of the e-commerce industry has been triggered by internet and smartphone penetration in the country. As per a study, India's E-commerce revenue is expected to reach US$ 120 billion by 2020, growing at an annual rate of 51 per cent, which is the highest in the world.

E-commerce (electronic commerce) is the buying and selling of goods and services, or the transmitting of funds or data, over an electronic network, primarily the internet. Ecommerce enables to buy and sell products on a global scale, twenty-four hours a day without incurring the overheads in running a brick and mortar store. The benefits of e-commerce include its around-the-clock availability, the speed of access, the wide availability of goods and services for the consumer, easy accessibility and international reach. There has been phenomenal increase in e commerce because of internet penetration and mobile telephony.

What happens in e-commerce transactions is that payment is collected by the e-commerce platform from the customer and after retaining its commission, which ranges from 15% to 25% and after deducting amount to be paid to the delivery boys or agencies, which may vary from Rs. 30 to Rs. 50 per delivery, the balance is paid to the end supplier. As per the existing mechanism, TDS is deductible (by the end supplier) on amount retained by the e-commerce portal, which is nothing but commission paid by the supplier to it (the portal) and therefore covered u/s 194H of the Act. Similarly TDS is required to be deducted u/s 194C on payment made to the delivery boys/agency. In fact the amount paid to the end supplier too have some element of profit and can technically be brought under TDS u/s 194C as portal and supplier are under contractual agreement. However in practise, it is seen that no TDS is being deducted in respect of these transactions, barring a few where reverse mechanism is applied which is firstly the end supplier makes payment of TDS and there after claims reimbursement of the same from the e- portal, like in case of Flipkart and Amazon.

The existing provisions impose an obligation on the payer to make TDS on the payments made to payee. In the E-commerce model, there may be difficulties to apply the existing TDS provisions on account of the fact that E-Commerce operators are not the actual payers; it is the final customer who is the actual payer. These operators merely act as a facilitator between the actual buyers and the sellers. Further it may be practically impossible that the payer (who is the end customer) to comply the TDS provisions on such transactions. Besides the existing TDS provisions do not apply on the purchase of goods.

Considering various difficulties as discussed above, it may not be possible to effectively make TDS on these transactions, under the current set of TDS provisions. The possible way is by introducing a special provision in the Income Tax Act 1961, to specify E-commerce operator as 'deemed payer' for the purpose of TDS compliances. Once, the E-commerce operator is considered as deemed payer, the provisions of TDS will come into play and the amounts being remitted by the E-Commerce operators to the actual suppliers can be subject to TDS. Alternatively such deduction may be termed as " Tax Retained at Source" and a nominal rate of TDS ranging from 1% to 2% may be applied. Further the portion to the extent of 15 % to 25% retained by the E-commerce platform/portal as their commission/charges may be subjected to TDS at the rate of 5% and both deductions happen at the end of E-commerce portal. This will reduce unnecessary compliance burden at the end of various suppliers, which are in few lacs and it will also be easier for the department also to deal with a few entities called as E Portals.

GST Act 2017, as amended w.e.f ,Oct, 2018 has introduced TCS provisions on Ecommerce platforms @ 1%, which may act as a guide to introduce similar provisions under Income Tax Act 1961. As the volume of e-commerce transactions is huge and has already crossed 50 billion USD in India and is likely to grow at a pace of over 20% year on year, it is important to bring such transactions under tax-net, not only for identifying new tax payers, but also for mobilising the revenue from TDS. It is therefore recommended that a new section 194P may be inserted in the Income-tax Act w.e.f. 1.4.2020 to bring such transactions under the ambit of TDS @ 1% which may be levied on sales amount through e-commerce platforms, so that entire transaction amount is subjected to TDS. Besides deduction @5% is made by the portal out of the amount retained (15% -25%) by it. It is felt that the rate of 1% is very low and may not cause any grievance, either to the e-commerce platforms or to the vendors or the suppliers. Responsibility to make TDS would be of the e-commerce platform. In fact by applying TDS @ 1% at the end of e-commerce platforms itself, the unnecessary hassles of making TDS by thousands of vendors/suppliers can be avoided and the department will have to deal with only very few entities. It is also proposed to keep a reasonable limit of turnover (say Rs. 5 Lacs) beyond which these provisions would be attracted so that very small people/vendors are excluded from such TDS.

TDS on E-commerce and Aggregators

Introduction:

Rationalisation and simplification of tax laws is one of the foremost priorities of the present Government. In equal measure, the Government has been focussed on expanding the tax base and in creating a more equitable tax framework. The last few years has been marked by significant advances in digital technologies, improved internet infrastructure and growth in smart devices, resulting in spurt of digital activities and transforming ways of doing business. The digital revolution has thrown open some of the most popular business models existing today, viz- online aggregators and marketplaces. The Government realises the benefits of digital innovation and has taken several measures to create, foster and nurture a business-friendly ecosystem for the digital players. At the same time, the policy objective of expanding the coverage of the income-tax levy to include digital companies within its fold has not been lost on the government.

E-commerce (electronic commerce) is buying and selling of goods and services, or the transmitting of funds or data, over an electronic network, primarily the internet. As per GST Act, Electronic commerce means the supply of goods or services or both, including digital products over digital or electronic network. Further Electronic commerce operator means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.These business transactions occur either as business-to-business (B2B), business-to-consumer (B2C), consumer-to-consumer or consumer-to-business. The terms e-commerce and e-business are often used interchangeably. Ecommerce enables to buy and sell products on a global scale, twenty-four hours a day without incurring the overheads in running a brick and mortar store. In broad terms, E-commerce includes an online auction sites, internet banking, online ticketing and reservations, and business to business (B2B) transactions. Recently, the growth of ecommerce has expanded to sales using mobile devices (smart phones / tablets), which is commonly known as 'm-commerce' and is simply a subset of ecommerce. The benefits of e-commerce include its around-the-clock availability, the speed of access, the wide availability of goods and services for the consumer, easy accessibility and international reach. There has been phenomenal increase in e commerce because of internet penetration and mobile telephony.

E- commerce has transformed the way business is done in India not only for sale-purchase of goods and services but also for making and receiving payments . Online market-platforms like Amazon, Flipkart, Zomato, Swiggy, Uber, Make-my-trip, Yatra Online, Paytm, e-wallet, Rupay etc. have come into play in last few years. As per Goldman Sachs and Nasscom, the Indian e-commerce market is expected to grow to US$ 200 billion by 2026 from US$ 50 billion as of now. Much growth of the e-commerce industry has been triggered by internet and smartphone penetration in the country. As per a study, India's E-commerce revenue is expected to reach US$ 120 billion by 2020, growing at an annual rate of 51 per cent, which is the highest in the world.

TDS on E-Commerce and Aggregators

Such phenomenal growth in e commerce throws various challenges to the tax authorities in terms of monitoring the transactions and collecting due taxes, including the compliance to the tax withholding or TDS provisions. More importantly in such transactions, the channels of payment are different from traditional transactions. It is seen that proper compliance of TDS provisions is not being made by these e-commerce platforms as it is not clear as to who should do TDS, on what amount and on what rate. What happens in e-commerce transactions is that payment is collected by the e-commerce platform from the customer and after retaining its commission, which ranges from 15% to 25% and after deducting amount to be paid to the delivery boys or agencies, which may vary from Rs. 30 to Rs. 50 per delivery, the balance is paid to the end supplier.

