

GST - TDS, ECOM, TCS

PIMPRI-CHICHWAD BRANCH OF WIRC

Deliberation by :-

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Delhi, Mumbai, Pune, Bangalore, Chennai, Nashik.

-- Prayer --

Oh GST grant me the

- wisdom to understand the law
 - courage to explain it to the clients
 - diplomacy to make it through the department
 - strength to be updated real time
 - patience to be in queue on the portal
 - humbleness to accept that there could still be something I don't know/understand
- and above all
- The resilience to unlearn and redo the above untiringly

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GST # Bhagwat Geeta

Different Interpretations by DIFFERENT persons at the SAME time

- GST as per Law (Implemented / Proposed/Announced/Press Release)
 - GST as per Businessmen
 - GST as per Consultants
 - GST as per Officers
 - GST as per GSTIN
-
- **Different Interpretations by SAME person at the DIFFERENT time periods**

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GST – TDS

SECTION 51 OF THE CGST/SGST ACT, 2017

SECTION 20 OF THE IGST ACT, 2017

SECTION 21 OF THE UTGST ACT, 2017

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TDS - Preliminaries

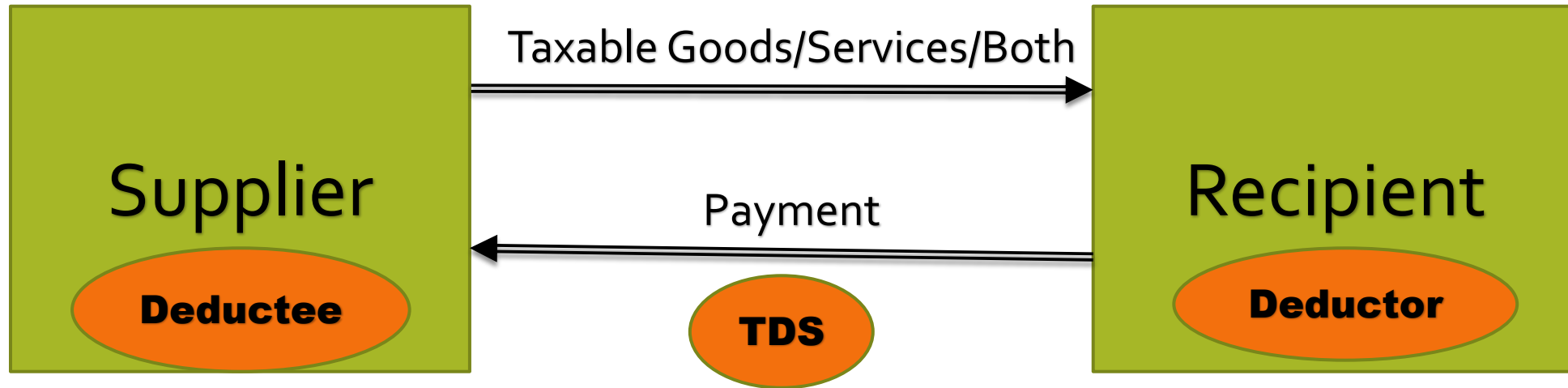
- We are very much Familiar with the **TDS mechanism under Income Tax**, which works as Monitoring and Anti Tax Evasion Measure and Compel tax deductee to File his Return of Income.
- Similarly we have mechanism of **Deduction of Commercial Tax under VAT** laws prevailing in Different states which is applicable on Government Departments only.
- On Same lines **TDS under GST** has been introduced and same is applicable on Government Owned Undertakings

