



TDS UNDER GST

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Introduction

The provisions of GST TDS have been notified and made effective from 1-10-2018.

This TDS is different from TDS under Income Tax Act. If a transaction is covered under both GST Act and Income Tax Act, both the decisions are required. Obviously, separate payments, separate returns and separate TDS certificates are required.

Section 51 of CGST Act makes provisions for GST TDS.

Standard Operating Procedure for TDS – Law Committee of GST Council has issued ‘Standard Operating Procedure’ (SOP) on 20-9-2018 for DDOs (Drawing and Disbursement Officers) and other deductors.

Registration as deductor – The deductor is required to register by applying online. He is required to register as deductor even if he is registered separately as supplier. Legal name to be indicated should be same as Income Tax TAN. Detailed procedure has been described in para 8 of the Standard Operating Procedure (SOP) issued by Law Committee of GST Council.

The registration form requires some personal details of DDO or deductor. If the DDO is transferred, details of new DDO should be submitted electronically on GSTN by amending registration details [indeed herculean task in Government department].

The DDO (Drawing and Disbursement Officer) is supposed to be personally liable to comply with TDS provisions. Mobile number and e-mail address is required as OTP is sent on mobile and e-mail for verification.

Accounting and records of TDS by DDO – Detailed instructions have been given in circular No. 65/39/2018-DOR dated 14.09.2018, vide which Guidelines for Deductions and Deposits of TDS by the DDO under GST have been given. The circular

has been issued by Department of Revenue. Records to be maintained by DDO have also been specified.

Deductor and deductee - Person deducting GST TDS will be termed as ‘deductor’. Supplier from whose invoice tax is deducted will be termed as ‘deductee’.

Applicability of TDS provisions

GST TDS provisions apply where total value of such supply, *under a contract*, exceeds rupees 2.50 lakhs (excluding GST) – section 51(1) of CGST Act.

The limit of Rs 2.50 lakhs is per contract (*excluding GST*). Thus, if contract is of value exceeding Rs 2,50 lakhs, TDS is required even if an individual invoice is less than Rs 2.50 lakhs.

TDS if advance paid to supplier on or after 1-10-2018 or tax invoice is on or after 1-10-2018 - The TDS provisions apply when payment is made or credited to supplier. Thus, if advance is paid on or after 1-10-2018, TDS provisions will apply.

Similarly, if supply is made before 1-10-2018 but invoice is issued after 1-10-2018, TDS provisions will apply.

In SOP issued on 20-9-2018, it has been clarified that if tax invoice was issued by supplier prior to 1-10-2018 but payment is made after 1-10-2018, TDS provisions do not apply.

Similarly, TDS is not required if supplier is unregistered.

When TDS not required – Para 4 of the Standard Operating Procedure (SOP) issued by Law Committee of GST Council clarifies that TDS is not required in following cases –

- Total value of taxable supply \leq Rs. 2.5 Lakh under a contract.
- Contract value $>$ Rs. 2.5 Lakh for both taxable supply and exempted supply, but the

- value of taxable supply under the said contract ≤ Rs. 2.5 Lakh.
- c) Receipt of services which are exempted. For example services exempted under notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017 as amended from time to time.
 - d) Receipt of goods which are exempted. For example goods exempted under notification No. 2/2017 – Central Tax (Rate) dated 28.06.2017 as amended from time to time.
 - e) Goods on which GST is not leviable. For example petrol, diesel, petroleum crude, natural gas, aviation turbine fuel (ATF) and alcohol for human consumption.
 - f) Where a supplier had issued an invoice for any sale of goods in respect of which tax was required to be deducted at source under the VAT Law before 01.07.2017, but where payment for such sale is made on or after 01.07.2017 [Section 142(13) refers].
 - g) Where the location of the supplier and place of supply is in a State(s)/UT(s) which is different from the State / UT where the deductor is registered.
 - h) All activities or transactions specified in Schedule III of the CGST/SGST Acts 2017, irrespective of the value.
 - i) Where the payment relates to a tax invoice that has been issued before 01.10.2018.
 - j) 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.
 - k) Where the tax is to be paid on reverse charge by the recipient i.e. the deductee.
 - l) Where the payment is made to an unregistered supplier.
 - m) Where the payment relates to “Cess” [GST Compensation Cess] component.

