



## TDS UNDER GST REGIME – SECTION 51 OF CGST ACT

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**W**e know about TDS under Income Tax Act, 1961 and the relevant penalties thereon for non-compliance. There is no concept of TDS in Central Excise Act 1944 even the erstwhile service tax law. However, under Value Added Tax law, there was a concept of TDS but it was limited to works contract activity only where transfer of property in goods involved in execution of works contract. The contractee was required to deduct WC-TDS at the time of making payment to the contractor and issue necessary certificates thereon. The rates of WC-TDS were varied from state to state, like 2%, 5%, 8% etc.

Three GST Bills have been passed and became the law of the land. Section 51 of CGST Act makes provision with respect to deduction of tax at source (TDS) by certain category of persons. Here, we are summarizing the relevant provisions of TDS in the form of FAQ and also highlighting the mechanism to minimize the risk of non-compliances thereon in the business.

### 1. Who are liable to deduct TDS?

The following persons are required to deduct TDS

- (a) A department or establishment of State Government or Central Government
- (b) Local Authority
- (c) Governmental Agencies
- (d) Such persons or category of persons as may be notified by the Government on recommendation of council.

*The first three category of persons are already specific in nature to deduct TDS. However, Government may on the recommendation of council notify other categories of persons also for the purpose of expanding the coverage of TDS.*

However, Government has further notified the following persons to deduct TDS vide its notification 50/2018 – Central Tax dated 13<sup>th</sup> September, 2018.

- (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 per cent. 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.

### 2. Whether TDS is applicable only on goods or services also?

TDS is applicable on taxable supply of goods or services or both.

### 3. Rate of TDS?

Tax will be deducted at the rate of 1% each for CGST and SGST from payment made or credited to the supplier. In case of IGST it would be 2%.

### 4. When Section 51 will be effective?

Government appoints 01<sup>st</sup> day of October 2018.

### 5. Is there any basic exemption for non deduction of TDS?

TDS will not be applicable where the total value of supply under a contract does not exceed Rs. 250,000/-. The value is excluding CGST, SGST, UGST, IGST and Cess Indicated in invoice.

### 6. Requirement of registration of the deductor?

As per the provision of section 24(vi), persons who are required to deduct TDS under section 51 shall take registration whether such persons are separately registered under the GST Act or not.

**7. What is the application FORM for Registration?**

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**8. When to Deduct TDS?**

As per section 51(1), TDS will be deducted @1% from the payment made or credited to the supplier. Here the word is used "from payment made or credited". A doubt may be arisen regarding point of time to deduct TDS. Under Income Tax Law the word whichever is earlier is used to specify the time of deduction.

However, as per FAQ released by CBEC, TDS will be deducted at the time of making payment to the supplier.

**Q23. .... While making any payments under such contracts, the concerned Government/authority shall deduct 1% of the total payment made and remit it into the appropriate GST account.**

However, FAQ has no legal interpretation. Request Government to clarify the time of deduction in more specific manner in order to avoid litigation.

**9. Explain the first proviso of section 51(1) with respect to non-applicability of TDS-**

Where the location of supplier and place of supply both are in same state but place of recipient of supply is another state, no TDS shall be deductible. Explain the same through a tabular form-

Location of Supplier	Place of Supply	Nature of GST	Place of Recipient	TDS applicability	% of TDS
Kolkata	Kolkata	CGST & SGST	Kolkata	Yes	2% (1%+1%)
Kolkata	Jharkhand	IGST	Kolkata	Yes	2%
Kolkata	Jharkhand	IGST	Bihar	Yes	2%
Kolkata	Kolkata	CGST & SGST	Bihar	No	-

**10. Time Limit for deposition of TDS?**

The deductor shall deposit TDS amount within 10 days after the end of the month in which deduction is made.

**11. Time Limit for furnishing of Return and Return FORM?**

As per the provision of section 39(3) Return of TDS will be filed within 10 days after the end of the month in which deduction is made. As per rule 66(1), return of TDS is to be filed in FORM GSTR- 7 through common portal either directly or from a facilitation centre notified by the commissioner.

**12. Late Fee on delay filing of TDS Return-**

Section 47 is also applicable for delay filing of GST return. Late fee for delay filing is Rs. 100/- for CGST and Rs. 100/- for SGST per day.

**13. Is there any interest for delay deposition of TDS amount?**

Interest shall be payable as per provision of section 50 and such rate shall not exceed at the rate of 18%.

**14. What is the quantum of penalty for failure of deduction of TDS or short deduction of TDS or failure to pay TDS to the Government?**

There shall be levied a penalty of Rs. 10,000/- or an amount equivalent to tax not deducted or tax shortly deducted or collected/ shortly collected but not deposit to the Government , whichever is higher. [Section 122(v)]

**15. Time limit for furnishing certificate of TDS?**

Within 5 Days from the date of deposition of TDS before the Government exchequer. Certificate shall be made available to the deductee in GSTR 7A FORM on the basis of filing of return by deductor.

**16. Penalty for delay issuance of TDS Certificate?**

Rs. 100/- per day till the failure is rectified but subject to maximum late fee of Rs. 5,000/-

**17. Whether the provision of section 73 or 74 is applicable for recovery of tax?**

Yes, provision of section 73 or 74 is applicable and the same procedure (e.g. issuance of show cause notice, serving a statement of calculation of tax, interest and penalty etc) will be followed for recovery of TDS.

**18. Can the deductor claimed refund in case the deductor has deposited excess TDS amount?**

Yes, he can claim refund and shall be dealt with the provision of section 54.

*Example:* XYZ has receipts goods amounting to Rs. 1,00,000/- (Basic value of goods) from M/s ABC. XYZ has wrongly deposit TDS amount Rs. 4,000/- instead of Rs. 2,000/-. He can claim such excess deposit amount except when it has been credited to the electronic cash ledger of the deductee.

**Control of TDS Compliance:**

1. Deductor has to ensure that the TDS has been deducted @1% on every receipt of taxable supply of goods or services or both.
2. Monitor the deposition of TDS within due date and filing of return thereon.
3. At the time of filing of return take proper care of GSTIN of the recipient.
4. Deductor shall at the end of every quarter make internal audit of compliance by a cost accountant.