Summary of Provisions

Details	secs of CGST Act, 2017	Rules of CGST Act, 2017	Notifications/ Circulars
Deduction of TDS	Sec 51	Rule 66	Notification- 33/2017-CT, dtd-15.09.17 50/2018-CT, dtd 13.09.18
Compulsory Liability of Registration for TDS deductors	Sec 24(vi)		Exempted- 57/2018-CT, dtd-23.10.18 61/2018-CT, dtd- 05.11.18 73/2018-CT, dtd- 31.12.18
Application for registration	Sec 25	Rule 12(1)	
Grant of Registration Certificate		Rule 12(2)	
Cancellation of Registration		Rule 12(3) read with Rule 22	
Payment of TDS	Sec 51(2)	Rule 85(4)	Circular 65/39/2018, dtd- 14.09.18
Payment through GST Challan		Rule 87(2) & 87(3)	
TDS Return	Sec 51(5)	Rule 66(1)	

Details	secs of CGST Act, 2017	Rules of CGST Act, 2017	Notifications/Circular
Issue of Certificate of deduction	Sec 51(3)	Rule 66(3)	
Late Fees (for late filing of GSTR-7)	Sec 47(1)		
Late Fees (for late furnishing of GSTR-7A)	Sec 51(4)		
Issue of Certificate of deduction	Sec 51(3)	Rule 66(3)	
Interest	Sec 51(6) read with Sec 50(1); Sec 20(xxv) of IGST Act read sec 51(6) & sec 50(1) of the CGST/SGST Act		
Penal provisions Demands & recovery	sec 51(7) read with sec 73 & sec 74 & sec 122(1)(v) and sec 20(xxv) & 4th proviso to Sec 20 of IGST Act	Rule 142	
Refund	Sec 51(8)		
Transitional Provisions	Sec 142(13)		

TDS - Preliminaries



TDS - Applicability

- Supply
- Taxable
- Goods/Service/Both
- Value of supply > Rs.2.5 Lakhs per Contract
- Deductor – Recipient (Persons specified)
- Deductee – Any Supplier
- The location of the supplier or place of supply is in a State(s)/UT(s) where the deductor is registered. Otherwise **No TDS** required

TDS - Applicability

- Persons Specified for deduction

- (a) a department or establishment of the Central Government or State Government or
- (b) local authority; or
- (c) Governmental agencies; or
- (d) such persons or category of persons as may be notified by the Government on the recommendations of the Council, (hereafter in this section referred to as “the deductor”)
- [Notified by Notification No. 33/2017 – Central Tax , Dated 15/09/2017] as under :
 - (a) an authority or a board or any other body, -
 - (i) set up by an Act of Parliament or a State Legislature; or
 - (ii) established by any Government, with fifty-one percent or more participation by way of equity or control, to carry out any function;
 - (b) society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860 (21 of 1860);
 - (c) public sector undertakings:

TDS - Compliance

- Under sec 24(vi) of the CGST Act, 2017 compulsory liability for registration for the deductors of TDS.
- TDS is to made on payment or credit whatever happens first.
- Where the location of the supplier and the place of supply are in the same State/UT, it is an intra-State supply and TDS @ 1% each under CGST & S/UTGST Act shall be deducted.
- Where the location of the supplier is in State A and the place of supply is in State B, it is an inter-State supply and TDS @ 2% under IGST Act is to be deducted
- Filing the TDS Return in FORM GSTR-7 and TDS payment to the Government by the deductor within ten days after the end of the month in which such deduction is made.
- The supplier (deductee) has to accept or reject the amount auto-populated in the table after logging on the portal.
- The accepted amount will be credited to Electronic cash ledger while rejected amount will be auto-populated in Amendment table of next month's FORM GSTR-7 of the deductor
- The deductor shall furnish to the deductee a TDS Certificate in Form 7A within 5 Days of Crediting the amount to the Government.

Provision for late fees for late filing of TDS Returns in GST

S.	Event	Consequence
1	TDS not Deducted	Interest to be paid along with the TDS amount; else the amount shall be determined and recovered as per the law.
2	TDS certificate not issued or delayed beyond the prescribed period of five days	Late fee of Rs. 100/- per day subject to a maximum of Rs. 5000/-
3	TDS deducted but not paid to the government or paid later than 10th of the succeeding month	Interest to be paid along with the TDS amount; else the amount shall be determined and recovered as per the law.
4	Late filing of TDS returns	Late fee of Rs. 100/- for every day during which such failure continues subject to a maximum amount of five thousand rupees.