As per the existing mechanism, TDS is deductible (by the end supplier) on amount retained by the e-commerce portal, which is nothing but commission paid by the supplier to it (the portal) and therefore covered u/s 194H of the Act. Similarly TDS is required to be deducted u/s 194C on payment made to the delivery boys/agency. In fact the amount paid to the end supplier too, have some element of profit and can technically be brought under TDS u/s 194C as portal and supplier are under contractual agreement. However in practise, it is seen that no TDS is being deducted in respect of these transactions, barring a few where reverse mechanism is applied which is firstly the end supplier makes payment of TDS and there after claims reimbursement of the same from the e- portal, like in case of Flipkart and Amazon.

In case of Uber Eats, it was found that no TDS was being done by the restaurant partners on payment of commission to it. Similarly in case of Uber India (taxi business) it was found that no TDS was made in respect of amount paid to driver partners. There after action was taken against it and tax demand was raised. Subsequently Uber India moved an application with CBDT, requesting for formulation of guidelines in respect of such transactions so that it provides level playing field to everybody. It is also seen that Book my show, the entertainment portal through which cinema tickets or various shows tickets can be booked was not making TDS on transactions with various parties, though provisions of section 194C/194H were clearly applicable. Similar is the case in respect of Oyo-rooms and other hotel booking platforms.

As per Nasscom about 235 million entities are involved in such online transactions directly or indirectly, which is very large and requires tax regulation. Since the volume of transactions is also quite huge, it becomes necessary to bring such transactions under TDS net, not only from revenue generation point of view but also to track transactions and to get new tax payers. The levy, through the mechanism of a withholding tax/retention tax levy on gross sales, seeks to efficiently recover taxes on revenues earned by digital platforms as well as suppliers/service providers effecting sales through the platforms. The following parameters remain paramount in the design of the levy:

(a) Certainty and simplicity in design of the levy;

(b) Easy to comply and administer;

(c) Not fastening any compliance obligations on the end users or consumers;

(d) Setting up a mechanism for gathering information on suppliers/service providers deriving revenues through the digital platforms, etc.

In first section of this report, an attempt has been made to understand various sectors of the e-commerce and business models used by each sector, tax implications, applicability of TDS provisions and how best to apply the same. In the next section feasibility of extending TDS provisions on such transactions has been examined. There after exclusions, withholding rate, threshold limit etc. has been discussed. In the last section of the report, a draft legislation/amendment has been suggested in the form of a new section 194P to be introduced. While recommending the amendment it has been kept in mind that proposed law is as simple as possible, easy to comply and easy to monitor and enforce.

2. Scope of E-commerce Transactions:-

The first question with the design of the withholding tax levy would be setting out the in scope entities i.e. digital platforms attracting the obligation. A digital platform is any web based platform for presenting content. It brings together different groups of users - eg consumers and producers. E-commerce may be given the same definition as given in sections 2(44) and 2(45) of the Central Goods and Services Tax Act, 2017. Obviously the scope of e-commerce transactions is quite wide. In terms of sectoral spread, it covers online retailing like Amazon, Flipkart, Myntra, Snapdeal kind of portals; Food delivery platforms like Swiggy, Zomato, taxi aggregators, Online advertising, Airticket booking platforms, Hotel room booking platforms, entertainment platforms etc. Further the sheer number of parties involved directly or indirectly is also very large, about 235million. The volume of business transacted is huge of the order of 50 billion USD and growing at CAGR of over 20%. The e-commerce operators and aggregators may include :

1. Online Retailers like - Amazon, Flipkart, Snapdeal,
2. Online Food Delivery Platforms- eg. Zomato, Food Panda etc.
3. Car Aggregators- Ola, Uber, Red Bus etc.
4. Online Advertising- Yahoo, Google, Facebook, Rediff etc.
5. Online Hotel and Holiday Booking-Booking.com, Trip adviser, Trivago, CRS etc.
6. Online Entertainment and Event Booking-Book My Show etc.
7. Online Payment and Money Transactions- Paytm, Mastercard, Visa, Maestro, CC Avenue,

Razorpay etc.

8. Facilitating provision of digital software and services like downloading music or movies.

9. Anybody engaged in any such similar activities through digital platforms

Typical Business flow in the e-commerce industry is given in the flow chart Figure -1 below.

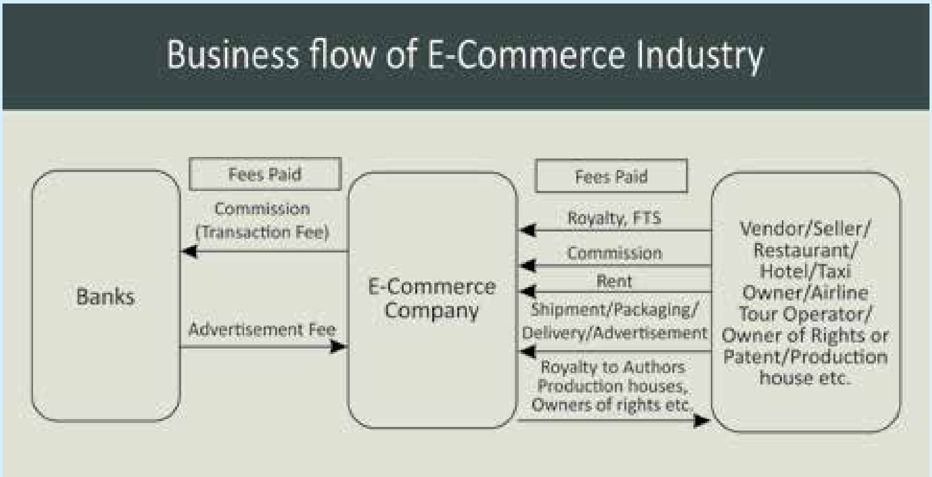

Figure : 1- Business Flow of E commerce Industry

For the sake of clarity, now each one of the sectors is discussed in detail as under:

2.1 Online Retailing Platforms- Amazon, Flipkart etc.:

Flipkart, has redefined shopping in India and works on a B2C (business to consumer model). Flipkart started with selling books and some other products, and later turned to a marketplace model which connect sellers and buyers. Today, it sells thousands of products- almost everything from smartphones to clothes to furniture refrigerators to FMCG goods. Flipkart claims to have lakhs of sellers on board from across India who list their products in over 80 categories. The average consumer might not care who the seller is and has a relationship with Flipkart, whereas the seller who may not have reached the customer at all can now do so thanks to Flipkart's platform. To facilitate this transaction and fulfil the order, Flipkart charges a varying percentage as a commission fee from the suppliers.

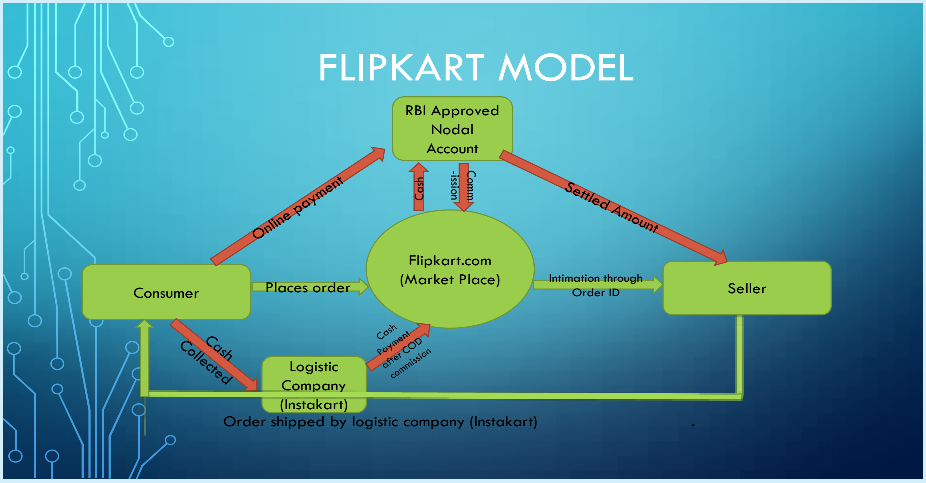

Figure : 2 : Online Retail Portals : Flipkart Model

So the business model shows that a customer first places an order for a particular item (lets say for Rs. 1000) and makes payment online through a payment gateway provided on the website. Then the order is forwarded to the supplier/vendor, who completes the order through delivery boys/agencies. Once the order is executed- goods delivered , Flipkart retains its commission(say Rs. 200) and delivery charges (say (Rs. 50) and pays rest of Rs. 750 to the vendor /supplier. Sometimes cash is collected by the delivery boys which is sent to Flipkart and thereafter payment channel is same.

