

TDS PROVISIONS OF SECTION 194-O, 194-Q, 206AB & 206CCA

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TDS ON E-COMMERCE TRANSACTIONS

TDS ON E-COMMERCE TRANSACTIONS

- FA 2020 has introduced section 194-O which provides for TDS on E-commerce transactions
- E-commerce operator (ECO) to deduct TDS @ 1% on gross payment made by it to e-commerce participant (ECP).
- 5% if e-commerce participant does not have PAN
- **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;
- **E-commerce operator** means any person who owns, operates or manages digital or electronic facility or platform for e-commerce. Whether non-resident e-commerce operator would also be covered?
- “**electronic commerce**” means the supply of goods or services or both, including digital products, over digital or electronic network.
- “**Services**” includes FTS or FPS as defined in section 194J

TDS ON E-COMMERCE TRANSACTIONS

- Section 1940 will override all other TDS provisions.
- Applicability - 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 deduct TDS at the rate of one per cent of the gross amount of such sales or services or both
- TDS to be deducted at the earlier of following two events:
 - At the time of payment to e-commerce participant; or
 - At the time of credit of amount of sale or services to the account of e-commerce participant

TDS ON E-COMMERCE TRANSACTIONS

- Amount would be deemed to be paid by e-commerce operator to e-commerce participant when purchaser of goods or services makes payment directly to e-commerce participant (for transactions facilitated by e-commerce operator).
- TDS not applicable if following conditions are fulfilled:
 - E-commerce participant is individual or HUF; and
 - Gross revenue during the year from such sale or services or does not exceed Rs. 5 lakhs; and
 - E-commerce participant has furnished PAN or Aadhar number to the e-commerce operator.
- A transaction in respect of which TDS is deducted under this section by e-commerce operator, no TDS is required to be deducted under any other section.
- Exception not applicable on payment relating to hosting advertisements or providing any other services by e-commerce operator.

194Q PROVISIONS

194Q - TDS ON PURCHASE OF GOODS

(1) Any person, being a buyer who is responsible for paying any sum to any resident (hereafter in this section referred to as the seller) **for purchase of any goods of the value or aggregate of such value exceeding fifty lakh rupees in any previous year**, shall, at the time of credit of such sum to the account of the seller or at the time of payment thereof by any mode, whichever is earlier, **deduct an amount equal to 0.1 per cent of such sum exceeding fifty lakh rupees as income-tax.**

Explanation: For the purposes of this sub-section, “**buyer**” means a person whose total sales, gross receipts or turnover from the business carried on by him **exceed ten crore rupees** during the financial year immediately preceding the financial year in which the purchase of goods is carried out, not being a person, as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein.

194Q - TDS ON PURCHASE OF GOODS

(2) Where any sum referred to in sub-section (1) is credited to any account, whether called “suspense account” or by any other name, in the books of account of the person liable to pay such income, such credit of income shall be deemed to be the credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

(3) If any difficulty arises in giving effect to the provisions of this section, the Board may, with the previous approval of the Central Government, issue guidelines for the purpose of removing the difficulty.

(4) Every guideline issued by the Board under sub-section (3) shall, as soon as may be after it is issued, be laid before each House of Parliament, and shall be binding on the income tax authorities and the person liable to deduct tax.

194Q - TDS ON PURCHASE OF GOODS

(5) The provisions of this section **shall not apply to a transaction** on which:

(a) **tax is deductible under any of the provisions of this Act**; and

(b) **tax is collectible under the provisions of section 206C** other than a transaction to which sub-section (1H) of section 206C applies.

