

NEWS LETTER

AJAY RATTAN & CO Chartered Accountants

NEWSLETTER FOR JANUARY 24
VOLUME 14, ISSUE 1



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ADVISORY BOARD



CA. AJAY AGGARWAL

B. COM. (HONS.), FCA, FCS, LLB, DISA,
DIP. (INTERNATIONAL TAXATION)

✉ : CAAJAY9@GMAIL.COM

☎ : 9810005583



CA. Varun Grag

B. COM. (HONS.), FCA

✉ : varun@ajayrattanco.com

☎ : 9023637000



CA Pradeep Rastogi

B. Com. (Hons.), FCA, LLB,
MIMA, PGD (ADR), APCCCL

✉ : pradeep@ajayrattanco.com

☎ : 9818344544



COMPLIANCE



DUE DATES | JANUARY 2024

GST

Due Date	Compliance Detail	Applicable To
10 th	a) GSTR-7 (TDS return under GST) b) GSTR-8 (TCS return under GST)	a) Person required to deduct TDS under GST b) Person required to collect TCS under GST
11 th	GSTR – 1 (Outward supply return)	<ul style="list-style-type: none">• Taxable persons having annual turnover > Rs. 5 crore in FY 2022-23• Taxable persons having annual turnover ≤ Rs. 5 crore in FY 2022-23 and not opted for Quarterly Return Monthly Payment (QRMP) Scheme
13 th	a) GSTR-6 [Return by input service distributor (ISD)] b) GSTR-5 (Return by Non- resident) c) GSTR-1 (Outward supply return)	a) Person registered as ISD b) Non-resident taxable person (NRTP) c) Taxable persons having annual turnover ≤ Rs. 5 crore in FY 2022-23 and opted for QRMP scheme
20 th	a) GSTR-3B (Summary return) b) GSTR-5A [Online Information Database Access and Retrieval (OIDAR) services return]	a) .Taxpayers having annual turnover > Rs. 5 crore in FY 2022-23 . .Taxpayers having annual turnover ≤ Rs.5 crore in FY 2022-23 and not opted for QRMP Scheme . b) OIDAR services provider
22 th	a) GSTR-3B (Summary return)	<ul style="list-style-type: none">• Taxpayers having annual turnover ≤ Rs. 5 crore in FY 2022-23 and opted for QRMP scheme and having principal place of business in Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands, Lakshadweep• Taxpayers having annual turnover ≤ Rs. 5 crore in FY 2022-23 and opted for QRMP scheme and having principal place of business in any other state

INCOME TAX

Due Date	Compliance Detail	Applicable To
7 th	a) TDS/TCS deposit b) Equalization Levy deposit	a) Non-Government deductors b) All dedutors
15 th	Form 27EQ –TCS return	<ul style="list-style-type: none">All Collectors
30 th	<ul style="list-style-type: none">TCS certificate in Form 27D	<ul style="list-style-type: none">All Collectors.
31 st	<ul style="list-style-type: none">TDS Return	<ul style="list-style-type: none">All Collectors.

other

Due Date	Compliance Detail	Applicable To
15 th	Deposit of PF & ESI contribution	All Deductors

DIRECT TAX

Withholding tax u/s 194-O of the Income-tax Act on payment of sums by an E-Commerce Operator (ECO) to an E-Commerce Participant – Guidelines prescribed by Central Board of Direct Taxes (CBDT)

History

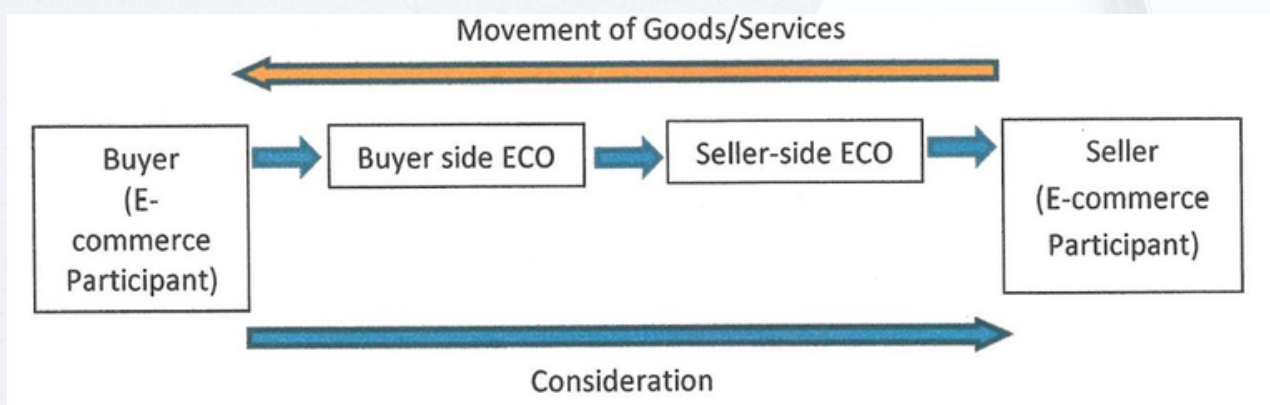
- The Finance Act, 2020 had inserted section 194-O in the Income-tax Act requiring an ECO to deduct tax at source @ 1% of the gross amount of sale of goods / services, facilitated through its electronic portal. Exemption is allowed to certain categories of individuals / Hindu undivided families fulfilling prescribed conditions
- Withholding of tax is required to be done on the 'gross amount' and at the time of payment or credit to the E-Commerce Participant, whichever is earlier (similar to other withholding tax provisions)
- In the past, guidelines have been issued by CBDT in the months of September 2020 and November 2021, clarifying certain issues regarding operation of the provision. Now, vide a 3rd set of guidelines issued on 28 December 2023, CBDT has clarified some more issues pertaining to operation of section 194-O as below.

