

# RVA INSIGHTS

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# Direct Tax Updates

## **CBDT amends Safe Harbour Rule 10TA and Rule 10TD effective 01 April 2024.**

The Central Board of Direct Taxes (CBDT) vide Notification No 104/2023 dated 19 December 2023 has sought to amend the Safe Harbour rules, specifically Rule 10TA and 10TD of the Income-tax Rules, 1962 (the Rules). These rules may be called the Income-tax (29th Amendment) Rules, 2023, and shall be deemed to have come into force from 1 April 2024.

### **Restriction of which loss or income should be excluded from operating expenses or income.**

The definition of operating expenses under Safe Harbour has been amended for the exclusion of loss on the transfer of assets or investment on assets where depreciation is included in the operating expenses.

The definition of operating income under Safe Harbour has been amended for the exclusion of income on transfer of assets or investment on assets where depreciation is included in the operating expenses.

### **Alignment of intra-group loans with global developments.**

As per Rule 10TA(f), there was a restriction of the eligibility of intra-group loans to only loans that were sourced in Indian rupees. This sub-clause (i) has now been omitted, and thereon, it may be viewed that loans that are sourced in any currency can be considered as eligible, subject to the other conditions.

The Safe Harbour was prescribed for advancing intra-group loans that are denominated in Indian Rupees (INR) or foreign currency; earlier, the reference to credit rating was specified as a CRISIL credit rating or its equivalent. The amendment has now omitted the reference to CRISIL and has added an explanation and defined credit rating to mean: "a credit rating assigned to the associated enterprise by a Securities and Exchange Board of India registered and Reserve Bank of India accredited credit rating agency which is applicable for the relevant previous year."

It also clarifies that if the Associated Enterprise (AE) has only one applicable credit rating, that shall be taken, however if they have more than one applicable credit rating, then the least of such rating should be applied.

In connection with the Safe Harbour prescribed for advancing intra-group loans denominated in foreign currency

- The earlier reference to six-month London Inter-Bank Offer Rate (LIBOR) has now been replaced with a currency specific reference rate as follows:

Currency	Reference Rate
USD	6-month Term Secured Overnight Financing rate (SOFR) + 45 basis points
EURO	6-month Euro Inter Bank Offered Rate (EURIBOR)
GBP	6-month Term Sterling Overnight Index Average (SONIA) + 30 basis points
YEN	6-month Tokyo Term Risk Free Rate (TORF) + 10 basis points
AUD	6-month Bank Bill Swap Rates (BBSW)
SGD	6-month Compounded Singapore Overnight Rate Average (SORA) + 45 basis points

This is in alignment with the discontinuation of LIBOR globally and the adoption of relevant currency-wise reference rates with suggested increase in the spread as well.

- Earlier, there was a blanket range of credit ratings which is now specified, e.g., AAA to A is now AAA, AA+, AA, AA-, A+, A, A. The Safe Harbour interest rate declared over the above reference rate is as below:

Credit rating of the AE	Loan Less than INR 2.5 Billion	Loan More than INR 2.5 Billion
AAA, AA+, AA, AA-, A+, A, A- or equivalent	150 basis points	150 basis points
BBB+, BBB, BBB- or equivalent	300 basis points	300 basis points
BB+, BB, BB-, B+, B, B- or equivalent	400 basis points	450 basis points
C+, C , C-, D or equivalent or not available	400 basis points	600 basis points

**E-commerce platforms are required to deduct a 1 percent tax on the gross amount of sale of a good or service carried out through their platform.**

The CBDT vide Circular No. 20 of 2023 dated 28 December 2023, has issued guidelines under section 194-O of the Income-tax Act, 1961, in relation to the applicability of tax deduction provisions on payment / deemed payment made by an e-commerce operator (ECO) to an e-commerce participant.

### **Highlights of the Circular:**

The Circular has issued the following key clarifications, in question and answer (Q&A) form, with respect to applicability of section 194-O of the Income Tax Act, 1961 (the Act):

1. Who should deduct TDS where there are multiple ECOs involved in a transaction?

**Answer:** In case where a platform or network (e.g., the Open Network for Digital Commerce) on which multiple ECOs are participating in a single transaction. For example, there could be a buyer side ECO involved in buyer side functions and a seller side ECO involved in seller side functions. In this case there may be two situations:

*Situation 1: Where multiple ECOs are involved in a single transaction of sale of goods or provision of services through ECO platform or network and where the seller-side ECO is not the actual seller of the goods or services:*

- a) On the buying side, a buyer-side ECO could be providing an interface to the buyer and on the selling side, a seller-side ECO could be providing an interface to the seller.
- b) In this situation, TDS under section 194-O of the Act is to be done by the seller-side ECO who finally makes the payment or the deemed payment to the seller for goods sold or services provided.