Flipkart earned INR 30,164 Cr in revenue for FY18. Flipkart has also introduced private labels such as MarQ and SmartBuy, which sell products in various categories. One of the biggest contributors to Flipkart's annual revenue is its big sales with huge discounts around festivals (like Deewali) such as The Big Billion Day. In recent months, this discounting has come under the government scanner and this could impact the company's revenue in the long-term. The sources of income of Flipkart are as under:

- Seller Commission: Flipkart charges a commission from the sellers since it provides a platform for sale for them.
- Convenience Charge: Flipkart charges a convenience fee to the buyers for faster delivery.
- Logistics: E-Kart is Flipkart's logistics company and facilitates the fulfillment of orders from sellers to buyers through its logistics arm. It charges a fee from the sellers for the same. There is no standard charge levied as it changes according to the geography.

- Advertisement: Flipkart sells advertising space to companies on its website. This offers a leverage to the companies buying the advertising space as they are presented first to the millions of customers visiting the Flipkart website daily.

- Media Buying: Flipkart releases ads for certain brands in the popular newspapers, radios, televisions, etc, In doing so, Flipkart charges a sum from the brands that it advertises for.

In 2016, Flipkart acquired a fintech company called FxMart and released a payments service called PhonePe. PhonePe offers a UPI-based payments app as well as support for billing, recharges, ecommerce and other online services. As per the UPI data released for August 2019, PhonePe was the leading app for UPI payments in India in 2019.

Post the acquisitions by Walmart last year, Flipkart has increasingly turned to hybrid or omni-channel sales model. It recently opened a FurniSure experience store to help customers touch and feel the furniture products before making the purchase. Besides ecommerce, Flipkart has recently acquired a food retail license, which it will use to run its fresh, locally-produced food retail business under the name FarmerMart. It's also selling groceries online through Flipkart SuperMart in some cities.

TDS Implications: The TDS issues involved in the Flipkart model are many; on commission from seller/supplier-u/s 194H, Shipping Fees/delivery charges- u/s 194C, logistics and storage charges etc. u/s 194I/194C and advertisement on website u/s 194C/194J. As per the latest information available, some of the sellers are making TDS on commission retained by Flipkart, while the position in respect of the items is not very clear.

Amazon India

Amazon in India works on complex business model constantly innovating according to the new challenges and needs of the markets. While the company core business model is based on its online store. Amazon launched its physical stores, which generated already over five billion dollars in revenues in 2017. Amazon Prime (a subscription service) (issue of PE since the customers pay online to get subscription of the online movies and entertaintment) also plays a crucial role in Amazon overall business model, as it makes customers spend more and being more loyal to the platform. Besides, the company also has its cloud infrastructure called AWS, which is a world leader and a business with high margins. Amazon also has an advertising business worth a few billion dollars. Thus, the Amazon business model mix looks like many companies in one. Amazon measures its success via a customer experience obsession, lowering prices, stable tech infrastructure, and free cash flow generation. Even though the United States represented the primary source of income for Amazon. It is expanding globally. Indeed, net sales have increased since 2014. In 2016 products represented almost 70% of total sales. Services sales have been growing at a fast pace. In terms of Operating Income, the growth has been mainly driven by the high margins deriving from the services sales. By looking more in-depth at the revenue sources, subscription and AWS services have been growing. That denotes how Amazon is expanding globally by moving more and more toward services (like Prime subscription and AWS). The source of revenue and TDS could be from following revenues;

1. Commission
2. Asset Sale
3. Subscription plans
4. Advertising
5. Usage Fees
6. Licensing
7. Rent/Lease

From the Amazon seller program the company earns fixed fees, a percentage of sales, per-unit activity fees, interest, or some combination of those based on the transactions generated by the marketplace; Although AWS is a platform of its own. With its the KDP platform allows thousands of independent authors to publish their e-books and info-products. According to the plan in which the independent author enrolls into Amazon earn anywhere from 30-70% of royalty fees from the sales.

A TDS Survey was conducted by the office of CIT-TDS 1 Delhi at the Delhi premises of the company. During the survey, it was found that the groups TDS data is maintained at Pune, accounting is done at Bangalore and Hyderabad, Financials are maintained at Bangalore and Chennai and copies of contracts pertaining to the business transactions are present in Hyderabad. It was noticed that Amazon group made TDS at the rate of 2% on Advertisement charges, Data Services, Cloud Services, Bundle of development and maintenance activity (Engineering Design-development-interior designing maintenance), CMS charges, Professional Support services of arranging transport services etc. whereas the same was required to be made at the rate of 10% u/s. 194J being provided as bundled and composite Professional and Technical Services. Further no attempts are being made by the Amazon group to ensure that the TDS is made by the sellers while making payments to the Amazon group.

Further no verification process existed or no attempts were made by the assessee group to verify the claims of the vendors, sellers, contractors etc. for short deduction in case of HUF or non requirement of turnover based auditing, etc. No TDS is made on the bank charges and transaction charges paid by Amazon group companies to Banks, Payment wallets etc. since it is collecting the same on behalf of sellers and other parties. Payments made by the bank to data security agencies and credit card companies and TDS made by bank on the same are the issues which attract TDS. There are other payments made by the Amazon group which are typical of any e-commerce company which attract provisions of sec. 194C such as contracts for work in progress, contract on repairs and maintenance, contract for security, contract for leasehold improvement, contract for maintenance and repairs of equipments and heavy equipments purchased and installed, maintenance of buildings and other premises, contract for travel and conveyance and lodging etc. The work flow of transfer of payments in the e-commerce company is given In Figure -3 for ready reference.

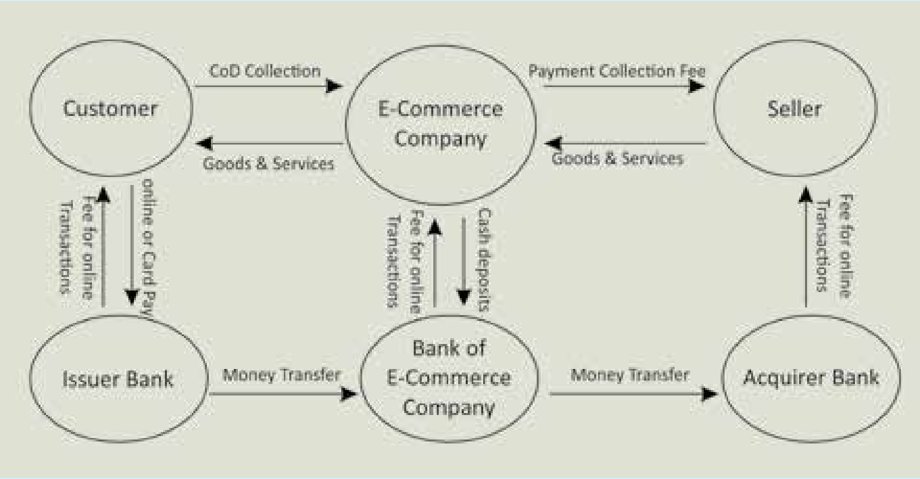

Figure : 3 - Workflow of Payment in E-Commerce Company

2.2 Food Delivery platforms (Swiggy, Zomato, Uber Eats etc.):-

Swiggy operates on a food delivery business model. It not only aggregates restaurants but also organises a fleet of delivery partners which deliver the food (in less than 30 minutes) on-demand. It crafted a business model which relied on a dual partnership model. The partners are:

Restaurant Partners: The restaurant partners are restaurants which opt to deliver to customers that come from Swiggy application and website.