Who should withhold tax at source u/s 190-O where there are multiple ECOs involved in a transaction?

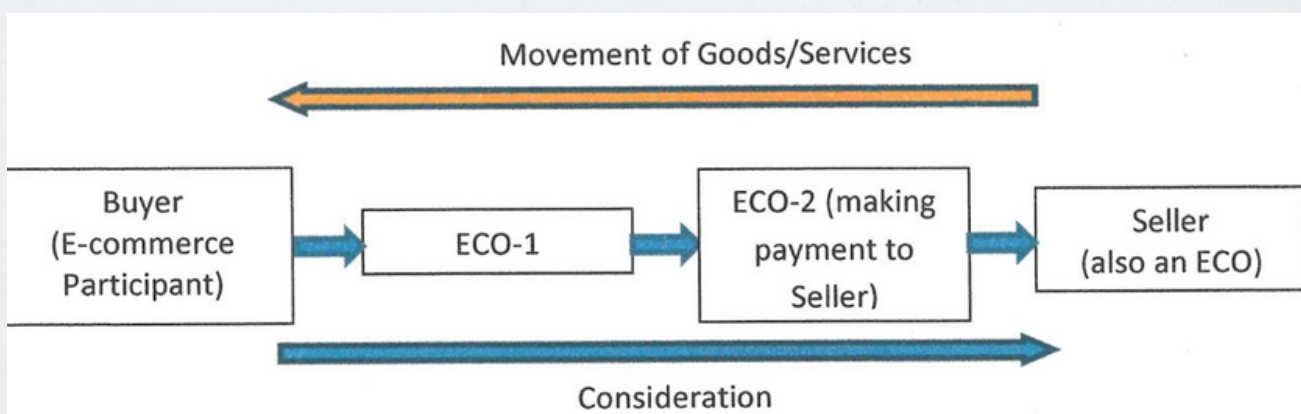
Such a situation might arise in the case of a platform or network (e.g., the open network for digital commerce) wherein multiple ECOs are participating in a single transaction of sale of goods / services through the platform / network. For example, there could be a buyer side ECO involved in buyer side functions and a seller side ECO involved in seller side functions.

In this case there might be 2 situations:

Situation 1 - Where the seller-side ECO is not the actual seller of goods / services. In this situation, withholding of tax u/s 194-O is required to be done by the seller side ECO who finally makes the payment to the seller. The seller-side ECO would file the requisite withholding tax return in Form 26Q and issue certificate to the seller in Form 16A.



Situation 2 - Where the seller-side ECO is the actual seller of goods / services. In this situation, withholding of tax u/s 194-O is required to be done by the ECO which finally makes the payment to the seller for goods / services sold, which in the case mentioned below is ECO-2. The ECO 2 would file the requisite withholding tax return in Form 26Q and issue certificate to the seller in Form 16A.



Operation of section 194-O in some other situations

The guidelines contemplate some other situations as well (given below) and explains in detail how section 194-O would operate in such cases, including illustrations.

- ECOs may be levying convenience fees or charging commission for each transaction and seller might levy logistics and delivery fees for the transaction. Payments may also be made to the platform or network provider for facilitating the transaction. Whether these would form part of 'gross amount' for the purpose of withholding tax u/s 194-O of the Act?
- How will GST, various state levies and taxes other than GST (such as Value Added Tax/ Sales tax / Excise duty / Central Sales Tax) be treated when calculating gross amount' of sale for the purpose of section 194-O?
- How will adjustment for purchase-returns take place?
- How will discounts given by seller as an E-Commerce Participant or by any of the multiple ECOs be treated while calculating 'gross amount' for the purpose of section 194-O?