- c) The TDS shall be on the gross amount of such sales of goods or provision of services and shall be deducted by the seller-side ECO at the time of credit to the account of a seller (being e-commerce participant) or at the time of payment or deemed payment thereof to such seller by any mode, whichever is earlier.
- d) Seller ECO to file the requisite TDS return in Form 26Q and issue certificate to seller under Form 16A

*Situation 2: Where multiple ECOs are involved in a single transaction of sale of goods or provision of services through ECO platform or network and where the seller-side ECO is the actual seller of the goods or services*

- a) On the buying side, an ECO (say ECO-1) could be providing an interface to the buyer and on the selling side, the seller itself is an ECO and is directly interacting with another ECO (say ECO-2).
- b) In this situation, TDS under section 194-O of the Act is to be done by the ECO-2 which finally makes the payment or the deemed payment to the seller for goods or services sold (i.e. ECO).
- c) The TDS shall be on the gross amount of such sale of goods or provision of services and be deducted by ECO-2 at the time of credit to the account of a seller or at the time of the payment or the deemed payment thereof to such seller by any mode, whichever is earlier.



d) ECO-2 to file the requisite TDS return in Form 26Q and issue certificate to the seller under Form 16A.

2. E-commerce operators may be levying convenience fees or charging commission for each transaction and seller might levy logistics & delivery fees for the transaction. Payments may also be made to the platform or network (e.g., ONDC) provider for facilitating the transaction. Would these form part of "gross amount" for the purposes of TDS under section 194-O of the Act?

**Answer:** In e-commerce, it is common for an order to be shipped to the buyer from the seller. It is therefore common for the sellers to charge the buyer additionally for shipping in the form of logistics/delivery/shipping/packaging fees.

Further, the buyer-side ECO and seller-side ECO may charge a commission to the seller to enable the online transaction, and the seller may choose to recoup all or part of that amount from the buyer.

Example 1: A buyer purchases goods worth Rs 100 from a seller and opts for home delivery. The seller charges the buyer an additional Rs 5 as packaging fees, Rs 10 as shipping fees and Rs 3 as a convenience charge (to recoup Rs 1 charged by the buyer side ECO and Rs 2 charged by the seller side ECO). In this case, the seller will issue an invoice Rs 118 to the buyer. The shipping fees, packaging fees and convenience fees are separately charged to the buyer to

provide services in relation to the main supply. In such a case, the seller side ECO is required to deduct tax on Rs 118 since this is the gross amount of sales.

In this example, fees charged by the seller side ECO (Rs 3 charged to the seller) and buyer side ECO (Rs 1 charged to the seller side ECO) for services provided would ordinarily have been subjected to tax under section 194H of the Act and the seller and the seller-side ECO respectively would have had to deduct tax and file TDS returns with respect to the fees paid.

However, as the tax has been deducted under section 194-O of the Act on the gross amount of sales of Rs 118, this amount of fees charged will not be subject to TDS under any other provision. However, this is subject to provision of section 194S of the Act.

Payments may also be made to the platform or network (e.g. ONDC) provider for facilitating the transaction. These would form part of the gross amount for the purpose of TDS under section 194-O of the Act if they are included in the payment for the transaction. If these payments are being paid on a lump sum basis and are not linked to a specific transaction, then these need not be included in the gross amount.

Example 2: The seller's label price of a product is Rs 85, the seller-side ECO's fee (for listing the seller catalog and

facilitating the transaction) is Rs 10 and the buyer side ECO's fee (to provide an interface to enable the buyer to discover the seller / product and to enable them to place an order) is Rs 5. The seller issues an invoice of Rs 100 (gross amount) to the buyer. TDS under section 194-O will be calculated on Rs 100 at the rate of 1%, and the responsibility of tax deduction and depositing the same would be on the seller ECO. The buyer and seller ECO's fees will not be subject to further TDS (say under section 194H of the Act).

3. How will GST, various state levies and taxes other than GST such as VAT/ Sales tax/ Excise duty/ CST be treated when calculating gross amount of sales of goods or provision of services as per the provisions of section 194-O of the Act?

**Answer:** It is clarified that under section 194-O of the Act, when tax is deducted at the time of credit of amount in the account of seller and the component of GST/ various state levies and taxes comprised in the amount payable to the seller is indicated separately, tax shall be deducted under section 194-O of the Act on the amount credited without including such GST / various state levies and taxes. However, if TDS is on payment basis because the payment is earlier than the credit, the tax would be deducted on the whole amount as it is not possible to identify that payment with GST / various state levies and taxes component of the amount to be invoiced in the future.

4. How will adjustment for purchase-returns take place?

**Answer:** Tax is required to be deducted under section 194-O of the Act at the time of payment or credit, whichever is earlier. Thus, before purchase-return happens the tax must have already been deducted under section 194-O of the Act on that purchase. If that is the case and against this purchase-return the money is refunded then this tax deducted, if any, may be adjusted against the next transaction by the deductor with the same deductee in the same financial year Further, the tax deducted and deposited will be allowed as credit to the seller.