Delivery Partners: They form the delivery fleet which is given the responsibility to pick up the order from the partner restaurant and deliver it to the end consumer.

Swiggy provides an online platform for ordering from a wide range of listed neighbourhood partner restaurants and have their own fleet of delivery personnel who pick up the orders from the partner restaurants and deliver it to the customers at their doorsteps. Swiggy works by providing a complete food ordering and delivery solution that connects the existing neighbourhood restaurants with the urban foodies proving to be beneficial for both. One can open the Swiggy application on his mobile phones or visit the Swiggy website and you will find a whole list of restaurants to order from. Once the restaurant is selected and the order placed, the restaurant which has its own Swiggy application receives the order details and starts preparing for the order. A broadcast signal is then sent to all the drivers in the vicinity who have their own driver application. Those willing to accept the order can choose to accept and deliver it. Swiggy also has integrated the Google Maps App which lets the customers know where their order is and the amount of time it will take for their order to get delivered in real-time. Similar model is followed by Uber Eats , Zomato and Foodpanda.

In food delivery platforms like Swiggy, Zomato, Uber Eats etc., the e-platform charges about 20% towards their commission, which is outrightly deducted from the payment received from customer. Apart from this amount payable to delivery buoys is also deducted and only balanced is paid to the restaurant. The restaurant supplies food which is delivered by a delivery company or agent with their human network, for this they are paid about Rs. 35-50/-, in a radius of about 5 kms. It is gathered that Zomato handles about 46,000 restaurant and Uber Eats about 26,000.

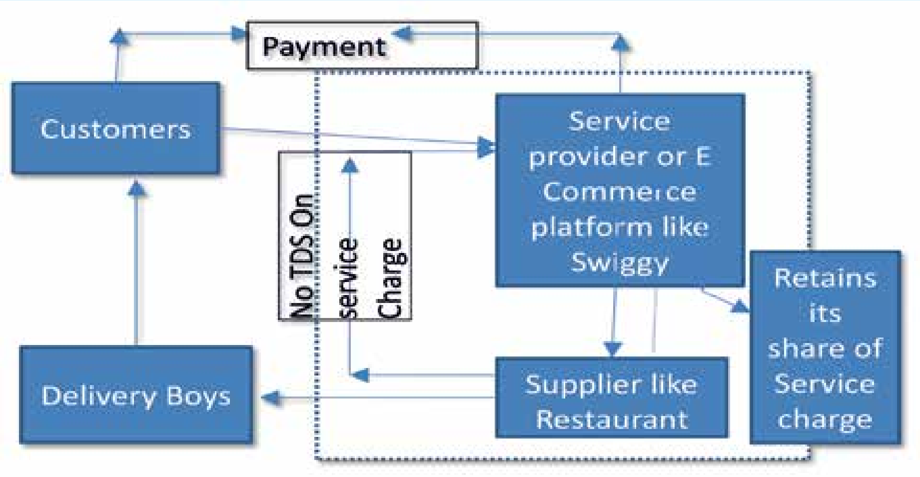

Figure 4: Food Delivery Platforms (Uber/Swiggy) Model

TDS Implication : From a TDS survey in case of a food delivery platform, it was found that no TDS was being done in respect of these transactions though TDS provisions u/s 194H were clearly applicable on commission retained by Uber eats and and u/s 194C on logistics delivery etc.

2.3 Taxi Aggregators Uber/Ola-Business Model

Uber transportation model is based on an App , which is to be downloaded by a customer as also by a driver partner on a smartphone and provides on-demand service to users. It connects willing passengers to taxi cab drivers. Taxi drivers use their own cars when providing taxi service and Uber gets 20% of the ride charges as commission. The total process is very simple, registered Uber users asks for a taxi using the Uber app, an Uber driver then dispatched to the passenger's location and assist the passengers to reach his destination. The passenger's credit card is used as the sole payment method. Currently, Uber service is available in 200 cities across 55 countries and is being expanded further and now includes even a helicopter ride. According to the experts, Uber is not any traditional taxi business because it doesn't employ any taxi drivers or owns any taxi. Uber basically connects the passenger and taxi driver and takes a percentage of the fee from the fare. It works like as under:

- **The Taxi Driver** - Anyone with a driving license and a car can apply for an Uber driver in any Uber covered cities. After screening, the driver is enlisted in the Uber system and given an Uber iPhone. This provides a steady income to anyone with a car without additional hazard or investment.

- **The Passenger** - Registered Uber users download the Uber app to their phones and if they need a taxi, they call a taxi via the Uber app. They can also track the taxi on their phone as it approaches. This service is convenient for the passengers, provides them relatively low cost comfortable service.

- **Fare and Payment** - Uber set the taxi fares. Premium fare during peak hours and flat rate for off peak hours. Passengers pay through their credit cards and don't have to pay any cash to the drivers. The fare is based on car type, distance and peak hour. Payment is secure because passengers pay only via credit card using Uber app.

- **Dividing the Profits** - Uber divides the fare, usually 80% to the driver and 20% to Uber. Even after a 20% pay cut, the taxi drivers earn more than the traditional taxi services. In some cities Uber had to reduce its percentage because of competition from similar companies like Lyft and Haio. It is estimated that Uber have to lower its profit in all the cities it operates in coming months.

Figure: 5 – Payment Process in Uber Taxi

Uber app is user-friendly, fast responsiveness from servers and systems and minimal glitches make Uber exceptional. Calling a taxi cab with the smartphone is easy and any passenger can benefit from it. Further Uber has no previous competitors in the taxi service business and established a solid infrastructure, branding and consumer trust. However uber is facing several lawsuits from taxi companies and unions in several big cities including New York, kept Uber engaged in regular court battles. However Uber is a highly profitable company and revenues are doubling every 6 months.

TDS implications: In Uber transportation model, it was found that they were not deducting tax at source under section 194C on the remittances made by the to the Driver-Partners. Their contention was that they were not providing transportation service and that Driver-Partners are independent transportation service providers who avail the lead generation service through the Uber App and that Driver-Partners have the option of cancelling trips after the same have been accepted by them. However such a claim was untenable on the basis of facts and even the judgments of the courts in foreign countries had held that they were providing transportation services. Consequently liability was raised against them u/s 194C of the Act. Subsequently they filed a petition before the CBDT, requesting for formulation of uniform guidelines so that it can be followed by others too and there is level playing field.

2.4 Hotel Booking Platforms like- Oyorooms, Trivago etc. :

Oyo Rooms is the largest branded network of hotels in Indian subcontinent, currently operating 450,000 listings in 5,000 cities in India, Malaysia, UAE, Nepal, China and Indonesia. The company started off its operations by building its business model around the aggregator business model but things have changed since 2018. Earlier, the company used to organize the partner with hotels, lease some rooms, and sell them under its own brand. Even though the process is still the same, Oyo's business model has changed its route to a new structure. The main focus, however, still is the quality of the service provided. Hence, to maintain the brand image, they make the partners provide services at predetermined standards while they make them more visible to their user-base.