194Q - TDS ON PURCHASE OF GOODS

- Section application w.e.f. 01.07.2021.
- Tax is required to be deducted by buyer, where the value or aggregate of value of goods purchased exceeds Rs. 50 lakhs during the previous year.
- TDS @ 0.1% of sum exceeding Rs. 50 lakhs;
- In the absence of PAN, the tax shall deducted at the higher of the following rates:
 - (a) at the rate specified in the relevant provision of this Act or;
 - (b) at the rate or rates in force; or
 - (c) at the rate of 5%
- Implications of section 40(a)(ia) on the buyer (safe bet is to deduct)

TCS ON SALE OF GOODS

- Section 206C (1H) is introduced to collect TCS on sale of goods
- Seller of goods shall collect TCS @ 0.1% from buyer of such goods (1% if buyer does not provide PAN or AADHAAR to seller)
- TCS shall be collected at the time of receipt of sale consideration.
- Threshold limit is Rs. 50,00,000. TCS shall be collected on amount exceeding 50,00,000 only (i.e. not on entire receipt during the year)
- TCS not applicable in the following cases:
 - If goods are exported; or
 - If such goods are covered under sub-section (1) or sub-section (1F) or sub-section (1G); or
 - If aggregate sale value of goods does not exceed 50,00,000/-; or
 - If the buyer is liable to deduct TDS on the goods purchased and has deducted TDS.

TCS ON SALE OF GOODS

- Buyer means, person who purchases goods, but does not include,
 - Central or State Government;
 - Embassy, high commission, legation, commission, consulate & trade representation of foreign state;
 - Local Authority;
 - Person importing goods;
 - Any other person notified by the Central Government.
- Seller means, a person whose turnover exceeds Rs. 10 Cr during the preceding previous year.

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- The provisions of section 194-O and section 206C(1H) shall not be applicable in relation to transactions in securities and commodities, which are traded through recognized stock exchanges and to transactions in electricity, renewable energy certificates and energy saving certificates traded through power exchanges.
- The second clarification is about the applicability of section 194-O on payment gateway. The Board has clarified that the TDS under section 194-O would have to be made by the ECO and not by the payment gateway even though payment gateway qualifies as an ECO for facilitating the service.
- The third clarification relates to applicability of section 194-O on an insurance aggregator in the subsequent years. Section 194-O not applicable if the insurance agent or insurance aggregator has no involvement in transaction in the subsequent year.

