Direct Tax (Paper 15)

Guidelines u/s 194-O(4) [Circular No.20/2023 dated 28-12-2023]

Finance Act, 2020 had inserted section 194-O in the Act mandating that an e-commerce operator (ECO) shall deduct income-tax at the rate of 1% of the gross amount of sale of goods or provision of service or both, facilitated through its digital or electronic facility or platform. However, exemption from the said deduction has been provided in case of certain individuals or Hindu undivided family fulfilling certain conditions. This deduction is required to be made at the time of credit of amount of such sale or service or both to the account of an e-commerce participant or at the time of payment thereof to such ecommerce participant, whichever is earlier. Any payment made by a buyer to a seller, both e-commerce participants, in a transaction facilitated by the e-commerce operator, shall be deemed to be the payment by the e-commerce operator to the seller and shall be included in the gross amount of sale of goods or provision of services or both for the purposes of tax deduction at source (hereinafter referred to as the 'deemed payment').

2. Section 194-O(4) empowers the Board (with the approval of the Central Government), to issue guidelines to remove difficulties. Earlier, guidelines on section 194-O were issued vide Circular no. 17 of 2020 dated 29th September, 2020 and Circular no. 20 of 2021 dated 25th November 2021. Representations have been received by the Board for further clarifications. The Board, with the approval of the Central Government, hereby issues the following guidelines.

3. Guidelines

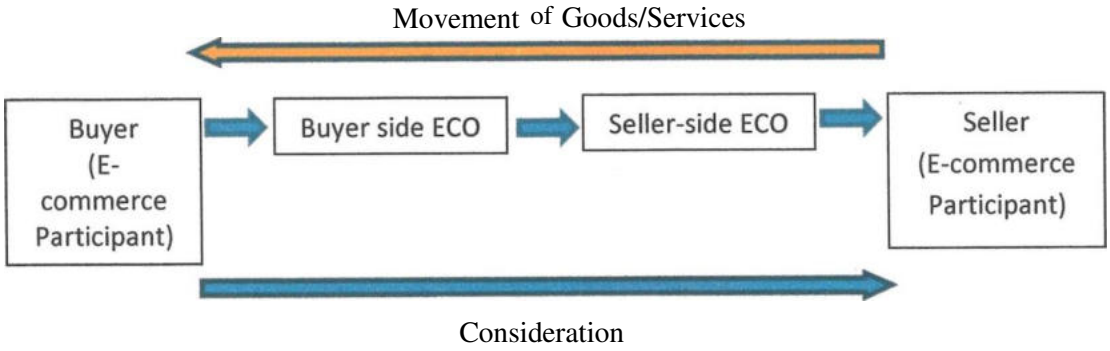
3.1 Who should deduct tax at source where there are multiple e-commerce operators (ECO) involved in a transaction?

Section 194-O of the Act mandates that the tax is required to be deducted where the sale of goods or provision of services or both of an e-commerce participant (buyer or seller) is facilitated by an e-commerce operator (ECO) through its digital facility or platform (by whatever name called).

There may be a platform or network (e.g. the Open Network for Digital Commerce) on which multiple e-commerce operators 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

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.

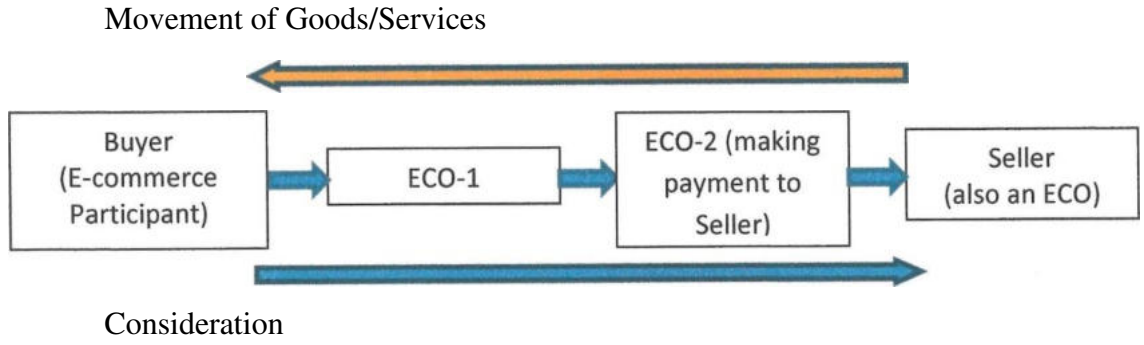


In this situation, the compliance under section 194-O is to be done by the seller-side ECO who finally makes the payment or the deemed payment to the seller for goods sold or services provided.