Oyo Rooms Business Model used to be a hotel aggregator. The customers used to buy the services from the brand Oyo rooms and didn't care who the partner was. Just like Uber, Oyo provided rooms with standardized quality and price. This model was a mix of aggregator business model and franchise business model. But as time passed, the company built its brand equity and the founders decided to shift its business model to a pure franchise business model. The company now gets 90% of its revenue from hotels under the franchise model. Oyo Rooms business model was similar to the usual aggregator business model . The company used to –

1. Lease a part of Hotel's inventory beforehand,
2. Organize those hotel rooms under their brand name – Oyo Rooms
3. These partner hotels provided standardized service to customers of those rooms as it was decided in a contract with Oyo.
4. Bookings were made through the Oyo Rooms website and mobile application.

As can be seen from the above , TDS is clearly deductible u/s 194I on the leasing of rooms by Oyo from Hotels. Besides on other services TDS may be applicable u/s 194C or u/s 194H as the case may be.

2.5 Online Ticketing Platforms like Makemytrip, Yatraonline etc. :-

MakeMyTrip.com, is most prominent online travel company and is engaged in providing online travel services including flight tickets, domestic and international holiday packages, hotel reservations, rail and bus tickets. As per Company website, it has presence in 14 cities all over the country and several frenchises which sell packages in approximately 28 cities, and has counters in four major airports in India. MakeMyTrip also have offices in New York, Singapore, Kuala Lumpur, Phuket and Bangkok. MakeMyTrip's services include air ticketing, hotel and alternative accommodations bookings, holiday planning and packaging, rail ticketing, intercity bus ticketing, car hire and ancillary travel requirements such as facilitating access to third-party travel insurance and visa processing. The Company's culture of continuous innovation and "customer first" strategic focus in India's travel market has allowed them to be the clear leader in the industry and positions them to accelerate the predominately offline hotels and accommodations market online. They have a pretty large team of data scientists. They are using chatbots extensively—Gia for Goibibo and Myra for MakeMyTrip.

MakeMyTrip is focusing on technology and data to make the customer experience more personalised and focused. MakeMyTrip logged over 94 million monthly shopping visits, and over 70 million monthly active users. The NASDAQ listed company, saw net revenues from the hotel business surge by almost 140% to $81.2 million in the first quarter of FY 2017-18. MakeMyTrip's revenues are currently split almost equally between ticketing and tours and hotel bookings. Hotels and packages, a higher margin category compared with airline ticketing, is the biggest revenue contributor and account for 56 percent of net revenue. The company is the market leader in domestic flight ticketing with a 24 percent market share. MakeMyTrip has made several acquisitions. In July 2015, MakeMyTrip invested in travel information and hotel review portal, HolidayIQ to pick up approximately 30% stake in the company. In the same month, it also invested $5 million in BonaVita Technologies, a start-up which plans to utilize the funds to build innovative products in the travel industry. In 2016, MakeMyTrip Ltd agreed to buy Ibibo Group's travel business in India in an all-stock deal, creating the country's largest online travel firm which, according to a note by Morgan Stanley, is worth $1.8 billion. The company launched its IPO in 2016. They received $180 million. Later, they launched another IPO in which they raised $330 million.

Yatraonline, Oyorooms and Cleartrip has similar business models. The following are the TDS issues in cases of such online ticketing platforms :

Items		TDS Sections
1.	Commission from Airline operators on flight, Bus, Train tickets booked –194H	
2.	Convenience fee and other service fee from customer	No TDS
3.	Commission from Hotel bookings	194H
4.	Payment at the hotel	unclear
5.	Payment through the App	unclear
6.	purchase of rooms at fixed rate for a particular day	194I

2.6 Entertainment Platforms- Book My Show Model:

Book my show commenced its business in the year 2007. It has over 16 Millions customers and users and over 10 Millions Tickets Per Month. It has presence in over 350 cities in four countries.

Bookmyshow Charges the Convenience Fee on every ticket which is booked on their platform. Its charge 10% internet handling fee. People can book and pick up tickets from kiosks or touch points appointed by BMS team. Its 60% revenue comes from ticketing sales which includes:

- Movie Tickets (English, Hindi etc)
- Event Tickets
- Sporting Events – IPL, ISL, Pro Kabbaddi, World Cup, T20, ISL etc.
- Comedy Shows
- Theater Performing Arts
- Kids Activities
- Theme Parks
- Corporate Trainings and Sporting Events

It also manages end to end logistics and requirements of events. From ticketing (online and offline) to ticket verification, to concierge and everything in between. They deploy manpower at these locations to take care of all this stuff and charges man hour based or event based fees. BMS has an on-ground service for vendors, where it gives a food and Beverages management system to F&B vendors at events. BMS has portable turnstiles, which can be transported from one venue to another. These turnstiles read barcodes and give entry, are manned by BMS employees and volunteers from the event (if any), who help the visitors with gate entry and guide them around the venue.

Besides it generates lot of revenue through advertisement. Any body who wants to promote their art work of films and short films can approach BMS to give them an "interest creation" boost with the online audience. BMS can take advantage of their huge page views to promote these new artists and their offerings. The F&B units of the venue can offer discounts on the platform of ticket booking over BMS and they pay BMS for hosting their offers on the App.

TDS implication of the above would come under section 194H for the convenience fees which is nothing but payment of commission, u/s 194C for advertisement and other services including manpower supply/deployment.

2.7. Payment Gateways :

A payment gateway is a merchant service provided by an e-commerce application service provider that authorizes credit card or direct payments processing for e-businesses, online retailers, bricks and clicks, or traditional brick and mortar. The payment gateway may be provided by a bank to its customers, but can be provided by a specialised financial service provider as a separate service, such as a payment service provider.

A payment gateway facilitates a payment transaction by the transfer of information between a payment portal (such as a website, mobile phone or interactive voice response service) and the front end processor or acquiring bank. When a customer orders a product from a payment gateway-enabled merchant, the payment gateway performs a variety of tasks to process the transaction. Many payment gateways also provide tools to automatically screen orders for fraud and calculate tax in real time prior to the authorization request being sent to the processor. Tools to detect fraud include geolocation, velocity pattern analysis, OFAC list lookups, 'black-list' lookups, delivery address verification, computer finger printing technology, identity morphing detection, and basic AVS checks. Payment gateways are software and servers that transmit transaction information to acquiring banks and responses from issuing banks (such as whether a transaction is approved or declined). Essentially, payment gateways facilitate communication within banks. Security is an integral component of all payment gateways, as sensitive data such as credit card numbers need to be protected from any fraudulent parties. The card associations have created a set of rules and security standards which must be followed by anyone with access to card information including gateways.

TDS Issue:

Central Government, by notification dated 31st December, 2012 has notified that no TDS shall be made on the following payments to the banks listed in the Second Schedule to the Reserve Bank of India Act:

(i) bank guarantee commission;

(ii) cash management service charges;

(iii) depository charges on maintenance of DEMAT accounts;

(iv) charges for warehousing services for commodities;

(v) underwriting service charges;

(vi) clearing charges (MiCR charges);

(vii) credit card or debit card commission for transaction between the merchant establishment and acquirer bank.

CBDT has exempted some payments made to banks and payment service providers from making TDS which include credit card or debit card commissions for transactions between a merchant establishment and the bank and clearing charges including interchange fee for payments settlement. Some other payments included for making the exemption from TDS are bank guarantee commission, cash management services, depository charges on maintenance of demat accounts. These were the steps initiated by the Government of India in the right direction to drive the payments system in the economy towards digital mode of payments through encouraging the online payments. Further assumption was made that these digital transactions and their exemption from the provision of TDSwill reduce the burden of compliance to the common men as the payer will not have to make TDS before making the payment to the bank.