Income-tax Return (ITR) Forms 1 & 4 for Assessment Year 2024-25 notified by CBDT

CBDT has notified following ITR forms for Assessment Year 2024-25:

ITR Form	Who can file	Who can file
ITR 1 Sahaj	Resident individuals (ordinarily residents – ROR) having: <ul style="list-style-type: none">• Total annual income ≤ Rs. 50 Lakh;• Income from salaries;• Income from 1 house Property• Income from other Sources• Agriculture income < Rs.5,000	An individual who is either <ul style="list-style-type: none">• Director in a company, or• Has invested in unlisted equity shares, or• In cases where tax has been deducted at source u/s 194N (cash payments > Rs. 1 crore by banking company / cooperative society), or• If income-tax is deferred on Employee Stock Ownership Plan (ESOP)
ITR 4 Sugam	Resident individuals / Hindu undivided families / partnership firms (except limited liability partnerships) having total annual income ≤ Rs. 50 Lakh computed u/s 44AD, 44ADA, 44AE of the Income-tax Act, 1961 relating to presumptive taxation	An individual who is either <ul style="list-style-type: none">• Director in a company, or• Has invested in unlisted equity shares, or• If income-tax is deferred on ESOP• Has agricultural income > Rs.5,000

Charitable Trusts / Institutions - CBDT allows investment in units of Powergrid Infrastructure Investment Trust as a recognized mode for continuity of tax exemption

Charitable Trusts / Institutions enjoying Income-tax exemption u/s 11(5) of the Income-tax Act are required to invest their surplus funds in prescribed modes, such as savings certificates, post office savings, deposit in an account with a scheduled bank or co-operative society, units of Unit Trust of India, deposit in any public sector company of India, etc.

Vide notification dated 18 December 2023, the CBDT has added investment in units of Powergrid Infrastructure Investment Trust as one of the recognized modes for continuity of tax exemption for such trusts / institutions.



G

GOODS

S

SERVICE

T

TAX

Notification No. 55/2023- Central Tax, Dated – 20.12.2023.

The CBIC has issued the notification for extending the due date for furnishing the return in FORM GSTR-3B for the month of November 2023 till the 27th day of December 2023, for the registered persons whose principal place of business is in the districts of Chennai, Tiruvallur, Chengalpattu and Kancheepuram in the state of Tamil Nadu.

Notification No. 56/2023- Central Tax, Dated – 28.12.2023.

The CBIC has issued the notification bringing forth significant changes to the time limits for the issuance of notices in the context of GST. This update, impacting the financial years 2018-19 and 2019-20, aims to streamline the process and provide additional time for both the GST department and taxpayers to handle compliance matters effectively.

• Filing of GSTR 9 and GSTR 9C for the F.Y 2022-23.

Sr No	Financial Year	Extended Period
1.	2018-19	<ul style="list-style-type: none">• Show cause notices can now be issued until 31st January 2024, extending the original deadline (31st December 2023) by one month.• Orders related to the recovery of tax not paid, short paid, or input tax credit wrongly availed or utilized can be issued until 30th April 2024, also extended by one month. (Original deadline was 31st March 2024)
2.	2019-20	<ul style="list-style-type: none">• Show cause notices can now be issued until 31st January 2024, extending the original deadline (31st December 2023) by one month.• Orders for the same financial year can be issued until 31st August 2024, extending the original deadline (30th June 2024) by two months.

Implication and Considerations:

A. Time Barring periods under Section 73:

- The extended deadlines mentioned above apply specifically to time-barring periods under Section 73.
- The GST department will still have an additional two years to issue notices and orders under suppression/ misrepresentation cases under Section 74.

B. Consideration for Taxpayers:

- For cases related to the financial year 2018-19 at the ASMT-10/DRC-01A stage, taxpayers are advised to be aware of the extended timeline.

Conclusion :

The extension of time limits for the issuance of GST notices and orders provides a more realistic timeframe for both the GST department and taxpayers to address compliance matters effectively. It is crucial for taxpayers to be aware of these extended deadlines and take advantage of the additional time provided to ensure a fair and just resolution of their cases. The balance between timely enforcement and allowing taxpayers a reasonable opportunity to be heard is essential for the smooth functioning of the GST system.

Instruction No. 05/2023- GST, Dated – 13.12.2023

CBIC has issued instructions no-05/2023 dated 13th December 2023, providing the clarity on the secondment of employees by overseas group companies to Indian firms. The instruction also addresses the application of Section 74(1) of the Central Goods and Services Tax (CGST) Act, following the Supreme Court's judgment in the case of Northern Operating Systems Private Limited (NOS). This article explores the key points outlined in the CBIC instruction and its implications.

