



# *THE CONTEMPORARY CODE*

*Amendments in E-Commerce Laws for the period 1st April, 2020 to 31<sup>st</sup> December, 2021*

DATE: 20 January 2022

## Foreword

Dear Reader,

Contemporary Code is a knowledge bulletin prepared by the young stars of team JHS. Each month this knowledge bulletin focuses on recent amendments in Corporate Laws. This month's theme is recent amendments to the E-Commerce Rules.

In simple terms, e-commerce is a means of conducting business electronically rather than traditional physical means. This includes all retail activities conducted over the internet such as purchasing goods, availing services, delivery, payment facilitation as well as supply chain and services management

Our young team members have analyzed the recent amendments in E-Commerce Rules, wherein each amendment is analyzed for your benefit in a crisp manner along with its implications. I am grateful to my partners, colleagues who have reviewed the output to make it reader friendly and lucid.

Happy reading and best wishes for safety and upcoming future.

Huzeifa Unwala  
Sr. Partner

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# 1 CONSUMER PROTECTION (E-COMMERCE) RULES, 2020

## INTRODUCTION

E-Commerce has been defined in the Consumer Protection Act, 2019 as buying or selling of goods or services including digital products over digital or electronic network. On July 23, 2020, the Ministry of Consumer Affairs, Food and Public Distribution has notified the Consumer Protection (E-Commerce) Rules, 2020 in order to protect the consumers from unfair trade practices and to address their concerns. The Consumer Protection (E-commerce) Rules 2020 attempts to combine the teeth of the Consumer Protection Act 2019, Indian exchange control laws (IEC Regulations) and the Information Technology Act 2000, to ensure fair play in technology and data driven ecommerce environment.

The term "e-commerce entity" has been very broadly defined under the E-Commerce Rules as "any person who owns, operates or manages digital or electronic facility or platform for electronic commerce, but does not include a seller offering his goods or services for sale on a marketplace e-commerce entity"

## APPLICABILITY



## NON-APPLICABILITY

The Rules shall not apply to any activity of a natural person carried out in a personal capacity not being part of any professional or commercial activity undertaken on a regular or a systematic basis.

## A. OBLIGATIONS OF E-COMMERCE ENTITIES

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- ❑ An E-Commerce entity needs to be a Company incorporated under The Companies Act, 1956 or The Companies Act, 2013 or a foreign company as per The Companies Act, 2013 or an office, branch or agency outside India owned or controlled by a person resident in India as defined in Foreign Exchange Management Act, 1999.
- ❑ Every e-commerce entity shall provide the following information in a clear & accessible manner on its platform to its users, namely;
  - legal name,
  - principal geographic address of its headquarters & branches,
  - name & details of its website; and
  - contact details.
- ❑ No unfair trade practices shall be adopted by any E-Commerce entity in any manner.
- ❑ Every E-Commerce entity shall establish an adequate grievance redressal mechanism having regards to the number of grievances ordinarily received by such entity from India, and shall appoint a grievance officer for the same, with the officer's name, contact details & designation displayed on its platform. Such officer should acknowledge the receipt of any consumer complaint within forty-eight hours and redresses the complaint within one month from the date of receipt of complaint.
- ❑ In case of imported goods, the entity shall mention the name & details of the importer of goods or services or of the sellers on its platform.
- ❑ Every e-commerce entity shall endeavor on a best effort basis to become a partner in the convergence process of the National Consumer Helpline of the Central Government.
- ❑ No E-Commerce entity shall impose cancellation charges on consumers unless similar charges are also borne by thee-commerce entity.
- ❑ Every e-commerce entity shall only record the consent of a consumer for the purchase of any good or service through an affirmative & explicit action and not record the consent automatically by including in the form of pre-ticked boxes. Also it should effect all the refund request as prescribed by Reserve Bank of India.
- ❑ No E-Commerce entity shall manipulate the prices of any goods or services to gain unreasonable profits. Also it shall not discriminate between consumers of the same class or make any arbitrary classification affecting their rights under the Consumer Protection, Act.

**Implication:** It shall be the duty of E-commerce Entities to indulge in fair trade practices and provide information to users so as to maintain transparency.