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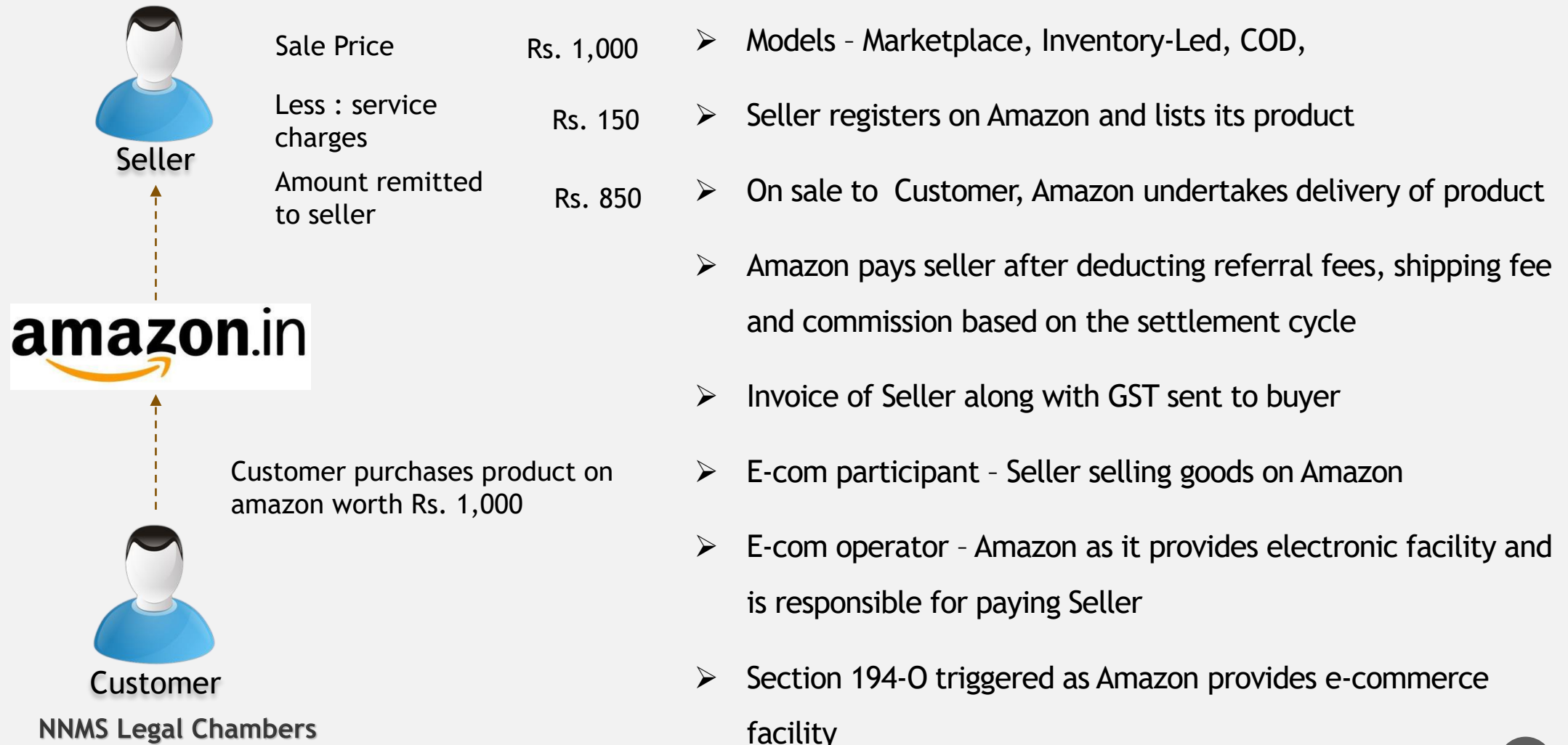
- Transactions from 01.04.2021 to be taken into consideration for calculation of threshold for FY 2021-22
- TDS to be deducted on amount without GST, if GST shown separately in invoice.
- Adjustment for purchase return permitted.
- Non-resident buyer excluded from section 194Q.
- Section 194Q not applicable in the year of incorporation.
- Turnover or receipts from non-business activity is not to be counted for this purpose.