TDS – Practical Issues

- Contract value > Rs. 2.5 Lakh for both taxable supply and exempted supply, but the value of taxable supply under the said contract \leq Rs. 2.5 Lakh.
- Supply of Goods on which GST is not leviable.
- All activities or transactions specified in Schedule III
- Where the payment relates to a tax invoice that has been issued before 01.10.2018.
- Where any amount was paid in advance prior to 01.10.2018 and the tax invoice has been issued on or after 01.10.18, to the extent of advance payment made before 01.10.2018.
- Where the tax is to be paid on reverse charge by the recipient i.e. the deductee.

TDS – Practical Issues

- Where the payment is made to an unregistered supplier.
- Contract worth Rs.10 lakh with a supplier entered into prior to 01.10.2018. A payment of Rs.1.5 Lakh in respect of an invoice dated 25.10.2018 is made
- Contract worth Rs. 5 Lakh with a supplier entered into prior to 01.10.2018. Invoice raised for Rs. 5 Lakh and made a payment of Rs.1 Lakhs to him prior to 01.10.2018. Balance amount of Rs.4 Lakh paid after 01.10.2018.
- Whether the value of Rs.2.5 Lakhs is inclusive of GST
- Supplier is registered under composition scheme

GST – TCS & E COMMERCE OPERATOR

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Summary of Legal Provisions

Details	secs of CGST Act, 2017	Rules of CGST Act, 2017	Notifications/Ci rculars
Collection of tax at source	Sec 52	Rule 67	51/2018-CT, dated 20.08.18
Compulsory Liability of Registration for TDS deductors	Sec 24(x)		Exemption- 65/2017-CT, dated-15.11.17
Application for registration	Sec 25	Rule 12(1)	
Grant of Registration Certificate		Rule 12(2)	
Cancellation of Registration		Rule 12(3) read with Rule 22	
Payment of TDS	Sec 52(2)	Rule 85(4)	52/2018-CT, dated 20.08.18
Payment through GST Challan		Rule 87(2) & 87(3)	
TDS Return	Sec 52(7)	Rule 67(1)	

Summary of Legal Provisions

Details	secs of CGST Act, 2017	Rules of CGST Act, 2017	Notifications/Ci rcular
Late Fees (for late filing of GSTR-8)	Sec 47(1)		
amount collected and reflected (GSTR 8A)	Sec 52(8)	Rule 67	
Discrepancy in return	Sec 52(9) read with 52(10)		
Interest	Sec 52(11)		
Penal provisions, Notice Demands & recovery	sec 51(12) read with sec 73 & sec 74	Rule 142	

Who is an ECO

- As per Section 2(44) of the CGST Act, 2017, electronic Commerce means the supply of goods or services or both, including digital products over digital or electronic network.
- As per Section 2(45) of the CGST Act, 2017, electronic Commerce operator means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

LEVY OF GST U/S 9 ON ECO

- Sec 9(5)
- The Government may, on the recommendations of the Council, by notification, specify categories of services
- the tax on intra-State supplies of which shall be paid
- by the electronic commerce operator if such services are supplied through it,
- and all the provisions of this Act shall apply to such electronic commerce operator as if
- he is the supplier liable for paying the tax in relation to the supply of such services:

PROVISION OF TCS U/S 52

- As per Section 52 of the CGST Act, 2017
- the ecommerce operator,
- not being an agent,
- is required to collect an amount calculated at the rate not exceeding one per cent.,
- as notified by the Government on the recommendations of the Council,
- of the net value of taxable supplies made through it,
- where the consideration with respect to such supplies is to be collected by such operator. The amount so collected is called as Tax Collection at Source (TCS).

