



## TDS PROVISION UNDER GST

**CMA S K MISHRA**  
FCMA, FCA

### Tax Deduction at Source (TDS) under GST

TDS is one of the modes/methods to collect tax, under which, certain percentage of amount is deducted by a recipient at the time of making payment to the supplier of taxable goods or services. 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.

Under the GST regime, section 51 of the CGST Act, 2017 prescribes the authority and procedure for 'Tax Deduction at Source'.

### Who is required to Deduct TDS

As per section 51(1), the following class of person shall be required to deduct tax at source @2% (CGST 1% + SGST 1%) on the payment made or credited to the supplier where the total value of supply under a contract exceeds Rs.2,50,000/- excluding GST:

- (a) a department or establishment of the Central Government or State Government; or
- (b) local authority; or
- (c) Governmental agencies; or
- (d) Following categories of person has been notified vide Notification No.33/2017-Central Tax Dated 15<sup>th</sup> Sept 2017 under clause 51(1)(d)

- 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

**Example:** If the supply order placed to a contractor is for Rs.4 lakhs, but payment is made in two installments of Rs.2.3 lakhs & Rs.1.7 lakhs, then TDS to be deducted from

both the payments since law mandates that TDS provision u/s 51 shall be attracted if the contract value exceeds Rs.2.5 lakhs. The value of supply shall be taken as the amount excluding the central tax, State tax, Union territory tax, integrated tax and cess indicated in the invoice

### Registration of TDS deductors:

A TDS deductor has to compulsorily register without any threshold limit. The deductor has a privilege of obtaining registration under GST without requiring PAN. He can obtain registration using his Tax Deduction and Collection Account Number (TAN) issued under the Income Tax Act, 1961

### Deposit of TDS with the Government:

The amount deducted shall be paid to the Central Government within ten days after the end of the month in which such deduction is made.

### TDS Certificate

A TDS certificate is required to be issued by deductor (the person who is deducting tax) in Form GSTR-7A to the deductee (the supplier from whose payment TDS is deducted), within 5 days of crediting the amount to the Government, failing which the deductor would be liable to pay a late fee of Rs. 100/- per day from the expiry of the 5th day till the certificate is issued.

The deductor shall furnish a TDS certificate in FORM GSTR-7A to the deductee mentioning in it the following:

- (a) contract value
- (b) rate of deduction
- (c) Amount deducted
- (d) Amount paid to the appropriate Government
- (e) Any other particulars as may be prescribed

### TDS Return:

The deductor is also required to file a return in Form GSTR-7 within 10 days from the end of the month. If the supplier is unregistered, name of the supplier rather than GSTIN shall be mentioned in the return.

### Consequences of non compliance of TDS provisions:

SI No.	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

### When GST not to be deducted at Sources (TDS)

No deduction shall be made if the location of the supplier and the place of supply is in a State or Union territory, which is different from the State, or as the case may be, Union Territory of registration of the recipient.

The supply would be intra-State supply and Central tax and State tax would be levied. In such case, transfer of TDS (Central tax + State tax of State B) to the cash ledger of the supplier (Central tax + State tax of State A) would be difficult. So in such cases, TDS would not be deducted.

The above statement can be explained in the following manner:

- Supplier, place of supply and recipient are in the same state. It would be intra-State supply and TDS (Central plus State tax) shall be deducted. It would be possible for the supplier (i.e. the deductee) to take credit of TDS in his electronic cash ledger.
- Supplier as well as the place of supply are in different states. In such cases, Integrated tax would be levied. TDS to be deducted would be TDS (Integrated tax) and it would be possible for the supplier (i.e. the deductee) to take credit of TDS in his electronic cash ledger.
- Supplier as well as the place of supply are in State A and the recipient is located in State B.

### Example

Registered dealer of Bhubaneswar has placed supply order to a registered dealer of Bihar for delivery of material to a party in Patna. The supply would be intra-State supply and Central tax and State tax would be levied. In such case, transfer of TDS (Central tax + State tax of Orissa) to the cash ledger of the supplier (Central tax + State tax of Bihar) would be difficult. So in such cases, TDS would not be deducted.

Thus, when both the supplier as well as the place of supply are different from that of the recipient, no tax deduction at source would be made.

### TDS PROVISION AT A GLANCE

Particulars	Description
Deductor	Dept. or establishment of Central/State Govt, local authority/board or body in which Govt hold 51% or more Equity, PSU, Societies registered under Societies Registrations Act 1860.
Registration	Separate registration as TDS deductor mandatory
Deductee	Supplier of Taxable goods or services
Rate	2% ( CGST+SGST)
Threshold limit	If contract value exceed Rs.2.5 lakhs , on entire value
No TDS	If the state/UT of location of the supplier and place of supply is different from the state/UT of registration of recipient
Payment of TDS	10 <sup>th</sup> of the Next month
TDS Certificate	Form GSTR-7A to be issued to the deductee within 5 days of crediting the amount to the Government.
Penalty for failure to issue TDS certificate	Rs.100/day from the expiry of the 5th day till the certificate is issued, Maximum Rs.5000/-
Effect in cash ledger	TDS to be credited to electronic cash ledger of the person from whom the amount was deducted after the same is reflected in the return of Deductor
Applicability of other provisions	Section 50(interest), section 54(refund) and Section 73/74 (SCN) equivalently applicable

Note: As per the decision taken in 26<sup>th</sup> GST Council meeting, the applicability of TDS provision has been deferred till 30.06.2018.