INTERPLAY BETWEEN DIFFERENT SECTIONS

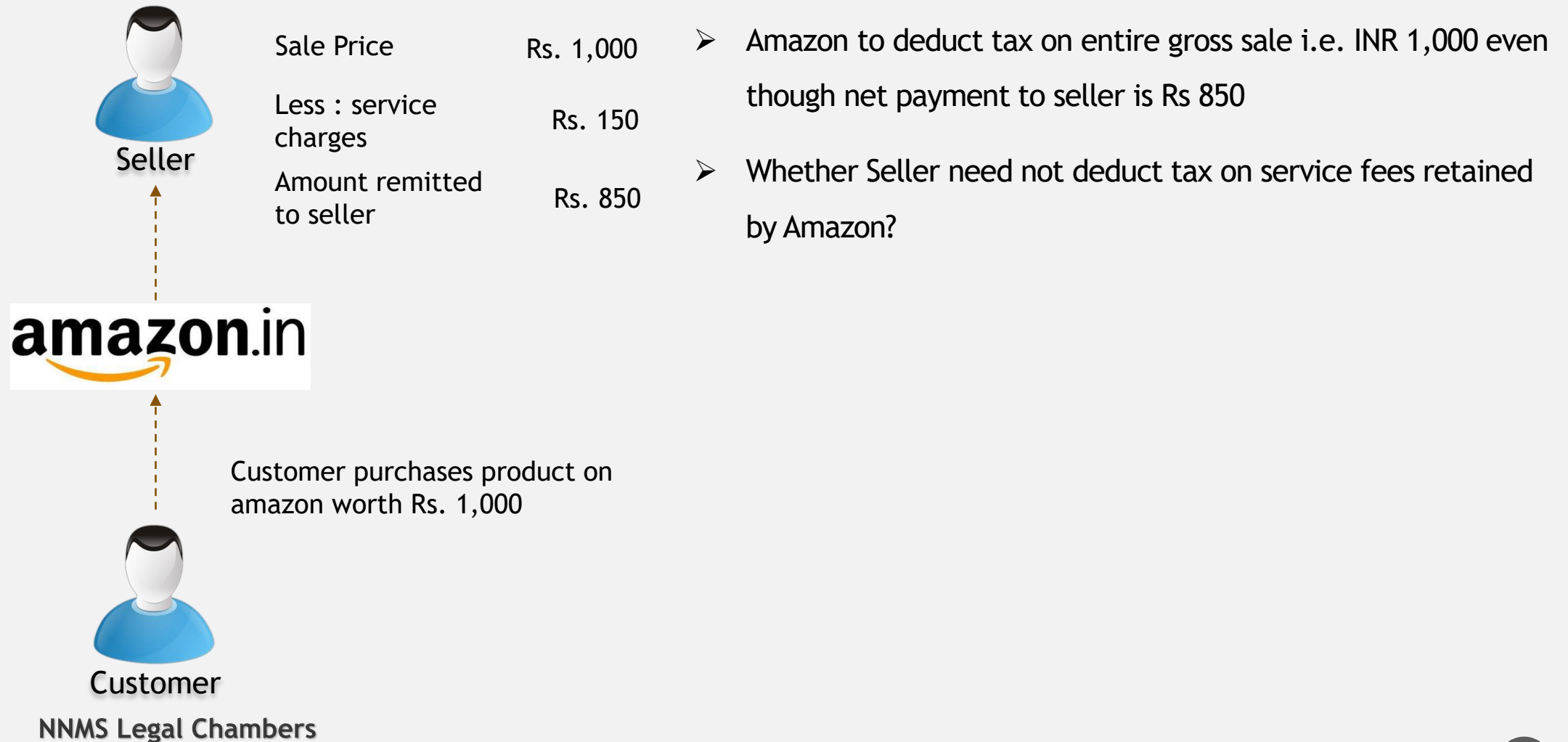
Nature of Interplay	Resolution
If tax is deductible under section 194-O and is deducted by ECO	Section 194-Q and 206C(IH) are not applicable
If tax is deductible under section 194-O but not deducted by ECO	Section 194-Q is not applicable ('deductible' is used) 206C(IH) is applicable ('deducted' is used)
If tax is collected under section 206C(IH)	Section 194-O continues to apply
Among section 194-O and 194Q	Section 194-O has primacy
Among section 194-Q and 206C(IH)	Section 194-Q has primacy
If tax is deducted under section 194Q	Tax is not collectible under section 206C(IH)
If tax is collected under section 206C(IH)	Tax is not deductible under section 194Q.

CASE STUDIES

AMAZON



AMAZON



PAYMENT BY E-WALLET



Seller

Sale Price	Rs. 1,000
Less : service charges	Rs. 20
Amount remitted to seller	Rs. 980



Paytm remits money to Seller

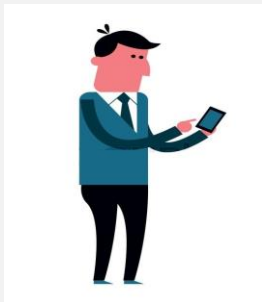


Customer

Customer purchases product offline worth Rs. 1,000 and makes payment through Paytm

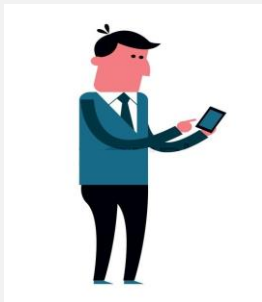
- Customer buys product from offline seller but makes payment through Paytm
- Seller registers itself with Paytm to receive payment
- Section 194-O applies only when sale of goods or services is facilitated by e-commerce operator
- Whether word 'facilitated' would cover providing e-wallet facility?
- Is seller e-commerce participant?