The tax shall be deducted 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. Seller ECO would 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

On the buying side, an ECO could be providing an interface to the buyer and on the selling side, the seller itself is an ECO and is directly interacting with an ECO.



In this situation, the compliance under section 194-O is to be done by the ECO which finally makes the payment or the deemed payment to the seller for goods or services sold, which in this case is ECO-2.

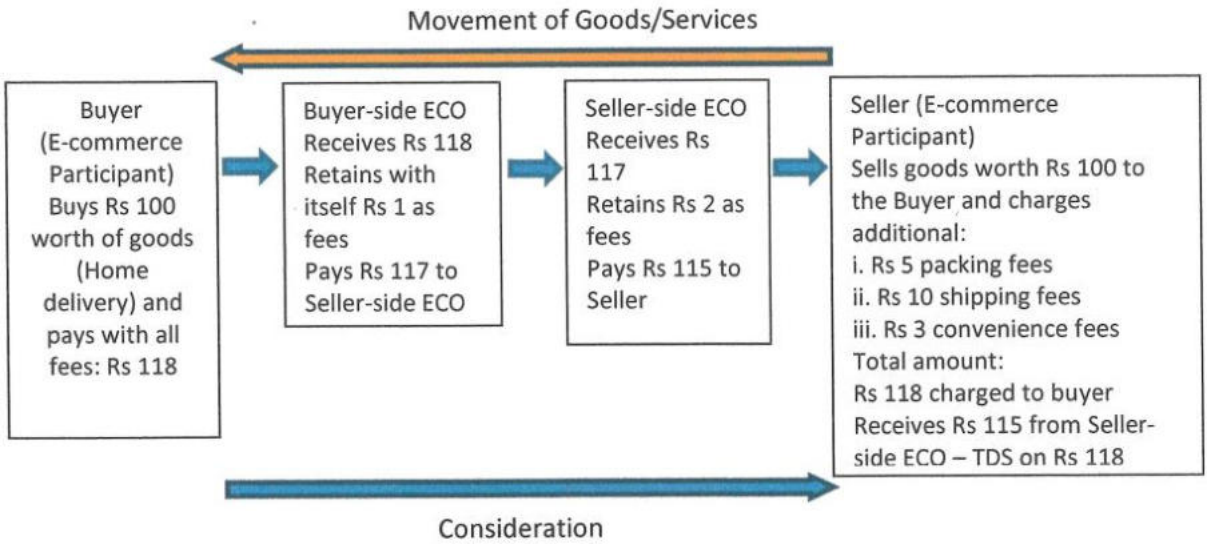
The tax shall be deducted on the "gross amount" of such sale of goods or provision of services and shall be deducted by ECO-2 at the time of credit to the account of a seller or at the time of the payment or the deemed payment thereof to such seller by any mode, whichever is earlier. Here, ECO-2 would file the requisite TDS return in Form 26Q and issue a certificate to the seller under Form 16A.

3.2 E-commerce operators may be levying convenience fees or charging commissions 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?

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 ₹ 100 from Seller and opts for home delivery. The Seller charges the Buyer an additional ₹ 5 as packing fees, ₹ 10 as shipping fees, and ₹ 3 as a convenience charge (to recoup the fees charged by the seller-side ECO, which includes ₹ 1 charged by the Buyer-side ECO and ₹ 2 charged by the Seller-side ECO itself). So the seller will issue an invoice for ₹ 118 (i.e. ₹ 100 + 5 + 10 + 2 + 1) 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, TDS is to be deducted u/s 194-O(1) of the Act on ₹ 118 since this is the gross amount of sales.



It is thus clarified that TDS shall be deducted by the seller-side ECO on the gross amount of sales of goods (₹ 118) or provision of services at the time of payment (including deemed payment) or credit. Seller-side ECO would file the requisite TDS return in Form 26Q and issue certificate to the seller under Form 16A.