## B. LIABILITIES OF MARKETPLACE E-COMMERCE ENTITIES

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As per the Consumer Protection (E-Commerce) Rules, 2020, a marketplace e-commerce entity which seeks to avail the exemption from liability under sub-section (1) of section 79 of the Information Technology Act, 2000 (21 of 2000) shall comply with sub-sections (2) and (3) of that section, including the provisions of the Information Technology (Intermediary Guidelines) Rules, 2011, an e-commerce entity which provides an information technology platform on a digital or electronic network to facilitate transactions between buyers and sellers should comply with the following-

- ❑ E-Commerce entities shall require sellers through undertaking to ensure that various descriptions and contents pertaining to goods and services mentioned on the platform is accurate
- ❑ Every marketplace e-commerce entity shall provide the following information in an accessible manner, displayed prominently on its platform
  - Details of sellers such as name of business, geographic address, customer care number, any ratings, feedbacks etc. for enabling customers to make informed decisions
  - Ticket number for each complaint lodged through which customer can track the status of a complaint
  - Information regarding security of payment methods, any fees charged to users, procedure to cancel payments
  - information relating to return, refund, exchange, warranty and guarantee, delivery and shipment, modes of payment, and grievance redressal mechanism, and any other similar information which may be required by consumers to make informed decisions;
- ❑ Every marketplace e-commerce entity shall in its terms and conditions, a description of any differentiated treatment which it gives or might give to its sellers
- ❑ Every marketplace e-commerce entity shall maintain records of relevant information regarding sellers who have repeatedly offered goods or services that have previously been removed or access to which has previously been disabled under various acts.

**Implication:** The new rules and regulations aim to protect the interest of the consumers by mandating the e-commerce entities to provide necessary information to customers that would enable them to take informed decisions and also empower the government to act against unfair trade practices in e-commerce.

# 1 CONSUMER PROTECTION (E-COMMERCE) RULES, 2020

## C. OBLIGATIONS OF SELLERS ON MARKETPLACE

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- ❑ No unfair trade practice shall be adopted by the seller through the e-commerce entity's platform including no misrepresentation with respect to the quality of any goods and services.
- ❑ Sellers on e-commerce cannot deny to take goods back and also refund money if there is any defect in product. This rule is not applicable in case where such late delivery was caused due to unforeseeable circumstances.
- ❑ Sellers must provide all the information to e-commerce entity including headquarter and all branch addresses, website details, GSTIN and PAN details, Landline Number and mobile number.
- ❑ Product information includes total price along with all the charges and applicable taxes, expiry date, name and details of importer, guarantees related to the authenticity, accurate information rated to terms of exchange, returns, and refund policy.
- ❑ The E-commerce Rules prescribe that it is now mandatory for a seller to enter into a written contract with an e-commerce entity in order to undertake any sale of goods and services on the platform of such e-commerce entity. As a matter of practice, e-commerce entities used to enter into a standard contract with a seller (before onboarding such seller on its platform) and such a contract was usually in a form of a click wrap agreement which set out the terms and conditions governing the sale of goods and services by such seller on the e-commerce entity's marketplace.
- ❑ Each seller needs to ensure that (a) it does not impersonate itself as a consumer and post reviews about the goods or services sold by it or misrepresent the quality or any features of any goods or services; (b) it would not refuse to take back the goods or refuse to refund the sale consideration, where the goods or services in question are defective, deficient or spurious or if they do not conform to the advertised features or the promised delivery schedule; (c) it would not advertise the goods or services offered in such a manner that are inconsistent with the actual characteristics of such goods or services; and (d) the images/description used in advertisements of goods or services offered, are consistent with the actual characteristics of such goods or services.

**Implication:** These duties help to perform a safe and secured e-commerce transaction in the marketplace. Such a market place will acquire more customer base and also helps to conduct e-business on a dynamic scale.

## D. OBLIGATIONS AND LIABILITIES OF INVENTORY E-COMMERCE ENTITIES

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- ❑ Every inventory e-commerce entity needs to furnish information on various matters related to refunds, exchange, delivery, grievance redressals, payments methods, fees or charges, contractual information required to be disclosed by law, etc in a clear and accessible manner.
- ❑ An inventory entity shall not falsely disclose itself to be a consumer entity.
- ❑ No entity shall falsify its quality or features of any goods or services.
- ❑ Advertisements made should be consistent as per the actual characteristics, access and usage of the products.
- ❑ No entity shall refuse to take back the goods in case of it being defective or damaged. Provided the above rule shall not apply in the case of late delivery due to unforeseen circumstances
- ❑ Any entity who undertakes the responsibility of the authenticity and guarantees such goods, shall bear appropriate liability in any action against authenticity.

**Implication:** The above amendments have thereby prescribed some liabilities and duties for the e-commerce entities with a view to safeguarding the interests of the ultimate consumers.

