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TDS UNDER GST

SHAH TEELANI & ASSOCIATES

CHARTERED ACCOUNTANTS



TDS under GST

The concept of TDS on GST was initially introduced in the Income Tax Act and has now been introduced in GST as well. The purpose of introduction of TDS on GST is only to enable the govt to have a trail of transactions and to monitor and verify the compliance. It acts as a powerful instrument to prevent tax evasion and expands the tax net, as it provides for the creation of an audit trail.

Every such registered person have to furnish a return in Form GSTR-7 electronically through the common portal for the month in which such deductions have been made within ten days after the end of such month

Just like in the Income Tax Act, the person deducting the TDS is required to deposit the TDS with the Govt and issue Form 16 and Form 16A, similarly under GST Act as well, the person deducting the TDS would be required to deposit the same with the Govt by the 10th of the next month and issue Form GSTR 7A to the person whose TDS has been deducted

After getting deferred till September 30, 2018, the Central Government vide Notification No. 50/2018 - Central Tax dated September 13, 2018 and Notification No. 51/2018 - Central Tax dated September 13, 2018, has appointed the 1st day of October 2018, as the date on which the provisions of Section 51 of the CGST Act, 2017 (i.e. Tax deduction at source) and Section 52 (i.e. Tax collection at source) shall come into force.

For easy digests, we are summarizing hereunder the gist of provisions pertaining to TDS and TCS in GST:

Particulars	Applicable Section/ Sub-section/ Notification	Provisions
Who is required to deduct TDS (deductor)?	Section 51(1) r.w. Notification No. 50/2018 - Central Tax dated September 13, 2018	Following persons are required to deduct TDS: (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 Persons notified under Section 51(1)(d): (a) an authority or a board or any other

		<p>body, -</p> <p>(i) set up by an Act of Parliament or a State Legislature; or</p> <p>(ii) established by any Government, with fifty-one per cent. or more participation by way of equity or control, to carry out any function;</p> <p>(b) Society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860 (21 of 1860);</p> <p>(c) public sector undertakings</p>
When & from whom TDS is required to be deducted (deductee)?	Section 51(1)	<p>Suppliers of taxable goods or services or both to the deductor(s), where the total value of such supply, under a contract, exceeds INR 2,50,000/-</p> <p>[Note -1]</p>
Location of Recipient is different from Location of Supplier and Place of Supply	Section 51(1)	<p>TDS on GST would not be applicable if the Location of Recipient is different from the Location of Supplier and the Place of Supply.</p> <p>[Note-2]</p>
When to Deducted	Section 51(1)	<p>On payment to the supplier or credit to the account of supplier</p> <p>[Note-3]</p>
Rate of TDS	Section 51(1)	<p>TDS is to be deducted at the rate of 1% [i.e. 2% for CGST+SGST/UTGST or IGST] from the payment made or credited to the deductee</p> <p>[Explanation-1]</p>
Value of supply	Explanation to Section 51(1)	<p>For the purpose of TDS specified above, the value of supply shall be taken as the amount excluding CGST, CGST/UTGST, IGST and cess indicated in the invoice</p>
Compulsory registration for TDS deductor	Section 24(vi)	<p>TDS deductors, whether or not separately registered, are required to compulsorily register in GST irrespective of threshold limits.</p>
Form for TDS deductor registration	Rule 12(1)	<p>Form GST REG-07 - Registration started from September 18, 2017(The Goods and Services Tax (GST) Council, at its 21st</p>

		meeting in Hyderabad) TDS applicants who do not have a PAN, can register on basis of TAN
Payment of TDS by deductor	Section 51(2)	The amount of TDS shall be paid to the Government by the deductor within 10 days after the end of the month in which such deduction is made.
TDS Certificate to deductee	Section 51(2) and Section 51(3) r.w. Rule 66(3)	The deductor shall furnish to the deductee a certificate in Form GSTR-7A (made electronically available), within 5 days of crediting the amount so deducted to Government, mentioning therein: <ul style="list-style-type: none"> ü contract value, ü rate of deduction, ü amount deducted, ü amount paid to the Government ü Such other particulars in such manner as may be prescribed
ITC to deductee	Section 51(5)	The deductee shall claim credit, in his electronic cash ledger, of the tax deducted and reflected in the return of the deductor furnished under Section 39(3).
GST Return by the TDS deductor	Rule 66(1)	GSTR-7 (The due date of filing GSTR-7 is due on 10th of the following month)
Interest / Late fee for non-compliance		
Non-payment of TDS within time	Section 51(6)	Interest as per Section 50(1) [at 18% per annum] is payable in addition to the amount of tax deducted.
Failure to furnish TDS Certificate	Section 51(4)	Late fee of INR 1,00/- per day from the day after the expiry of five days period until the failure is rectified, subject to a maximum amount of INR 5,000/- [i.e. INR 2,00/- per day subject to maximum of INR 10,000/- for CGST + SGST/UTGST]
Recovery & Refund		
Determination of amount in default	Section 51(7)	In accordance with Section 73 (determination of tax in non-fraud cases) or Section 74 (determination of tax in fraud cases) of the CGST Act, 2017
Refund of	Section 51(8)	Refund to deductee arising on account of

excess deduction		excess or erroneous deduction shall be dealt in accordance with Section 54. No refund shall be granted if the amount deducted has been credited to electronic cash ledger of deductee.
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Note-1