Though the initial push to the digital transformation in the payments system was a welcome step in the right direction, however since the volume of digital transactions throughe-payments systemhas not only jumped exponentially but also the stakeholders in the payment gateway system has multiplied. The stakeholders today along with the common men are not only banks butcard association, issuer, Payment gateway companies, Payment processor companies, E-Wallet companies etc. Importantly, some of these players are based out of the country or the technology provided by them is from outside India. The intention of the CBDT vide notification dated 31stDecember, 2012 as given above was to promote digital payments with the ease of transactions between the customer and the merchant i.e seller, however over the period of time the banking transactions between the companies and aggregators or e-commerce companies who are acting as a middle men to collect the money on behalf of the merchant had also started taking advantage of the exemption without undergoing scrutiny by the Department. Meanwhile there were instances when the TDS assessing officers made an attempt to bring these charges under the TDS provision of section 194H by considering the bank charges and Micr charges as well as bank fees as commission. However in many cases the Judiciary struck at these attempts by considering them as services which cannot be termed as commission. The banks are providing the services to its clients for which it is charging some fees, however it has been noticed that when the similar service is being provided by the bank through the digital mode of transaction the banks and other stake holders charge some fees in the name of MICR charges, Convenience fees, Bank charges etc. These are the charges for the extra level of secure technology, accounting softwares, verification softwares and other services akin to professional services including the back office customer relations and management services provided by the payment gateway platforms and the Banks. These services are required to be classified as professional and technical services and many of these are being outsourced by the banks to some other specialist agencies. Hence the same is now required to be brought under the ambit of section 194J of the I.T Act 1961. However since the E-commerce platform is a special kind of mode for enabling the digital payment transfer, therefore the same can now be considered as part of the proposed new section of Inome Tax Act 1961 u/s. 194P. The brief description of the work flow in the Payment gateway system is reproduced below for ready reference;

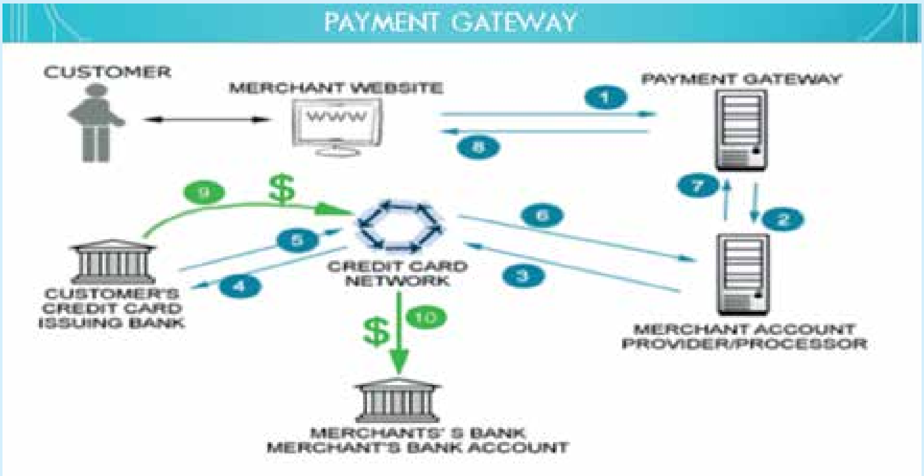

Figure: 6 : Payment Gateways

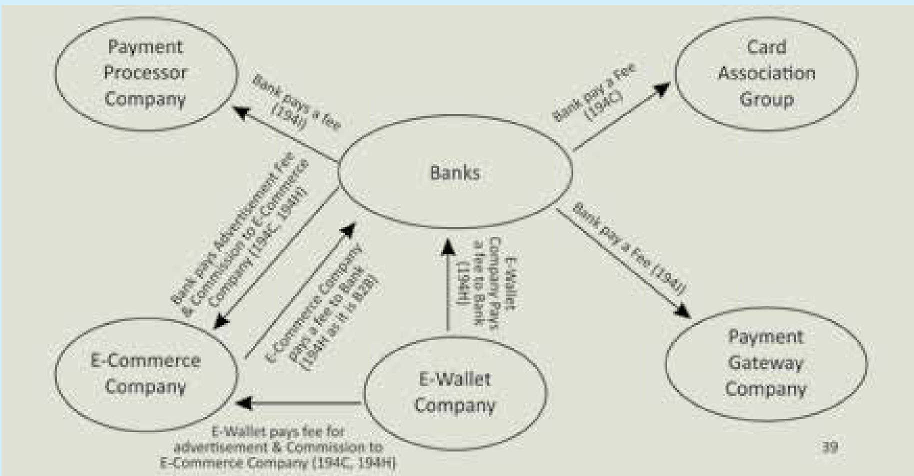

Figure: 7 : E-Payment Platforms- workflow

Commission paid and convenience fees charged by such portals are subject matter of TDS, subject to exceptions made by the government.

3. How to introduce TDS on E-commerce and Aggregators?

Considering various difficulties as discussed above, it may not be possible to make TDS on these transactions, under the current set of TDS provisions. The possible way is by introducing a special provision in the Income Tax Act 1961, to specify E-commerce operator as 'deemed payer' for the purpose of TDS compliances. Once, the E-commerce operator is considered as deemed payer, the provisions of TDS will come into play and the amounts being remitted by the E-Commerce operators to the actual suppliers can be subject to TDS. Alternatively such deduction may be termed as " Tax Retained at Source" and a nominal rate of TRS ranging from 1% to 2% may be applied. This will reduce unnecessary compliance burden at the end of various suppliers, which are in few lacs and it will also be easier for the department also to deal with a few entities called as E Portals.

Detailed discussions to this effect were held in 16th TDS Conference held at Jaipur recently wherein it was decided to constitute a study group to recommend guidelines on the subject. Since then this matter has been discussed in great length with all stake holders, including tax officers, tax professionals and tapyers (E commerce portals). These transactions essentially constitute payment of commission by prospective sellers to the e-commerce platforms, and delivery charges paid, to the delivery boys/entities etc which are hit by provisions of Section 194H and 194C respectively.

It is also noticed that w.e.f. October 2018, such transactions have been brought under GST provisions (sec. 52 of GST Act) and are subjected to 1% TDS on the net value of taxable supplies made through the E-commerce operator (except agent) by the suppliers, where the consideration with respect to such supplies is to be collected by the E-commerce operator in respect to registered vendors having turnover of over Rs. 25 Lakhs. Similar to the GST, currently there are no separate provisions under the Income Tax Act (IT Act) for collection/ withholding of taxes on the amount remitted by the E-commerce operators to the actual suppliers for the sale of goods/ services provided through the platforms of the E-commerce operators. This create difficulties for the Government to track whether the required taxes have been paid or not. More over there is no accountability on part of the e-commerce companies to ask the vendors or merchants to make TDS. This situation achieves more importance and is an impediment to the increase of the tax base where many sellers/merchants move scot free even after making huge transactions in cash by selling through Cash on Deliver (CoD) mode of payment.

The question is how to bring these E-Commerce transactions under TDS net. The existing provisions impose an obligation on the payer (subject to certain exclusions) to make TDS on the payments made to the payee. In the E-commerce models, there may be difficulties to apply the existing TDS provisions on account of the fact that the E-Commerce operators are not the actual payers as it is the customer/buyer who is the actual payer. These operators act as a facilitator between the actual buyers and the sellers. It is difficult for the payer (who is the end customer) to comply the TDS provisions on such transactions. Further the existing TDS provisions do not apply on the purchase of goods. Further the end supplier also finds it difficult to make TDS as he is not making payment but receiving such payment from E Portal, who is making payment after retaining its share/commission.