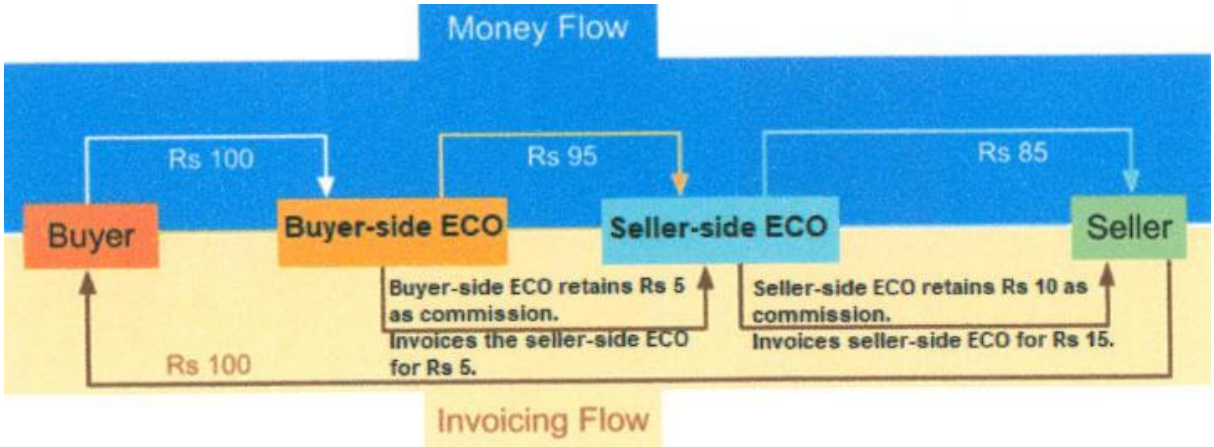
Under sub-section (3) of section 194-O, a transaction on which tax has been deducted by an ECO under sub-section (1) of section 194-O shall not be liable to TDS under any other provision of Chapter XVII-B. Accordingly, this exclusion will also apply to the amount received by ECO for the provision of services which are in connection with the main transaction of sale of goods or provision of service or both referred to in subsection (1) of section 194-O. However, sub-section (4) of section 194S of the Act overrides Section 194-O and states that if tax is deducted under section 194-S of the Act, no tax is deductible under Section 194-O.

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

However, as tax has been deducted under sub-section (1) of section 194-O on the gross amount of sales of ₹ 118, this amount (which includes buyer-side ECO fee of ₹ 1 and seller-side ECO fee of ₹ 2 charged to the end customer) will not be subject to TDS under any other provision. However, this is subject to provisions of sub-section (4) 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 “gross amount" for the purposes of TDS under section 194-O 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



Consider a case where the Seller's label-price for a product is ₹ 85, the seller-side ECO's fee (for listing the Seller catalogue and facilitating the transaction) is ₹ 10, and the Buyerside 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 ₹ 5. The Seller charges the Buyer a total of ₹ 100 (₹ 85 + 10 + 5) and issues an invoice for ₹ 100 (gross amount), as shown in the diagram above.

The TDS under section 194-O of the Act will be calculated on ₹ 100 (gross invoice value) at the rate of 1%, and that the responsibility of withholding and depositing it would be on the seller ECO. The buyer ECO's fees (₹ 5) charged to seller-side ECO and seller ECO's fees (₹ 15) charged to the Seller will not be subject to further TDS (say under Section 194H of the Act.).

3.3 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?

In Para 4.3.2 of circular no. 13 of 2021 in the context of TDS on purchase of goods, it has been provided that in case the GST component has been indicated separately in the invoice and tax is deducted at the time of credit of the amount in the account of the seller, then the tax is to be deducted under section 194Q of the Act on the amount credited without including such GST.

"4.3.2 Accordingly with respect to TDS under section 194Q of the Act, it is clarified that when tax is deducted at the time of credit of amount in the account of seller and in terms of the agreement or contract between the buyer and the seller, the component of GST comprised in the amount payable to the seller is indicated separately, tax shall be deducted under section 194Q of the Act on the amount credited without including such GST. However, if the tax is deducted 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 identity that payment with GST component of the amount to be invoiced in future."

Similar clarification was provided in the context of State levies and taxes in para 5.2.3 of Circular no. 20 of 2021.

"5.2.3 In this regard, it is hereby clarified that in case of purchase of goods which are not covered within the purview of GST, when tax is deducted at the time of credit of amount in the account of seller and in terms of the agreement or contract between the buyer and the seller, the component of VAT/Sales tax/Excise duty/CST, as the case may be, has been indicated separately in the invoice, then the tax is to be deducted under section 194Q of the Act on the amount credited without including such VAT/Excise duty/Sales tax/CST, as the case may be.

However, if the tax is deducted on payment basis, if it is earlier than the credit, the tax is to be deducted on the whole amount as it will not be possible to identify the payment with VAT/Excise duty/Sales tax/CST component to be invoiced in the future. Furthermore, in case of purchase returns, the clarification as provided in Para 4.3.3 of circular no. 13 of 2021 shall also apply to purchase return relating to non GST products liable to VA T/excise duty/sales tax CST etc."