Rate of TCS is 0.5% under each Act (i.e. the CGST Act, 2017 and the respective SGST Act / UTGST Act respectively) and the same is 1% under the IGST Act, 2017. Notifications No. 52/2018 – Central Tax and 02/2018-Integrated Tax both dated 20th September, 2018

TCS - Implications

- As per sec 24(x) of the CGST Act, 2017, every electronic commerce operator has to obtain compulsory registration in each state irrespective of the value of supply made by him.
- Further as per Section 24(ix) of the CGST Act, 2017, every person supplying goods through an ecommerce operator shall mandatorily register irrespective of the value of supply made by him.
- However, a person supplying services, other than supplier of services under section 9 (5) of the CGST Act, 2017, through an e-commerce platform are exempted from obtaining compulsory registration provided their aggregate turnover does not exceed INR 20 lakhs (or INR 10 lakhs in case of specified special category States) in a financial year. **Since such suppliers are not liable for registration, ecommerce operators are not required to collect TCS on supply of services being made by such suppliers through their portal.**
- The “net value of taxable supplies” means the aggregate value of taxable supplies of goods or services or both, other than the services on which entire tax is payable by the e-commerce operator, made during any month by a registered supplier through such operator
- TCS is to be collected once supply has been made through the e-commerce operator irrespective of the actual collection of the consideration.

TCS - Implications

- The amount collected by the operator is to be paid to appropriate government within 10 days after the end of the month in which the said amount was so collected and submit return in FORM GSTR-8 in terms of Rule 67 of the CGST Rules, 2017
- The operator is also required to file an annual statement by 31st day of December following the end of the financial year in which the tax was collected in FORM GSTR-9B.
- As per section 52(6) of the CGST Act, 2017, interest is applicable on omission as well in case of incorrect particulars noticed. In such a case, interest is applicable since it is a case of omission. Further penalty under section 122(vi) of the CGST Act, 2017 would also be leviable.
- The amount of TCS deposited by the operator with the appropriate Government will be reflected in the electronic cash ledger of the actual registered supplier.

TCS – Practical Issues

- Will the TCS provision be applicable to foreign ecommerce operator
- Whether value of net taxable supplies to be calculated at gross level or at GSTIN level?
- Whether TCS to be collected on exempt supplies?
- Whether TCS to be collected on supplies on which the recipient is required to pay tax on reverse charge basis?
- Whether TCS is to be collected in respect of supplies made by the composition taxpayer?
- Sometimes sales return is more than sales and hence can negative amount be reported? Can it be adjusted in the next period?

Thank - You

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Exemption from TDS by way of proviso

“Provided that with respect to persons specified under clause (a) of sub-section (1) of section 51 of the Act, nothing in this notification shall apply to the authorities under the Ministry of Defence, other than the authorities specified in the Annexure-A and their offices, with effect from the 1st day of October, 2018.” -- Notification 57/2018-Central Tax, Dated – 23.10.2018

“Provided further that nothing in this notification shall apply to the supply of goods or services or both from a public sector undertaking to another public sector undertaking, whether or not a distinct person, with effect from the 1st day of October, 2018.” -- Notification 61/2018-Central Tax, Dated – 05.11.2018

“ Provided also that nothing in this notification shall apply to the supply of goods or services or both which takes place between one person to another person specified under clauses (a), (b), (c) and (d) of sub-section (1) of section 51 of the said Act” – Notification 73/2018- Central Tax, Dated- 31.12.18

Relevant provisions of TDS in GST and effective date:

Provisions of Law:

- GST Laws provide for tax deduction at source (TDS) by the specified category of persons (herein after referred to as 'the deductor') from the payment made or credited to the supplier of taxable goods or services or both (herein after referred to as 'the deductee') at a prescribed rate.

Effective date:

- Notification No. 33/2017 – Central Tax dated 15.09.2017 was issued by the CBIC to enable registration of tax deductors. However, Government suspended the applicability of TDS till 30.09.2018. Now, it has been decided that the TDS provision would be made operative with effect from 01.10.2018. Notification No. 50/2018-Central Tax dated 13.09.2018 has already been issued in this regard by CBIC. Similar notifications have been issued by respective State Governments.