The question that merits importance is as to how to bring these E-Commerce transactions under the TDS? Whether an explanation in the existing provisions of the Act should be introduced or a new provision under the Act has to be introduced to tackle the complexity?

The existing provisions impose an obligation on the payer (subject to exclusions) to make TDS on the payments made to payee. In the E-commerce model, there may be difficulties to apply the existing TDS provisions on account of following:

- The E-Commerce operators are not the actual payers; it is the final customer who is the actual payer. These operators merely act as a facilitator between the actual buyers and the sellers.
- It may be practically impossible that the payer (who is the end customer) to comply the TDS provisions on such transactions.
- The existing TDS provisions do not apply on the purchase of goods.

4. Is it possible to introduce TDS on such transactions?

Considering the above difficulties, it may not be possible for the Government to introduce TDS on these transactions under the current set of TDS provisions. Therefore only possible way is by introducing a special provision to specify E-commerce operator as 'deemed payer' for the purpose of TDS compliances. Once, the E-commerce operator is considered as deemed payer, the provisions of TDS will come into play and the amounts being remitted by the E-Commerce operators to the actual suppliers can be subject to TDS. However, even in that circumstances, the transaction of purchase of goods may not be covered under the TDS ambit, taking into consideration the current scheme of TDS provisions. To overcome this, the government may think of creative nomenclature like " tax retained at source or TRS".

Alternatively, the new provisions may be introduced as a separate chapter exclusively devoted to the E-commerce operators. Further, it may be noted that the existing rates provided under the provisions of TDS are higher and may result into an unnecessary fund blockage for the small vendors, who generally have low tax liabilities. Hence, the TDS rate may also need to be carefully decided and should not exceed 1%.

5. Exclusions

To ensure certainty and keeping the levy specific, suitable exclusions must be drawn on the levy. The following may be considered:

(a) The levy must be targeted at entities effecting sales/earning revenues from the platform and should not include purchases. This would be logical and would align with the underlying policy objective, which would be to collect and recover taxes from businesses deriving revenues through the platform or the platforms itself.

(b) This is a domestic withholding tax levy. The sales effected or services rendered by non-residents through these digital portals, will be separately dealt with by provisions of section 195 of the Act and equalisation levy.

(c) It is important to consider that such exclusion may not be extended to digital platforms where both sets of users i.e. suppliers and customers are located in India and only the ownership of the platform lies with a non-resident.

(d) Common man or the customer should not be burdened with the compliance realated procedures and the onus of making the TRS/TDS should be on the provider of service.

6. Point of withholding/ Deduction:

We believe there is a need to consider whether trigger for collecting tax on the portal must vest at the time of sale or payment. To maintain parity with existing sections of withholding tax, the liability to deduct/retain taxes could be maintained in line with the existing rules of tax deduction i.e. at the time of payment/credit, whichever is earlier. However, given the length of the operating cycles, it may imperil the cash flow situation of the company owning the digital model. As a measure to address the cash flow concerns, we believe the liability to deposit such taxes deducted/retained must vest at the earlier of the following events:

(a) Within 7 days from the end of the month in which proceeds are released (whether through escrow arrangement or otherwise) to the supplier/service provider by the digital portal;

OR

(b) Within 30 days from the end of the month in which credit of such sum is made by the digital portal to the account of the supplier/service provider;

7. Rate of withholding

The rate of withholding must be modest, so as to not discourage digital innovation and e-commerce activity. The levy will apply to traders/distributors of merchandise goods, hotel owners, restaurant owners, flight operators, etc. that operate at very low albeit different profit margins. It is therefore imperative that the rate of withholding adopted in the levy appropriately reflects the low margins and does not create fresh business impediments of excess tax credits, refunds, etc. A rate of 1% will maintain the aims of the policy measure and must therefore be maintained.

8. De minimis threshold

Regardless of the simplicity of the levy, we expect the compliance burden related to the levy to significantly increase for digital portals. We believe there are two ways in which this could be tackled through the design of the tax:

(a) The first would be setting a high de minimis threshold, based on sales effected by sellers through the portal. In our view, a sum of Rs. 5,00,000 of sales/gross receipts (annual threshold) is fair and will ensure tax does not directly affect small dealers, vendors and businesses.

(b) A second way could be possible inclusion of safe habour mechanisms to exempt certain categories of digital platforms. Many small sized digital platforms are barely keeping up with existing compliance requirements, so extending the obligation of deduction on digital platforms liable to tax audit would be welcomed.

9. Foreign E-commerce operators having no presence in India:

The current TDS provisions do not make distinction for compliances, whether or not the payer is resident in India or not. Thus, similar to these in case new provisions are brought in, the same may also not provide any such distinction. Thus, the foreign E-Commerce operators may also be required to comply TDS provisions while making payments to the Indian resident payees. However the mechanism of equalization levy 6% takes care of that

10. Possible implications of TDS on E-commerce:

While any such new TDS provisions may help the Government to check any tax leakages in the system, however, it will be important to take into consideration the possible impact on the E-Commerce industry as well and whether such provisions will hamper the growth of e-commerce in India, which looks so promising as of now. In our discussions with various stake holders, no such apprehensions were expressed from any quarters, so we presume that introduction of such provisions may not affect growth of E-commerce in the country. Committee is also of considered view that introduction of such provisions may not increase the cost of compliance in any way and on the contarary it may reduce the cost of compliance to the tax payers as also monitoring costs of the department.

11. GST provisions :

Recently the government has put responsibility to collect tax at source (TCS) upon Electronic Commerce Operators and it is relevant to examine them to look for similarities . As per the GST Act, when an 'E- Commerce Operator' receives payment (which is consideration by another person for a supply made by someone else), he must collect TCS at the rate of 1% and pay it to the Government. 'E- Commerce Operator' is defined as any person who owns, operates or manages digital or electronic facility or platform for electronic commerce. Further 'E- Commerce' is defined as the supply of goods or services or both, including digital products over digital or electronic network.

Under Section 52, an E- Commerce Operator is liable to collect TCS only if the supply has been made through such Operator by other suppliers and the consideration is collected by the E-Commerce Operator. Supplies made by the electronic commerce operator on its own account are not subject to TCS requirements. The section 52 of GST Act reads as under :

Section 52 of CGST Act 2017: Collection of Tax at Source

(1) Notwithstanding anything to the contrary contained in this Act, every electronic commerce operator (hereafter in this section referred to as the "operator"), not being an agent, shall collect an amount calculated at such rate not exceeding one per cent., as may be notified by the Government on the recommendations of the Council, 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.

Explanation: For the purposes of this sub-section, the expression "net value of taxable supplies" shall mean the aggregate value of taxable supplies of goods or services or both, other than services notified under sub-section (5) of section 9, made during any month by all registered persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

(2) The power to collect the amount specified in sub-section (1) shall be without prejudice to any other mode of recovery from the operator.

The above provisions has a lot of similarities with Income Tax provisions and may act as a good guide to introduce similar provisions under the Income Tax Act 1961.

Since this area has huge potential in terms of identifying new tax payers, as also mobilising the revenue from TDS, it is recommended that a new section 194P may be inserted in the Income-tax

Act w.e.f. 1.4.2020 to bring such transactions under the ambit of TDS @ 1% which may be levied on gross sales amount, so that entire transaction amount is subjected to TDS. It is felt that the rate of 1% is very low and may not cause any grievance, either to the e-commerce platforms or to the vendors or the suppliers.