Accordingly, it is clarified that under section 194-O, 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 on the amount credited without including such GST/various state levies and taxes. However, if the tax is deducted 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 future.

3.4 How will adjustment for purchase-returns take place?

It has been clarified in para 4.3.3 of circular no. 13 of 2021, with respect to purchase returns under section 194-Q of the Act, tax must have already been deducted before the purchase-return. In that case, the tax deducted may be adjusted against the next purchase against the same seller and no adjustment is required if the purchase-return is replaced.

Similarly, it is noted that the tax is required to be deducted under section 194-O 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 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 has been completed with goods replaced.

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

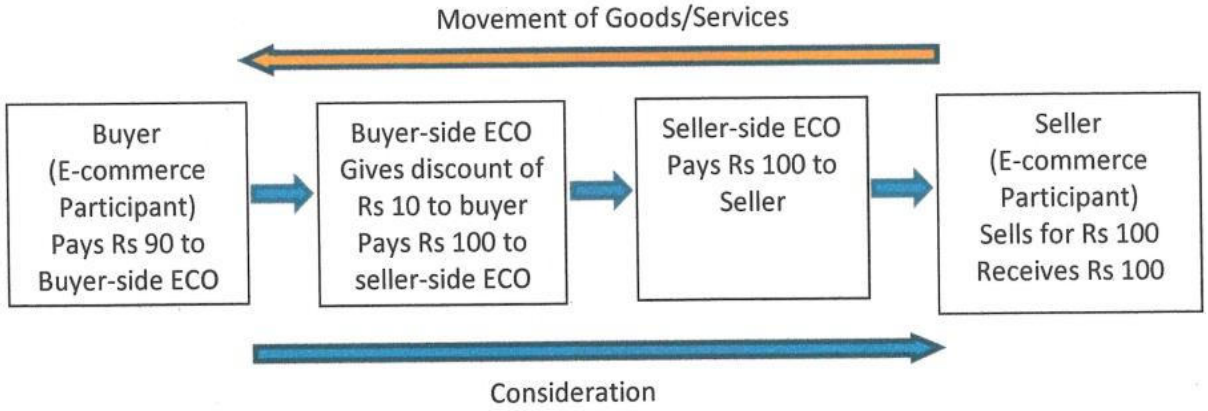
a) Seller Discount:

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 ₹ 100, and the seller offers a discount of ₹ 10, ₹ 90 will be receivable from the buyer. In this case, the seller will invoice the buyer for ₹ 90, and hence the TDS will be calculated on ₹ 90.

b) Buyer ECO or Seller ECO Discount:

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



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

Notified person for Sec. 206CCA/206AB [Notification No. 45 & 46/2024 dated 27-05-2024]

For the purpose of section 206CCA and sec. 206AB, the Central Government hereby notifies the Reserve Bank of India to be a person referred to in the clause (ii) of the proviso to sub-section (3) of the said section.

Time limit for verification of return of income after uploading [Notification No. 2 of 2024 dated 31-03-2024]

In pursuance of the powers conferred under Rule 14 of the Centralised Processing of Returns Scheme, 2011, Notification No. 05 of 2022 dated 29.07.2022 was issued by the DGIT(Systems) specifying the time limit for verification of Income Tax Return (ITR) as 30 days from the date of transmitting the data of ITR electronically.

2. It is clarified that:

(i) Where the return of income is uploaded and e-verification/ITR-V is submitted within 30 days of uploading – In such cases the date of uploading the return of income shall be considered as the date of furnishing the return of income.

(ii) Where the return of income is uploaded but e-verification or ITR-V is submitted after 30 days of uploading – In such cases the date of e-verification/ITR-V submission shall be treated as the date of furnishing the return of income and all consequences of late filing of return under the Act shall follow, as applicable.

3. The duly verified ITR-V in prescribed format and in the prescribed manner shall be sent either through ordinary or speed post or in any other mode to the following address only:

- Centralised Processing Centre,
- Income Tax Department,
- Bengaluru - 560500, Karnataka.

4. The date on which the duly verified ITR-V is received at CPC shall be considered for the purpose of determination of the 30 days period from the date of uploading of return of income.