Key Highlights:

- 1. Supreme Court Judgment on Secondment:** The instruction refers to the Supreme Court's judgment dated May 19, 2022, in the case of CC, CE & ST, Bangalore vs. Northern Operating Systems Private Limited (NOS). The judgment examined the nature of secondment of employees by overseas entities to Indian firms and its implications for Service Tax.
- 2. Unique Characteristics of Each Arrangement:** CBIC emphasizes that the Supreme Court's judgment in the NOS case underlines the need for a nuanced examination based on the unique characteristics of each specific secondment arrangement. It cautions against applying the judgment mechanically to all cases, emphasizing the importance of a case-specific analysis.
- 3. Observation on Application of Precedents:** The instruction cites a previous observation by the Supreme Court in the case of Commissioner of Central Excise, Mumbai vs. M/s Fiat India(P) Ltd. It highlights that each case depends on its own facts, and a broad resemblance to another case is not decisive. The uniqueness of each case should be considered in determining tax implications.
- 4. Section 74(1) of CGST Act:** The instruction addresses the mechanical invocation of the extended period of limitation under Section 74(1) of the CGST Act in cases involving secondment. It clarifies that Section 74(1) can be invoked only when there is evidence of fraud, wilful misstatement, or suppression of facts to evade tax. Mere non-payment of GST is not sufficient to invoke this provision.
- 5. Guidance for Investigation and Notices:** The CBIC instructs field formations to carefully consider the distinct factual matrix of each case involving secondment. It advises against mechanically invoking Section 74(1) and emphasizes the need for specific evidence of fraud or wilful misstatement before issuing show cause notices.

Conclusion: The CBIC's recent instruction provides valuable guidance on the nuanced examination of secondment arrangements and the application of Section 74(1) of the CGST Act. As businesses navigate the complexities of cross-border employment arrangements, this clarification aims to ensure a fair and evidence-based approach to tax implications under the GST regime.

ADVISOR

Two-factor Authentication for Taxpayers, dated 01.12.2023

1. GSTN is introducing two-factor authentication (2FA) for taxpayers to strengthen the login security in GST portal. The pilot rollout has been done for a state of Haryana and working seamlessly. Currently, 2FA will be rolled out for **Punjab, Chandigarh, Uttarakhand, Rajasthan and Delhi** in 1st phase. In 2nd phase, it is planned to be rolled out all states across India.
2. Taxpayers would need to provide one-time password (OTP) post entering user id and password, the OTP will be delivered to their Primary Authorized Signatory **“Mobile number and E-mail id”**.
3. Taxpayers are requested to keep their email and mobile number of authorized signatory updated on the GST Portal for receiving the OTP communication. This OTP would only be asked in case the taxpayer changes the system (desktop or laptop or browser) and location.
4. The solution would be rolled out from 1st of December’2023.

Date extension for reporting opening balance for ITC reversal

1. In order to facilitate the taxpayers in correct and accurate reporting of ITC reversal and reclaim thereof and to avoid clerical mistakes, a new ledger namely Electronic Credit and Re-claimed Statement was introduced on the GST portal. This statement was made available to help the taxpayers in tracking their ITC that has been reversed in Table 4B (2) and thereafter re-claimed in Table 4D (1) and 4A (5).
2. Now to facilitate taxpayers, further opportunity to declare opening balance for ITC reversal in the statement has been extended till 31st January 2024.
3. Kindly note that after declaring the opening balance for ITC reversal, only three amendment opportunities post the declaration will be provided to correct declared opening balance in case of any mistakes or inaccuracies in reporting.
4. Facility to amend declared opening balance for ITC reversal will be available till **29th February 2024**.



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HEAD OFFICE: E-115, 11TH FLOOR, HIMALAYA HOUSE, KASTURBA GANDHI MARG, NEW DELHI-110001

BRANCH OFFICE: 1113, 11TH FLOOR, ARUNACHAL BUILDING, BARAKHAMBA ROAD, NEW DELHI -110001

(Partner-in-charge -CA Ajay Aggarwal)

BRANCH OFFICES:

SCO 13, 1st Floor, Kabiri Site,
Industrial Area Phase -2,
Chandigarh -160002
(CA Varun Garg)

212-A, Vashisht Complex,
Sikanderpur, Gurugram-122004
(CA Piyush Jindal)

House No. 14266, Street No. 2A,
Ganesha Basti, Bhatinda- 151001
(CA Yogesh Kumar Jain)

B-249 2nd Floor, Sector -71
Noida Near Sector 61 Metro
Station, Noida -201301
(CA Prakhar Srivastava)