

Union Budget 2020: Clarifications required for Online Travel Agency transactions

While presenting the Union Budget 2020, two provisions with a purpose of widening the scope of Tax Deducted at Source (TDS) and Tax Collection at Source (TCS) were introduced;

- New section for purpose of widening the scope of Tax Deducted at Source ('TDS') on e-commerce transaction (i.e. Section 194-O of the Income tax Act, 1961 ('the Act')) introduced. Section 194-O envisages payment of TDS by E-commerce companies for facilitating sale of goods and services of e-commerce participant through its digital electronic facility or platform, and;
- An amendment to section 206C of the Income tax Act, 1961 ('the Act') to introduce TCS by Authorised Dealers on foreign remittances through Liberalised Remittance Scheme (LRS) and TCS by Travel Agents on selling overseas tour packages.

The proposed TDS and TCS provisions have a significant bearing on Travel Agents rendering services in relation to travel and tourism in India. The challenges have been elaborated below:

Background

- Travel agents are the persons facilitating provision of services between the actual service providers providing travel services viz. airlines, railways, bus operators, cab operators, hotel owners (hereinafter referred to as 'actual service provider') and the service recipients viz passengers intending to avail the travel services. Such facilitation services can be provided either through traditional medium (i.e. over the call or through retail offices) or through digital medium (i.e. website and mobile based applications).
- Travel agents also provide services which are in nature of packaged tours which involves planning, scheduling, organizing, arranging tours which may include arrangements for accommodation, sightseeing or other similar services by any mode of transport.

ISSUE FACED BY ONLINE TRAVEL AGENTS ('OTA') (E-COMMERCE COMPANIES) AND RECOMMENDATIONS

Section 194O – TDS by Ecommerce Companies

- Section 194-O envisages payment of TDS by E-commerce companies for facilitating sale of goods and services of e-commerce participant through its digital electronic facility or platform. The term "services" includes 'fees for technical services' and fees for 'professional services', as defined in the Explanation to section 194J.
- Introduction of new section with levy of TDS @ 1 percent will negatively disrupt the business conducted through Online travel agents. Considering the volume of transactions involved, Section 194-O would cause irreparable loss to the entire Online travel Industry with increased compliance burden. This will also negatively impact working capital of OTAs and the Vendors, and could lead to reduced trading activity, thereby impact economic growth. This has never been and can be the intention of the Government.
- Especially, in the air ticketing business where all travel agents have to follow international payment settlement procedure laid down by IATA and its settlement mechanism through BSP or the GDS/CRS companies. These settlement systems do not allow deduction of TDS upfront and airlines would not reimburse the TDS amount till the time OTA issue a TDS certificate to this effect. This will put the entire burden of TDS liability on an average for four months of business on the working capital of OTA.

Recommendation:

- In order to avoid working capital issues for suppliers and ecommerce companies, it is recommended that TDS should only be made applicable for such suppliers who do not

provide PAN/TAN in which case it could be as high as 5%. It will avoid blocking of capital and facilitate ease of business where supplier is already tax registered but not due to pay taxes.

- Without prejudice to above request, keeping in with the fact that air ticketing is end to end digitalized business, airlines should be exempted from the requirement of TDS. Else, either Ministry of Finance or the Ministry of Civil Aviation should issue an instruction for IATA, BSP and CRS/GDS companies to include upfront TDS deductions in their respective settlement mechanism.

Section 206C (1G) – TCS by Overseas Tour Package Seller

- As per section 206C, sub-section 1G, clause (b), seller of an overseas tour program package, who receives any amount from a buyer, being the person who purchases such package, shall, collect TCS @ 5% with PAN and 10% without PAN from the buyer.
- We believe that it will cause inconvenience to genuine tax payers who have PAN and regularly file their Income tax returns, especially to salaried assesses who get their income post deduction of full TDS. It will also cause inconvenience to assesses who pay through legitimate payment modes and are below the threshold income level to file returns.
- Additionally, from the definition of overseas tour package, we understand that the TCS shall be applicable on payments made for booking of bundled overseas tour package as it offers visit to foreign country **and** includes expenses for hotel stay, sightseeing, etc. as a bundled package. However, there are doubts that TCS would also be applicable to standalone air ticket or hotel bookings, etc.
- It is pertinent to note here that foreign travel agents and especially, foreign direct suppliers usually provide standalone component bookings in direct competition to domestic travel agents. It would be impractical to impose TCS on foreign direct suppliers such as hotels and other activity suppliers. TCS on standalone bookings will give an unfair advantage to such foreign travel agents and suppliers.

Recommendation:

- We recommend that to avoid an ambiguity in implementation of TCS provision, an appropriate clarification should be issued to clarify that TCS will be applicable on sale of Overseas Tour Packages only. TCS will not be applicable on booking of standalone air ticket or hotel rooms or merely on sale of standalone activities such as entry tickets, etc.
- We further recommend that to avoid inconvenience to genuine tax payers, TCS should only be made applicable where the traveler do not provide PAN and TCS in such cases can be collected at the higher rate of 10%.
- We may further recommend that to effectively track foreign travel expense the Government should consider to mandatorily link the PAN with Passport of the travelers. The Government may allow a 6-9 months' time frame for traveler to link PAN with Passport.