OLA



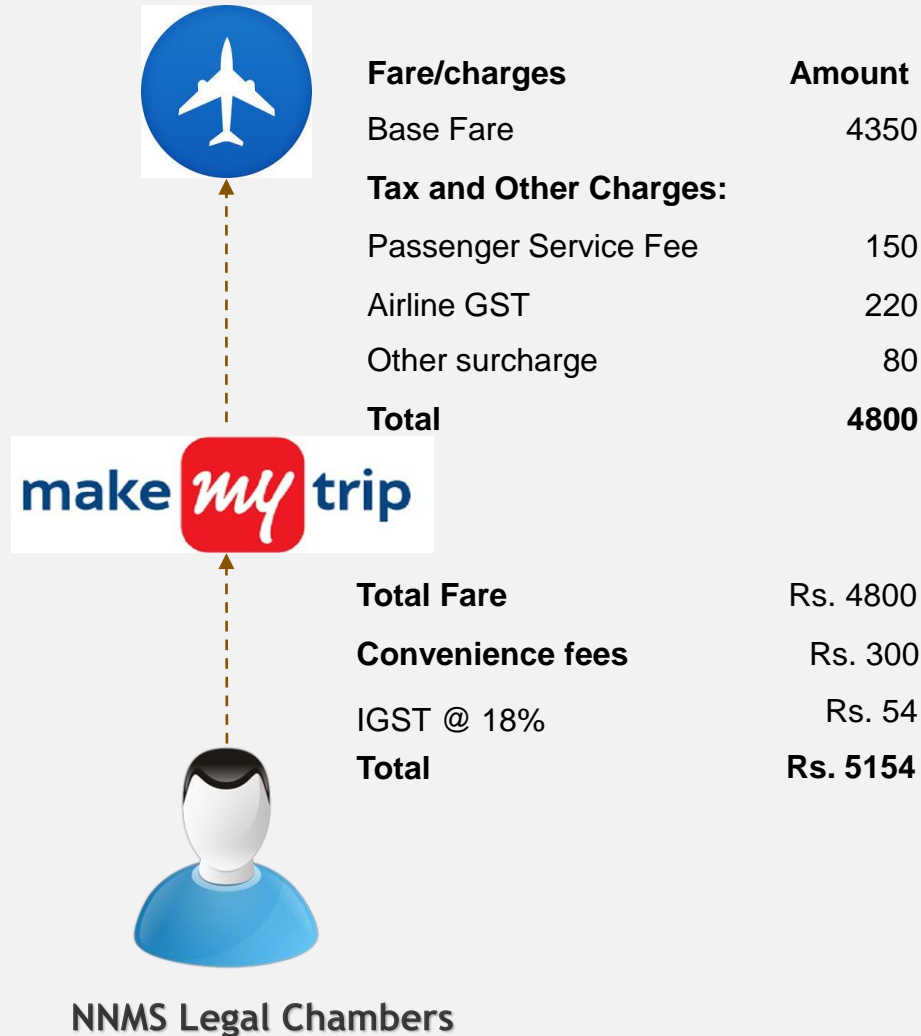
- Ola/Uber are Taxi Aggregators. They do not own taxi or employ taxi driver.
- Vehicle owner registers himself with Ola
- Ola allots ride through its software. Pricing is decided by software.
- Ola pays fare and incentives to Driver. Driver incurs cost of car, petrol, maintenance etc
- Some customers pay cash directly to driver.