5. It is further clarified that where the return of income is not verified within 30 days from the date of uploading or till the due date for furnishing the return of income as per the Income-tax Act, 1961 - whichever is later - such return shall be treated as invalid due to non-verification

Verification of the return [Notification No. 19/2024 dated 31-01-2024]

Return filed by an individual or HUF shall be verified in the following manner:

Condition	Mode
Where accounts of individual / HUF are required to be audited u/s 44AB	- Electronically with digital sign - **Transmitting the data electronically in the return under EVC**
Where total income assessable during the previous year of a person, being an individual of the age of 80 years or more at any time during the previous year, and who furnishes the return in Form number SAHAJ (ITR-1) or Form number SUGAM (ITR-4)	- Electronically with digital sign - Transmitting the data electronically in the return under EVC - Transmitting the data in the return electronically and thereafter submitting the verification of the return in Form ITR-V - Paper form
Other individual / HUF	Any mode specified above other than paper mode

Income notifies for sec. 80LA [Notification No. 04/2024 dated 04-01-2024]

The Central Government hereby notifies activity of investment in a financial product by the non-resident, in accordance with a contract with such non-resident entered into by a capital market intermediary, being a Unit of an International Financial Services Centre, where the income from such investment is received in the account of the non-resident maintained with the Offshore Banking Unit of such International Financial Services Centre, as referred to in sec. 80LA(1A)

Clarification regarding inter-Trust donations [Circular No. 03/2024 dated 06-03-2024]

Income of any fund or institution or Trust or any university or other educational institution or any hospital or other medical institution referred to in certain clauses of section 10(23C) [‘first regime’] or any Trust or institution registered under section 12AA or 12AB of the ITA (‘second regime’) is exempt, subject to the fulfilment of certain conditions. The conditions, inter-alia, include the following:-

a. at least 85% of income of the Trust/institution should be applied during the year for charitable or religious purposes;

b. Trusts or institutions are allowed to apply mandatory 85% of their income either themselves or by making donations to the Trusts with similar objectives; and
c. If donated to other Trust/institution, the donation should not be towards corpus.

In order to ensure intended application towards charitable or religious purposes, Finance Act, 2023 provided that eligible donations made by a Trust/institution shall be treated as application for charitable or religious purposes, only to the extent of 85% of such donations and accordingly, the Finance Act, 2023 made the following amendments:

(a) inserted clause (iii) in Explanation 2 to third proviso of section 10(23C)

"any amount credited or paid out of the income of any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or subclause (via), other than the amount referred to in the twelfth proviso, to any other fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), or trust or institution registered under section 12AB, as the case may be, shall be treated as application for charitable or religious purposes only to the extent of eighty-five per cent of such amount credited or paid"

(b) inserted clause (iii) in Explanation 4 to section 11(1)

"any amount credited or paid, other than the amount referred to in Explanation 2, to any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, as the case may be, or other trust or institution registered under section 12AB, as the case may be, shall be treated as application for charitable or religious purposes only to the extent of eighty-five per cent of such amount credited or paid"

3. Concern has been raised that whether the balance 15% of donation to other trust / institution would be taxable or is eligible for 15% accumulation since the funds would not be available having been already disbursed.

4. The matter has been examined with reference to the issues raised in paragraph 3 and it is reiterated that eligible donations made by a trust / institution to another trust / institution under any of the two regimes referred to in para 2 shall be treated as application for charitable or religious purposes only to the extent of 85% of such donations. It means that when a trust / institution in either regime donates ₹ 100 to another trust / institution in either regime, it will be considered to have .. applied 85% (₹ 85) for the purpose of charitable or religious activity. It is clarified that 15% (₹ 15) of such donations by the donor trust / institution shall not be required to be invested in specified modes under section 11(5) of the Act as the entire amount of ₹ 100 has been donated to the other trust / institution and is accordingly eligible for exemption under the first or second regime.

This is illustrated by following example where Trust 1, Trust 2 and Trust 3 are trusts or institutions under any of the two regimes. Further, Trust 1 is making eligible donation to Trust 2 and Trust 2 is further making eligible donation to Trust 3.

S.N.	Particulars	Trust 1		Trust 2		Trust 3	
1.	**Income (A)**	300		100		100	
2.	Income which is required to be applied **(B = 85% of A)**		225		85		85
3.	**Application of income**						
4.	Donation to other trusts under the first or second regime **(C)**	100		100		Nil	
5.	Amount to be considered as application of income against the donations at row no. 3 [as per clause (iii) of the Explanation 2 to third proviso to section 10(23C) or clause (iii) of the Explanation 4 to section 11(1) of the ITA]. **(D = 85% of C)**		85		85		
6.	Balance income for application **(E = A-C)**	200		Nil		100	
7.	Application other than Sr. No. 4 **(F = 85% of E)**		170				85
8.	Remaining income which may be accumulated without Form No. 10/9A **(G = 15% of E)**		30				15
9.	Funds required to be invested in section 11(5) of the ITA modes **(H = G)**		30				15
10.	Exemption of income **(I = C + F + G)**	300		100		100	