Persons liable to deduct and pay GST TDS

Following persons are liable to deduct GST TDS @ specified rate from the payment made or credited to the supplier (deductee) of taxable goods or services or both from the payment made or credited to the supplier, w.e.f. 1-10-2018 -

- a) a department or establishment of the Central 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 Central or a State Government on the recommendations of the GST Council.

Persons liable to deduct and pay TDS under clause (d) - Under clause (d) above, following are made liable to pay TDS

- (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.

These authorities liable to deduct and pay GST TDS were earlier notified *vide* Notification No. 33/2017-CT dated 15-9-2017.

Meaning of Local Authority and Governmental Agency – The term ‘local authority’ has been defined. The term ‘Governmental Agency’ seems to be broad and its exact meaning is not clear.

Rate at which TDS is to be made

The rate of TDS is as follows – (a) in case of intra state (i.e. within the State) supply of taxable goods or services or both = 1% of CGST plus 1% SGST/UTGST (total 2%) [section 51(1) of CGST Act and SGST Act] (b) in case of inter-state supply of taxable goods or services or both - 2% of IGST [first proviso to section 20 of IGST Act].

The deduction is from payment made or credited to the supplies exceeds Rs 2.50 lakhs per contract.

No TDS if goods or services are not taxable – TDS provisions are not applicable if goods or services supplied by supplier (deductee) are not taxable.

TDS of CGST and SGST/UTGST for intra-state supply and IGST for inter state supply

TDS of GST will be of CGST and SGST/UTGST for intra-state supply and IGST for interstate supply – proviso to section 51(1) of CGST and SGST Act and first *proviso* to section 20 of IGST Act].

Value to be taken excluding GST

For the purpose of deduction of tax specified above, the value of supply shall be taken as the amount excluding the tax (CGST, SGST or UTGST and Compensation Cess) indicated in the invoice – *explanation* to section 51(1) of CGST Act.

Thus, TDS is required to be on net value **excluding** CGST, SGST/UTGST and IGST.

Procedure to be followed by deductor

The procedure is as follows.

Deductor to pay tax deducted to Government - The amount deducted as tax under this section shall

be paid to the credit of the Government by the deductor within ten days after the end of the month, in the prescribed manner – section 51(2) of CGST Act.

Deductor to file monthly return electronically – Deductor is required to file return electronically to Government. The return is to be filed in prescribed form and manner within ten days after end of each month – section 39(3) of CGST Act.

The prescribed form of return is GSTR-7. Offline tool is available to submit GSTR-7 return.

If there is no transaction in a particular month, the deductor is not required to file return for that month – *ratio* of section 39(8) of CGST Act.

Time limit for filing return can be extended by Commissioner by issuing notification – section 39(6) of CGST Act.

Procedure for submission of return by a person required to deduct tax at source in form GSTR-7 - Every registered person required to deduct tax at source under section 51 shall furnish a return in form GSTR - 7 electronically - Rule 66(1) of CGST and SGST Rules, 2017.

The details furnished by the deductor under rule 66(1) shall be made available electronically to each of the suppliers in Part C of form GSTR - 2A (normal scheme) and form GSTR - 4A (composition scheme) on the Common Portal.

The TDS certificate under section 51(3) of CGST Act shall be made available electronically to the deductee on the Common Portal in form GSTR -7A on the basis of the return furnished under rule 66(1) of CGST and SGST Rules.

Certificate of TDS to deductee - The deductor shall, in the manner prescribed, furnish to the deductee a certificate mentioning therein the contract value, rate of deduction, amount deducted, amount paid to the appropriate Government and other prescribed details – section 51(3) of CGST Act.

The certificate is in form GSTR-7A. The certificate is generated electronically on GSTN system and cannot be issued manually by deductor.

Credit of TDS in electronic cash register of deductee

The deductee shall claim credit, in his electronic cash ledger, of the tax deducted and reflected in the return of the deductor – section 51(5) of CGST Act.

Thus, deductee can take credit in electronic cash register only when deductor files return and not on the basis of TDS certificate.

Determination of the amount in default under this section shall be made in the manner specified in section 73 or 74 of CGST Act – section 51(7) of CGST Act.