**Reference:** <https://consumeraffairs.nic.in/sites/default/files/E%20commerce%20rules.pdf>



## E. AMENDMENTS TO THE E-COMMERCE RULES, 2020

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In order to protect the interest of the consumers and to ensure that there is transparency in the e-commerce platforms and also to further strengthen the regulations that govern the same, the Department of Consumer Affairs brought forward draft amendments to Consumer Protection (E-Commerce) Rules, 2020. The Proposed Amendments were available on the website of Department of Consumer Affairs for views / comments / suggestions till 6 July 2021 which was extended by the Government till 21 July 2021.

**REFERENCE:** [https://consumeraffairs.nic.in/sites/default/files/file-uploads/latestnews/Comments\\_eCommerce\\_Rules2020.pdf](https://consumeraffairs.nic.in/sites/default/files/file-uploads/latestnews/Comments_eCommerce_Rules2020.pdf)

In order to answer some of the questions that were raised in accordance to these Rules, the Ministry released a Notification dated May 17, 2021, introducing the Consumer Protection (E-Commerce) (Amendment) Rules, 2021 which introduced the requirement for an e-commerce entity, being a company incorporated under The Companies Act, 1956 or The Companies Act, 2013 or a foreign company as per The Companies Act, 2013 or an office, branch or agency outside India owned or controlled by a person resident in India as defined in Foreign Exchange Management Act, 1999 to appoint a nodal officer or an alternate senior designated functionary who is a resident in India, to ensure compliance with the provisions of the Act or the Rules made thereunder.

**Reference:** <https://consumeraffairs.nic.in/sites/default/files/Consumer%20Protection%20%28E-Commerce%29%20%28Amendment%29%20Rules%2C%202021.pdf>