Ex-1 :- A Ltd invoice to B Ltd

S.No	Invoice Particulars	Amount (Rs.)
1	Base value of Invoice	10,00,000
2	GST Charged on Invoice	1,80,000
3	Total Invoice Value	11,80,000
4	TDS to be deducted by B Ltd (10 Lacs X 2%)	20,000

Ex- 2:- Mr. A enters into a contract of Rs. 2.25 Lakhs with a Local authority to provide Income Tax Advisory. He also enters into a contract worth Rs. 1 Lakhs to provide GST Advisory.

Ans :- The total value of services provided is Rs. 3.25 Lakhs which is more than Rs. 2.5 Lakhs. However, in this case – the provisions of TDS on GST would not be applicable as the value of each contract is less than Rs. 2.5 Lakhs.

Ex- 3:- Mr. A enters into a single contract to provide services worth Rs. 4 Lakhs. He receives Rs. 2 Lakhs as advance on the month Sep, 2018 and the balance Rs. 2 Lakhs on the month of June, 2019.

Ans :- The provisions of TDS on GST will get applicable as the contract value is more than Rs. 2.5 Lakhs.

Ex-4 :- B Ltd gives two separate PO/ Contracts to A Ltd

Particulars	Purchase Order No. 01	Purchase Order No. 02
Purchase Order Value excluding GST	2,50,000	3,00,000
GST on the above PO value- @18%	45,000	54,000
Total Purchase Order Value	2,95,000	3,54,000
Applicability of TDS	NO	Yes

Note-2

Ex- 1:- Gujarat Govt. enters into a contract worth Rs. 3 Lakhs with Hotel Taj – Maharashtra to rent space for the purpose of conducting an event in their hotel.

Ans :- The provisions of TDS would not apply in this case irrespective of the contract value as the Place of Supply and Location of Supplier is different from the Location of Recipient.

Place of Supply – Maharashtra.

Location of Supplier – Maharashtra.

Location of Recipient – Gujarat.

Eg 2:- A vendor registered in Gujarat provides services to the Maharashtra Govt worth Rs. 4 Lakhs.

Ans:- The provisions of TDS will apply in this case.

Place of Supply – Maharashtra

Location of Supplier – Gujarat

Location of Recipient – Maharashtra

Therefore, while determining the applicability of TDS on GST, it is very important to determine the place of supply.

Eg-3 :- Cases

Sl. No.	Location of Supplier (A Ltd)	Place of Supply	State of registration of recipient (B Ltd)	Type of Supply	TDS under GST	Type of GST
1	Delhi	Delhi	Delhi	Intra State	Yes	CGST+SGST
2	Delhi	Haryana	Haryana	Inter State	Yes	IGST
3.	Delhi	Haryana	Karnataka	Inter State	Yes	IGST
4.	Delhi	Delhi	Haryana	Intra State	No	Not Applicable

Note-3

Ex-1:- Service Contract Value Rs. 1 Crores

Particulars	10% Advance Money received (Rs in Lacs)	Subsequent Invoice (Rs in Lacs)
Base Value	10	5
Add GST Charged	1.80	0.90
Total amount to received	11.80	5.90
TDS Deduction -@2%	0.20	0.10

***Explanation-1** :- 1% TDS is required to be deducted under both the CGST and the SGST Act and therefore the total TDS to be deducted is 2%. In case of an inter-state transaction, IGST would be levied and 2% TDS would be levied in this case as well.

Compliance:-

Compliance	Time Limit/ Penal Provision
Registration requirement {Section 24 (vi)} read with { Section 25(6)}	Compulsorily registration and there is no threshold limit for this Apply for registration GST REG-07 filling Income Tax TAN number.
Date of deposit of TDS {Section 51(2)}	10th day of Next Month
Filing of TDS return {Section 39 (3)}	Same as above
Issue of TDS certificate {Section 51(3)}	Within 5th day of payment
Late Fees for not issuing the TDS Certificate {Section 51(4)}	Rs. 100 per day (Maximum Rs. 5,000)
Late filing of TDS return{Section 51(4)}	Same as above
Interest for non-payment of TDS {Section 51(6)}	18% Per annum

Accounting of TDS Under GST

1. Creation of three general ledger in books
 TDS Receivable Account
 UT/SGST TDS Receivable Account
 IGST TDS Receivable Account
2. Aforesaid accounts will be debited with amount of credit in respective Electronic Cash Ledger (ECL) made by deductor in GST portal.
3. At the time of utilisation of TDS amount from ECL for payment of GST liability in GST portal correspondingly above TDS Receivable account will credited in respective Output GST liability or GST Liability clearing account in books as per GL configuration.

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