Further, no adjustment is required if the purchase-return is replaced by the goods, since in that case the transaction on which tax was deducted under section 194-O of the Act has been completed with goods replaced.

5. How will discounts given by seller as an e-commerce participant or by any of the multiple ECOs be treated while calculating gross amount?

Answer:

- a) Seller Discount:

In the situation where the discount is given by the seller itself, the seller would reduce the price of the products sold or services provided.

As an example, if the label price of a product is Rs 100, and the seller offers a discount of Rs 10, Rs 90 will be receivable from the buyer. In this case, the seller will invoice the buyer for Rs 90, and hence the TDS will be calculated on Rs 90.

b) Buyer ECO or Seller ECO Discount:

In cases where discount is given by the buyer ECO / seller ECO, usually the receives full consideration for the product, however part of it is received from the buyer and balance is discharged to the seller by the buyer ECO / seller ECO, as the case may be.

As an example of a discount is given by the buyer ECO, if the price quoted by the seller is Rs 100, and the buyer ECO gives a discount of Rs 10, Rs 90 will be collected from the buyer and remitted to the seller, and the buyer ECO will pay the remaining Rs 10 to the seller via the seller ECO. The invoice on the buyer will be raised for Rs 100 and tax will therefore be deducted by the seller-side ECO on Rs 100, which is the gross amount of sales.

## Extension of Time Limit for Issuance of Orders for the FY 2018-19 and FY 2019-20

- The time limit specified under-section 73(10) for issuance of order is within three years from the due date for furnishing annual return for the financial year to which tax not paid or short paid or input tax credit wrongly availed or utilized.

The time limit for the below mentioned financial years have been further extended as specified below:

Financial Year	Time Period for Issuing Order u/s 73(10)	Extended Time Period for Issuing Order u/s 73(10)
2018-19	Up to 31.03.2024	Up to 30.04.2024
2019-20	Up to 30.06.2024	Up to 31.08.2024

[Notification No. 56/2023 – Central Tax dated 28 December 2023]

## **Extension of Time Limit for reporting of Electronic Credit Reversal and Re-claimed Statement on GSTN Portal**

- A new ledger, the “**Electronic Credit Reversal and Re-claimed Statement**” (ECRR), was introduced on the GST portal enabling tax payers to track ITC reversals in Table 4B(2) for subsequent re-claim in Tables 4D(1) and 4A(5).

The time limit to report cumulative ITC reversals for the ECRR ledger opening balance is extended until 31 January 2024, with up to 3 amendments for corrections, enhancing the accuracy and consistency of ITC reversal and re-claim transactions and any modifications to the opening balance to be completed by 29 February 2024.

## **New changes in GSTR-1; Table 14 and Table 15 are added in the GSTN portal**

- The GSTN added two new table in GSTR-1 starting from January 2024 onwards for
  - ✓ Table 14- Taxable Supplies made through E-commerce Operators
  - ✓ Table 15- Taxable outward on which the E-commerce Operator is liable to pay tax u/s 9(5) of the CGST Act

## **Formation of Principal Bench of Goods & Service Tax Appellate Tribunal**

- The Central Government on the recommendation of the GST Council, notified the Principal Bench of the Goods and Services Tax Appellate Tribunal (GSTAT) at New Delhi with effect from 01 January 2024.

## **Recent Advisories on 2-factor Authentication**

- Earlier, 2-factor authentication was made mandatory for taxpayers with an Aggregate Annual Turnover (AATO) exceeding INR 100 crores effective from 21 August 2023.

Now, as per the latest NIC update, the 2-factor authentication has been made mandatory for all taxpayers with AATO of INR 20 crore and above.

Taxpayers required to provide one-time password (OTP) post entering user id and password. The OTP will be delivered to the Primary Authorized Signatory's mobile number and E-mail id.

## **FOREIGN TRADE POLICY RELATED**

### **Amendments in Import Policy with respect to used IT Assets – SEZ to DTA**

- Used IT Assets (laptops, desktops, monitors, printers) may be moved from SEZ to DTA without a license for restricted imports for the purpose of further use in their DTA operations only, provided that there is a minimum usage of 2 years in the SEZ area and that the goods are not older than 5 years from the date of manufacturing.
- Further, where a unit is closing down its SEZ and re-locating to the DTA, the movement of the Used IT assets from SEZ to DTA is allowed without license for restricted imports for assets not exceeding 5 years in age. Exceptions apply for Used assets that entered SEZ and made use for less than 2 years.
- The relaxation for import from SEZ to DTA under condition 1 & 2 above, shall be applicable given that no



exemption from any regulatory requirements was availed at the time of import of the used IT Assets into the SEZ

- Import of any Used IT assets which do not fulfil the above conditions/criteria shall be subject to license for restricted import.

[Notification No. 56/2024-24 dated 01.01.2024]

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