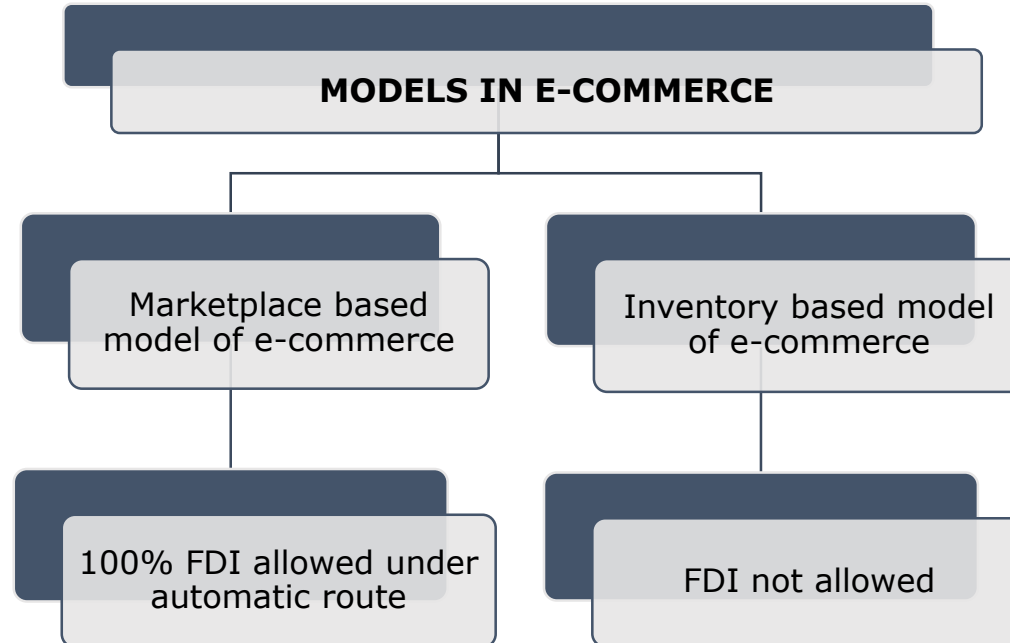
## F. SALIENT FEATURES OF THE PROPOSED AMENDMENTS OF E-COMMERCE RULES, 2020

- ❑ The proposed e-commerce policy that will soon be released by the industry department is expected to spell out measures to support small retailers, farmers and micro, small and medium enterprises (MSME) in adopting digital technology, people aware of the matter said.
- ❑ Under the proposed policy, the Centre will also have to focus on promoting the government backed e-commerce network Open Network for Digital Commerce (ONDC).
- ❑ Under the proposed policy, the Centre will also have to focus on promoting the government-backed e-commerce network Open Network for Digital Commerce (ONDC). ONDC aims to reduce the cost of doing business. It will benefit small and traditional retailers, while curbing digital monopolies.
- ❑ E-tailers will also have to provide complete information of products, including its description, delivery, prices; expiry, refund, exchange, warranty, country of origin at a pre-purchase stage so that buyers are able to make an informed purchase decision.
- ❑ E-tailers may have to appoint officers to ensure compliance with domestic laws.
- ❑ Sellers on the e-commerce platforms will also have to mention their physical address and ensure that product pricing is fair and non-discriminatory.
- ❑ Marketplaces cannot have control over products sold on their platform.
- ❑ The government will have the authority to ask any e-commerce company to produce information that may be required for development of the sector.
- ❑ The government is planning to regulate India's growing e-commerce space. It plans to make marketplaces more accountable and provide a level-playing field to traditional offline traders who are not able to catch up with the digital revolution in retail trade.
- ❑ Through the policy, the government will direct e-commerce companies to come up with a mechanism that will ensure that counterfeit and pirated products are not sold by e-tailers. This is a move that is expected to bring relief to consumers who often get duped.

**Reference:** Business Standard dated 18<sup>th</sup> & 19<sup>th</sup> January, 2022

## MODELS OF E-COMMERCE

- ❑ E-commerce means the buying and selling of goods and services including digital products over digital and electronic network. Digital electronic network includes computers, TV channels and internet applications used in automated manner like web pages, extranets, mobiles, etc.
- ❑ Subject to the provisions of FDI policy, e-commerce entities should engage only in Business to Business (B2B) e-commerce and not Business to consumer (B2C) e-commerce.



## MARKETPLACE BASED MODEL OF E-COMMERCE

- ❑ A marketplace-based model of e-commerce means providing of an information technology platform by an e-commerce entity on a digital & electronic network to act as a facilitator between the buyer and the seller.
- ❑ The sellers selling through a marketplace-based e-commerce model is required to be registered on the platform on a B2B basis.

## INVENTORY BASED MODEL OF E-COMMERCE

- ❑ In the Inventory based model of e-commerce, the inventory of goods and services is owned by the e-commerce entity and sold to the customers directly.

## HYBRID E-COMMERCE MODEL

- ❑ A Hybrid e-commerce model is a combination of marketplace and inventory-based e-commerce models.
- ❑ It is also called a 'Managed e-commerce model'.

## AMENDMENTS

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### CONDITIONS TO BE FULFILLED:

#### **I. Marketplace e-commerce entity SHALL:**

- Provide support services to sellers which shall include but not be limited to warehousing, logistics, order fulfillment, call centre, payment collection, advertisement/marketing, financing, etc.
- Clearly provide the name, address and other contact details of the vendor whose goods/services are made available for sale electronically on their platform.
- Provide services to the vendors on their platform at arm's length and in a fair and non-discriminatory manner.
- Provide cashback provided by their group companies to the buyers in a fair and non-discriminatory manner.
- Have to obtain and maintain a report of statutory auditor by 30<sup>th</sup> September every year for the preceding financial year confirming compliance of the e-commerce guidelines.

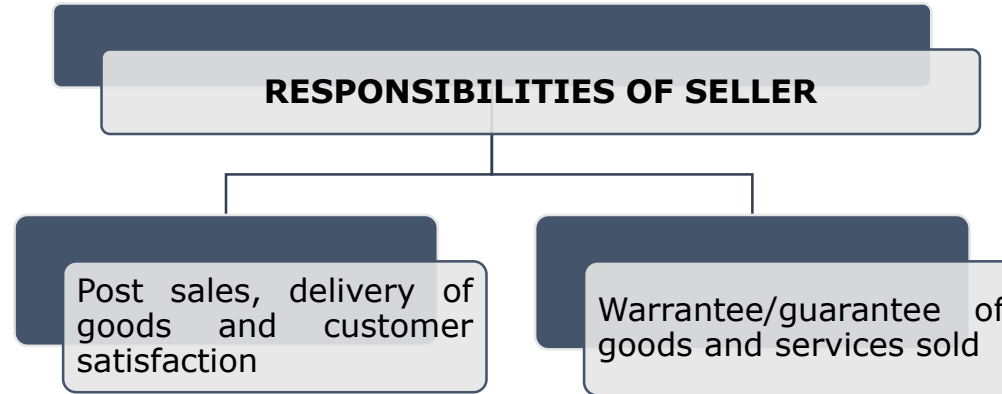
#### **II. Marketplace e-commerce entity SHALL NOT:**

- Exercise ownership or control over the inventory i.e., the goods which are purported to be sold. Such an ownership or control over the inventory will render the business into inventory-based model. (NOTE: Inventory of a vendor is deemed to be controlled by the e-commerce marketplace entity or its group companies if more than 25% of the purchases of such vendor are from them.)
- Directly or indirectly influence the sale price of goods or services thereby maintaining a level playing field.
- Mandate any seller to sell any product exclusively on its platform only.
- Be unfair and discriminatory by providing services to one vendor on such terms which are not made available to other vendors in similar circumstances.