OLA



- E-com participant - Vehicle owner, as he offers service on electronic platform
- E-com operator - Ola as it provides electronic facility and is responsible for paying Driver
- Section 194-O is triggered
- Ola will be required to deduct TDS on payments made to Vehicle Owner/Driver. Pursuant to Explanation to section 194-O, payment in cash made by customer to driver will be deemed to be payment made by Ola to vehicle owner
- Section 194C v Section 194O

MAKE MY TRIP (MMT)



- User books ticket online
- MMT charges user air fare (which includes airline GST) and MMT service charge. Invoice provides details of air fare charged by airline along with airline GST and MMT charges are stated separately
- E-com participant - Airline Companies as they are selling tickets through digital or electronic facility
- E-com operator - MMT, as it provides electronic facility and is responsible for paying Airlines
- Whether Section 194-O triggered and on what amount TDS to be deducted.
- Whether TDS applicable on commission from airlines.

HOTEL BOOKING



Fare/charges	Amount
Room Rent	5000
Passenger Service Fee	900
Total	5900



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- Hotel Booking - Aggregator and Franchise Model
- Franchise Model - OYO may lease a part of Hotel's Inventory beforehand and organises it under its brand name.
- User books rooms online
- OYO charges user room rent
- Whether Section 194-O triggered in case of Franchise Model?

BOOK MY SHOW (BMS)



Fare/charges	Amount
Base Fare	350
Tax and Other Charges:	
Convenience Fee	50
GST	09
Total	409

book my show



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- Cinema owners register on BMS and offers tickets for booking. Pricing is decided by the Cinema Owners
- User books movie tickets through BMS
- BMS charges user, Cinema charges along with GST and it's charges are separately charged along with GST
- Whether Section 194-O is triggered?
- BMS also provides various services like ticket verification, on-ground services for vendors, advertisement, etc. What would be the TDS implications on these.

RAILWAY TICKET BOOKING ON IRCTC



Rail Fare Rs. 1,000



Rail Fare Rs. 1,000
IRCTC Charges Rs. 10
Total Rs. 1,010



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- IRCTC has sole rights to book railway tickets online
- E-com participant - Ministry of Railway as it sells ticket through IRCTC
- E-com operator - IRCTC as it provides electronic facility and is responsible for paying Railway
- IRCTC charges user for railway fare and IRCTC service charge.
- IRCTC remits railway fare to Ministry.
- Even though section 194-O is triggered, no TDS deductible as section 196 provides for no TDS on payments made to Government

CARS-24

- Cars 24 works on C2B model.
- It purchases used cars from individuals and dealers, then sells it to other dealers.
- Seller has to book an appointment on the Cars 24 website.
- Seller has to visit the nearest Cars 24 branch for due verification.
- Post verification, Cars 24 will give best available quote. Cars 24 charges a nominal fees to sellers, who sells car to them.
- Cars 24 has various channel partners, who buy the second hand cars. Cars 24 charges a fees to buyers.

Whether, TDS u/s 194-O is applicable?

OLX

- OLX works to C2C model (i.e. Consumer sells to Consumer).
- Seller needs to create an account and list its product by uploading the images on the OLX website.
- Buyer will browse the listing.
- OLX neither acts as a liason between buyer and seller nor involves in negotiation. It provides merely a platform.
- Seller can opt for “Sponsored and Premium listing” services by paying a fee to OLX.
- OLX earns revenue from “Google Adsence”, which is an advertisement from Google.

Whether TDS u/s 194-O is applicable for the above transactions?

JUST DIAL

- Just Dial works on B2B and B2C models.
- Seller lists its products and services on JD website.
- Buyer can browse the listing or can call the JD (88888 88888) and seek the details.
- Seller can opt for premium listing service by paying some fees. JD provides various packages, based on the package opted, seller standing in the search list is determined.
- Information on search by buyer is transferred only to paid sellers.

Whether TDS u/s 194-O is applicable?