Responsibility to make TDS would be of the e-commerce platform. In fact by applying TDS @ 1% at the end of e-commerce platforms itself, the unnecessary hassles of making TDS by thousands of vendors/suppliers can be avoided and the department will have to deal with only very few entities. It is also proposed to keep a reasonable limit of turnover say Rs. 5 Lacs beyond which these provisions would be attracted so that very small people/vendors are excluded from such TDS.

12. Conclusions:

In the light of the discussions with the various stakeholders, it may be concluded that existing mechanism of TDS is not able to take care of e-commerce transactions and aggregators effectively. Further, it has given rise to avoidable disputes, all over the country. As the volume of e-commerce transactions is huge and has already crossed 50 billion USD in India and likely to grow at a pace of over 20% year on year, it is important to bring such transactions under tax-net. However It may not be possible for the department to effectively monitor the compliance of TDS by several lakhs small-small vendors and suppliers. It is therefore recommended that it would be simple and appropriate if the responsibility of making TDS or TCS or TRS (Tax retained at source) is entrusted to the e-commerce platform or aggregator of the business. This will do away with the platform of monitoring several and small-small entity and the department will have to deal with only E commerce portals. Further, it was also concluded that a threshold limit of turnover/receipts (of Rs. 5 lakhs) may be kept for these vendors above which the TDS provisions would be applicable. Further, the rate of TDS may be kept low at 1% which may not cause any cash flow problem either to the portal or to the individual suppliers. This mechanism in our opinion would be fair, easy to comply and easy to enforce and may not cause any additional burden either to the tax payers or on the e-commerce platform.

Further the online or e-commerce services provided by the non resident person should also be made to pay for the income generated through India operations. Therefore whatever payments are being made to foreign suppliers or vendors should also be subjected to TDS @ 1%, like Indian suppliers to create level playing field . It may however be noted that existing equalisation levy on the transactions of advertisement services at the rate of 6%, takes care of payments made to the non resident persons. Therefore the same shall be exempted from the proposed provisions of section 194P. However, the payments for advertisement services made to the resident persons shall continue to be covered under the provisions of section 194P. This mechanism in our opinion would be fair, easy to comply and easy to enforce and may not cause any additional burden either to the asessee or on the e-commerce platform companies. It is, therefore, recommended to introduce a new section in the Income-Tax Act as Section 194P which may be as recommended below:-

Proposed Legislation for E-commerce and Aggregators

Payments in respect of e-commerce transactions and aggregators

194P. (1) Every person, being a specified party or any other person acting on its behalf, whether resident in India or otherwise, who are responsible for paying any sum (excluding any sales return or refund) to any vendors, in respect of a specified transaction shall, at the time of credit of such sum to the account of the vendor or at the time of payment thereof, whichever is earlier, deduct an amount at one per cent on such sum as income-tax.

(2) No deduction shall be made under sub section (1) where the amount of such sum credited or paid or likely to be credited or paid by the specified party to the account of, or to the vendor, does not exceed five hundred thousands rupees in a year.

Provided that where no deduction is made on account of this sub-section, the specified party shall report particulars of such sums on which no deduction is made, in the form and in the manner as may be prescribed.

(3) In addition to the above, every such specified party in respect of a specified transaction shall, at the time of credit of such sum to the account of the vendor or at the time of payment thereof, whichever is earlier, also retain tax being an amount equal to five per cent of the difference between any amount received or receivable by the specified party from any consumers/customers and any amount paid or payable by such specified party to any vendor (aggregate amount/amounts retained by it before payments made to vendor/supplier) in respect of such transaction, whether called as website usage fee, platform fee, facilitation fee, commission, service fee, margin, profit, marketing fee, etc. or any other term representing business receipts of such specified party.

(4) No deduction of tax under this Chapter shall be required to be made by any consumers or vendors in respect of specified transactions on which taxes have been deducted in accordance with the provisions of this section by the specified party.

(5) Provision of sub-section (4) will not be applicable to amount received by e-commerce platforms for hosting advertisements of any person or for rendering services other than specified transaction.

Explanation 1 – For the purposes of this section-

(i) "specified party" means any person, whether resident or otherwise, being an aggregator of goods or services or both, by whatever name called including but not limited to cab aggregator, restaurant aggregator, food ordering and delivery platform, online food and grocery store, over-the-top (OTT) streaming platform, information service aggregator, travel or hospitality service aggregator, real estate search portal, online marketplace for local services, engaged in the activity of undertaking or facilitating specified transactions through electronic means such as websites, mobile platforms, mobile applications, communication over the internet, or through telecommunications.

(ii) "specified transaction" means any transaction involving initiation or completion or both of supply of any goods or services or both, such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made by a vendor to a consumer, including but not limited to:

a. Provision of taxi or cab or shuttle services
b. Delivery of food whether in its natural form, wholly or partially processed, prepared or served in any form
c. Internet video on demand service
d. Information provider services
e. Travel services including ticket booking services
f. Hospitality services
g. Real estate related services
h. Social networking
i. Furniture
j. Fashion and Lifestyle
k. Any other similar platform for supply of goods or services or both through electronic means such as websites, mobile platforms, mobile applications, communication over the internet, or through telecommunications

(iii) "vendor" means any person who is a resident seller of goods or a resident provider of services, by whatever name called.

(iv) "consumer" means any person who orders, avails, requests, receives or pays for a goods or service, by whatever name called.

(v) "goods" includes property of any kind, whether tangible or intangible, movable or immovable and shall also include but not being limited to –

a. Mobile phones, laptops, computer, television, refrigerators and other electronic gadgets;
b. Books and periodicals;
c. Automobile vehicles;
d. Grocery items and other materials, commodities, articles of household use;
e. furniture;

f. food products, whether processed or in natural form,

g. fashion and lifestyle products including apparels, cosmetics, self-care, home décor;

(vi) "service" includes means anything other than goods and shall include but not being limited to–

a. delivery of food products, whether processed or in natural form;

b. provision of cabs, bikes, rickshaw, scooters or other vehicles;

c. travel and hospitality services including services in relation to booking of hotels, inn, guesthouse or such other places for accommodation purpose or booking of tickets of bus, train, flights or booking of tickets or passes for movies or other events;

d. services in relation to facilitating sale, purchase, renting or leasing of real estate properties and includes services in relation to repair & renovation of real estate properties;

e. services rendered by carpenter, electrician, plumber and such other services of household use;

f. providing access to information of any kind for commercial or other purpose;

g. streaming of video content through over-the-top (OTT) platform, internet video-on-demand;

h. Any other similar platform for supply of goods or services or both through electronic means such as websites, mobile platforms, mobile applications, communication over the internet, or through telecommunications or any other means which the Central Government may specify.

Explanation 2 - For the removal of doubts, it is hereby clarified that the obligation to comply with this section applies and extends to all persons, resident or non-resident, whether or not, the non-resident person has—

(i) a residence or place of business or business connection in India; or

(ii) any other presence in any manner whatsoever in India.

Revenue Impact of the above Amendment:

Presently the volume of online transactions is about USD 50 Billion or about Rs. 3,50,000 cr. Assuming that 50% of these sales are relating to vendors having turnover exceeding Rs 5,00,000/-, then the sales covered are u/s 194P works out to about Rs.1,75,000 cr. If 80% share of these sales goes to the vendors and 20% to the portal then possible TDS impact works out to Rs. 1400cr + 1750cr = 3150cr, which may grow rapidly (over 20% annually) in subsequent years.

However the other benefits in terms of increased taxpayers and additional taxes paid by them will also be substantial. It is estimated that this drive would result into at least 5 lakhs new taxpayers, who will pay additional taxes.


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