## 2 E-COMMERCE ACTIVITIES IN FDI POLICY 2020

### RESPONSIBILITIES MENTIONED:

In a marketplace model, following will be the sole responsibilities of the seller with respect to goods and services:



### CERTAIN ADDITIONAL CONDITIONS:

- ❑ An entity having equity participation by e-commerce marketplace entity or its group companies, or having control over its inventory by e-commerce marketplace entity or its group companies, will not be permitted to sell its products on the platform run by such marketplace entity.
- ❑ In the marketplace model, payments for sale may be facilitated by e-commerce entity in conformity with the guidelines of RBI.

### **IMPLICATION:**

There isn't much change in FDI Policy 2020 pertaining to e-commerce activities, from FDI Policy 2017 pertaining to the same activities. Some additional points in FDI Policy 2020 are covered above are for the benefit of users of E-Commerce. It can be said that the FDI Policy 2020 has increased the scope of duties and obligations of the Marketplace e-commerce entity.

**Reference:** [https://dpiit.gov.in/sites/default/files/FDI-PolicyCircular-2020-29October2020\\_0.pdf](https://dpiit.gov.in/sites/default/files/FDI-PolicyCircular-2020-29October2020_0.pdf)

# EQUALISATION LEVY ON E-COMMERCE SUPPLY OR SERVICES

The rapid growth of information technology has resulted in substantial expansion of the supply and procurement of digital goods and services globally, including India. The growth of e-commerce economy has revolutionised the concept of *brick and mortar* to *click and order*. Emergence of new age technologies has revolutionised new business models in line with the digital epoch making it difficult to identify the location of source or origin point of a business transaction. These new business models have created new tax challenges.

Thus Equalisation Levy was introduced via Finance Act, 2016 which provides for equalisation levy @ 6% of the amount of consideration for specified services received or receivable by a non-resident not having PE in India, from a resident in India who carries out business or profession, or from a non-resident having PE in India.

**In order to widen and deepen the equalisation levy net beyond online advertisement, its scope has been extended to consideration received or receivable for e-commerce supply or services made or provided or facilitated on or after 1.4.2020.**

## CHARGEABILITY

From A.Y. 2021-22, equalization levy @ **2%** would be chargeable on the amount of consideration received or receivable by an e-commerce operator from e-commerce supply or services made or provided or facilitated by it –

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

## NON-CHARGEABILITY

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

# EQUALISATION LEVY ON E-COMMERCE SUPPLY OR SERVICES

## SPECIFIED CIRCUMSTANCES:

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

## SERVICES COVERED:

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- Online sale of goods owned by the e-commerce operator; or
- Online provision of services provided by the e-commerce operator; or
- Online sale of goods or provision of services or both, facilitated by the e-commerce operator; or
- Any combination of activities listed in clause above

## PERSON RESPONSIBLE FOR PAYING/DEDUCTING:

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An e-commerce operator, being a non-resident who owns, operates or manages digital or electronic facility or platform for online sale of goods or online provision of services or both.



# EQUALISATION LEVY ON E-COMMERCE SUPPLY OR SERVICES

## COLLECTION AND RECOVERY:

The equalization levy referred in Sec165A(1) has to be paid by every e-commerce operator to the credit of the Central Government for the quarter of the financial year ending with the date specified in column (2) of the Table below by the due date specified in the corresponding entry in column (3) of the said Table:

S. NO.	Date of ending of the quarter of the F.Y.	Due Date
1	30 <sup>th</sup> June	7 <sup>th</sup> July
2	30 <sup>th</sup> September	7 <sup>th</sup> October
3	31 <sup>st</sup> December	7 <sup>th</sup> January
4	31 <sup>st</sup> March	31 <sup>st</sup> March

## POINT OF DIFFERENCE BETWEEN SECTION 166 AND SECTION 166A:

- ❑ As per Sec 166: Equalisation Levy on Specified Services (@6%), the person responsible for collecting the levy is the **service recipient** availing the specified service(s), who has to deduct Equalisation Levy from the amount paid or payable to a non-resident in respect of such service(s). The service recipient responsible for deduction and remittance is a resident or a non-resident having PE in India.
- ❑ As per Sec 166A: Equalisation Levy on e-commerce supply (@2%) or services, the person responsible for collecting the levy is the **recipient of the amount**, in case of an e-commerce operator affecting online sale of goods owned by him or online provision of services. There is no deduction obligation on the part of the service recipient/buyer, in this case. Therefore, in this case, the responsibility for payment of equalization levy is vested on the non-resident e-commerce operator who does not have a PE in India.