PRACTO

- Practo connects doctors and patients. Apart from this, sells medicines to chemists and druggists, sales of Practo Ray, Premium listing service for doctors on payment of fees.
- Practo Ray (SaaS application): this is a Software provided to doctors for an annual subscription fees. It helps doctors in maintaining their patients record, billing, prescriptions and others.
- Doctors are listed on the Practo with details of experience, area of specialisation etc.
- Patients browse the listing. Practo would list the doctors who are paid and opted for premium listing service in the top of the list.
- Patients can fix the appointment with doctor. Patients can also consult with the doctors on the Practo for free or on payment of fee.

Whether TDS u/s 194-O is applicable?

TDS/TCS FOR RETURN NON-FILERS

S 206AB TDS FOR NON-FILERS OF IT RETURN

(1) Notwithstanding anything contained in any other provisions of this Act, where tax is required to be deducted at source under the provisions of Chapter XVIIIB, other than sections 192, 192A, 194B, 194BB, 194LBC or 194N on any sum or income or amount paid, or payable or credited, by a person (hereafter referred to as deductee) to a specified person, the tax shall be deducted at the higher of the following rates, namely:

(i) at twice the rate specified in the relevant provision of the Act; or

(ii) at twice the rate or rates in force; or

(iii) at the rate of five per cent.

(2) If the provisions of section 206AA is applicable to a specified person, in addition to the provision of this section, the tax shall be deducted at higher of the two rates provided in this section and in section 206AA.

S 206AB TDS FOR NON-FILERS OF IT RETURN

(3) For the purposes of this section “specified person” means a person who has not filed the returns of income for both of the two assessment years relevant to the two previous years immediately prior to the previous year in which tax is required to be deducted, for which the time limit of filing return of income under sub-section (1) of section 139 has expired; and **the aggregate of tax deducted at source and tax collected at source in his case is rupees fifty thousand or more in each of these two previous years:**

Provided that the **specified person shall not include a non-resident who does not have a permanent establishment in India.**

Explanation: For the purposes of this sub-section, the expression “permanent establishment” includes a fixed place of business through which the business of the enterprise is wholly or partly carried on.

S 206AB TDS FOR NON-FILERS OF IT RETURN

- Applicable w.e.f. 01.07.2021.
- Basic condition - TDS under original section should be attracted
- A special provision providing for higher rate for TDS for the non-filers of income-tax return. The tax shall deducted at the higher of the following rates:
 - (a) twice the rate specified in the relevant provision of the Act; or
 - (b) twice the rate or rates in force; or
 - (c) the rate of five per cent
- Applies to all cases of TDS except: Sec 192 (Salary); Sec 192A (PF); Sec 194B (Lottery); Sec 194BB (Horse race); Sec 194LBC (Securitization Trust) and Sec 194N (Bank withdrawals).
- Applies to all payees Resident and to those Non-residents, who have PE.
- Applies even when payee has PAN

S 206CCA TCS FOR NON-FILERS OF IT RETURN

(1) Notwithstanding anything contained in any other provisions of this Act, where tax is required to be collected at source under the provisions of Chapter XVII-BB, on any sum or amount received by a person (hereafter referred to as collectee) from a specified person, the tax shall be collected at the higher of the following two rates, namely:

- (i) at twice the rate specified in the relevant provision of the Act; or
- (ii) at the rate of five per cent.

(2) If the provisions of section 206CC is applicable to a specified person, in addition to the provisions of this section, the tax shall be collected at higher of the two rates provided in this section and in section 206CC.

S 206CCA TCS FOR NON-FILERS OF IT RETURN

(3) For the purposes of this section “specified person” means a person who has not filed the returns of income for both of the two assessment years relevant to the two previous years immediately prior to the previous year in which tax is required to be collected, for which the time limit of filing return of income under sub-section (1) of section 139 has expired; and the aggregate of tax deducted at source and tax collected at source in his case is rupees fifty thousand or more in each of these two previous years:

Provided that the specified person shall not include a non-resident who does not have a permanent establishment in India.

Explanation: For the purposes of this sub-section, the expression “permanent establishment” includes a fixed place of business through which the business of the enterprise is wholly or partly carried on.’

THANK YOU