**Reference:** [https://www.incometaxindia.gov.in/communications/notification/notification\\_87\\_2020.pdf](https://www.incometaxindia.gov.in/communications/notification/notification_87_2020.pdf)

## 4 TDS U/S 194-O OF THE INCOME TAX ACT

### SCOPE AND APPLICABILITY:

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Section 194-O, inserted by the Finance Act, 2020 w.e.f. 1.10.2020, provides that where sale of goods or provision of services of an e-commerce participant is facilitated by an e-commerce operator through its digital or electronic facility or platform, such e-commerce operator is liable to deduct tax at source @**1%** (**0.75%** from 1.10.2020 to 31.03.2021) of the gross amount of such sales or services or both.

### NON-APPLICABILITY / EXCEPTIONS:

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- Non-resident e-commerce participants are exempted from the scope of this section.
- A ceiling limit of Rs 5 lakh is set only for resident individuals and HUF. Thus, an e-Commerce operator is not required to deduct TDS if the amount, paid or credited to individuals/HUF during a financial year, does not exceed Rs 5 lakh

### PERSON RESPONSIBLE FOR PAYING:

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E-commerce operator shall be deemed to be the person responsible for paying to the resident e-commerce participant. Further, wherever the purchaser of goods or service recipient directly makes any payment to the e-commerce participant, then, in such cases, such payments shall be deemed to the amount credited or paid by the e-commerce operator to the resident e-commerce participant.

**Reference:** [https://www.incometaxindia.gov.in/Communications/Circular/Circular\\_17\\_2020.pdf](https://www.incometaxindia.gov.in/Communications/Circular/Circular_17_2020.pdf)

## 5 INFORMATION TECHNOLOGY ACT, 2000

The Act aims at regulating the use of the Internet by providing punishments for publication of obscene information or hacking or destroying or altering the data from devices. The salient features of the act

- ❑ **E-contracts** - The Indian Contract act, 1872 governs the law related to contracts. For a contract to be valid and enforceable it should be offered and accepted in the same sense by the party within considerable time. Every transaction which involves consideration directly or indirectly is covered in the ambit of the Contracts act. The seller and buyer on an e-commerce platform enter into an electronic contract. You must have observed the "I have read and accepted all the terms and conditions" check box on every website or platform operating electronically. These are the terms of contracts offered by the seller and acceptance of which by the buyer will create a valid contract between the parties. Under the Information Technology Act, 2000 the offer or invitation to offer is made by the seller and accepted by the buyer by clicking on the "I agree" option. This is called the Click Wrap method.
- ❑ **Transaction Security** - Transaction security is a significant barrier to the development of e-commerce. The Parties must be ensured that business conducted over the networks is secure and reliable. The most reliable means is through cryptography. The most popular and useful method of encryption for general messaging is public-key cryptography; that is, encryption and decryption techniques involve the use of two kinds of keys, public keys and private keys both of which are mathematically linked. One key is used for encryption and the other corresponding key is used for decryption. The Information Technology Act, 2000 regulates encryption in India through the Department of Telecommunication, which controls all aspects regarding telecommunications, including encryption. Every time permission is required from the DoT to send encrypted messages.
- ❑ **Digital signature** - These are e signatures that can be annexed to e-contracts by the parties and shall be treated equivalent to physical signatures. Section 3 of the Information Technology Act, 2000 establishes that a signature could be sent using public-key cryptography. In order to link the identity of the sender with the signature, it is necessary to attach a digital certificate which is issued by a so-called certified authority that confirms the identity of the sender.

## 6 PAYMENT AND SETTLEMENT SYSTEMS ACT, 2007

As per the act, the e-commerce entity shall qualify as a payment system through compliance with Rules specified by RBI for online payments. Further, it is mandatory for an intermediary that is receiving payments through electronic modes to have a Nodal Account in operation for settling the payments of the merchants on its online e-commerce platform.

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# DISCLAIMER

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