

51. Tax deduction at source.—

(1) Notwithstanding anything to the contrary contained in this Act, the **Government may mandate,—**

(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),

to deduct tax at the rate of one per cent **from the payment made or credited to the supplier** (hereafter in this section referred to as - the deductee) of taxable goods or services or both,

where the total value of such supply, under a contract, **exceeds two lakh and fifty thousand rupees:**

Notified *vide Notification No 33/2017 and 50/2018 – Central Rate dated 15.07.2018 and 13.09.2018 respectively* :

(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 51% 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

Weather Tax is deductible on Exempted supply of Goods or Services or both?

No tax shall be deducted on the supply of exempted goods or services or Nil rated supply of goods and services.

Whether Registration is mandatory for the Tax deductor?

Yes, there is no threshold limit for this. Registration is mandatory under section 24(vi).

The registration can be obtained on the basis of PAN or TAN issued under the Income Tax Act.

Whether separate registration is required as Tax deductor to a person who is already registered as a supplier?

Yes, deductor is required to get a separate registration as TDS deductor by using his PAN/TAN.

How Tax should be deposited?

Deductor shall file Form GSTR – 7 for depositing the Tax.

Since when did these provisions come into effect?

October 01, 2018 (*vide Notification No. 50/2018 dated 13.09.2018*)

Whether a Public Sector Undertaking (PSU) shall deduct TDS on payment or credit made for a supply to another PSU/Govt.?

No (*Notification No.57/2018 Central Tax dated 23.10.2018*)

When no tax is required to be deducted?

1. When total taxable value of supply is **not exceeding Rs 2,50,000** under a contract.
2. When there are more than one contract and each contract is for supply of taxable goods / services value not exceeding Rs 2,50,000. e.g. M/s Ram Brothers entered into 2 contracts for supply of goods to Department of Govt. valued Rs 2,20,000 and Rs 2,10,000.
No tax will be deducted as each taxable supply under a contract is not exceeding Rs 2,50,000. Nevertheless, their joint value is more than Rs 2,50,000.
3. When there is a common contract for taxable supply as well as exempted supply. But value of taxable supplies is not exceeding Rs. 2,50,000 under that contract. No tax shall be required to be deducted.
4. Goods or Services Exempted under GST Act:
 - (a) Services exempted under notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017 as amended from time to time.
 - (b) Goods exempted under notification No. 2/2017 – Central Tax (Rate) dated 28.06.2017 as amended from time to time.
 - (c) Goods on which GST is not leviable. For example, petrol, diesel, petroleum crude, natural gas, aviation turbine fuel (ATF) and alcohol for human consumption.
5. **No tax to be deducted:** 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 **e.g.**

Where the location of the supplier is in Chandigarh and the place of supply is in Chandigarh and recipient is registered in Delhi. No tax shall be deducted.

6 All activities or transactions specified in **Schedule III** of the CGST/SGST Acts 2017, irrespective of the value.

7 Where the payment relates to a tax invoice that has been issued before 01.10.2018.

8 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.

9 Where the tax is to be paid **on reverse charge** by the recipient i.e. the deductee.

10 Where the payment is made to **an unregistered supplier**.

Provided that **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.**

Municipal Corporation of Delhi has ordered supply of taxable goods to a supplier registered in Chandigarh for supply in Chandigarh itself. Is this transaction liable for deduction of tax at source?

1. No tax shall be deducted when the location of supplier and place of supply is in a State/UT which is different from the State/UT of the registration of the recipient.
2. Here, the location of the supplier is in Chandigarh and the place of supply is in Chandigarh and the recipient is registered in Delhi. No tax shall be deducted.

Explanation.—**Value of Supply:** For the purpose of deduction of tax specified above, 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.

(2) **Time of payment of tax to Government:** The amount deducted as tax under this section shall be paid to the Government by the deductor **within ten days after the end of the month in which such deduction is made**, in such manner as may be prescribed.

(3) A certificate of tax deduction at source shall be issued in such form and in such manner as may be prescribed.

What are the provisions relating to the issue of TDS certificates under the GST law?

TDS certificate in Form GSTR-7A to the concerned person within 5 days of depositing the tax to the government.

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(4) [*****]78 If any deductor fails to furnish to the deductee the certificate, after deducting the tax at source, within five days of crediting the amount so deducted to the Government, the deductor shall pay, by way of a late fee, a sum of **one hundred rupees per day from the day after the expiry of such five days** period until the failure is rectified, subject to a maximum amount of five thousand rupees by

Repealed vide The Finance Act, 2020 (No. 12 of 2020) –Brought into force w.e.f. 01 January, 2021.

(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 sub-section (3) of section 39, in such manner as may be prescribed.

(6) If any deductor fails to pay to the Government the amount deducted as tax under sub-section (1), **he shall pay interest in accordance with the provisions of sub-section (1) of section 50**, in addition to the amount of tax deducted.

(7) The determination of the amount in default under this section shall be made in the manner specified in section 73 or section 74.

(8) The refund to the deductor or the deductee arising on account of excess or erroneous deduction shall be dealt with in accordance with the provisions of section 54.

Provided that no refund to the deductor shall be granted, if the amount deducted has been credited to the electronic cash ledger of the deductee.

II. Section 20 of the IGST Act, 2017

20(X): All provisions of the CGST Act, 2017 related to **tax deduction at**

source shall, mutatis mutandis, apply as if they were enacted under this Tax Act.

Provided that tax shall be deducted at the rate of 2% from the payment made or credited to the supplier.

III. Section 21 of the UTGST Act, 2017

21(xi) All provisions of the CGST Act, 2017 related to tax deduction at source shall, *mutatis mutandis*, apply as if they were enacted under this Tax Act.

3. Effective Date of TDS implementation

TDS provisions came into force from October 01, 2018 vide Notification No. 50/ 2018 – Central Tax dated 13.09.2018. This notification also specifies persons or category of persons liable to deduct tax.

Sec 52. Collection of tax at source.

(1) Notwithstanding anything to the contrary contained in this Act, **every electronic commerce operator** (hereafter in this section referred to as the operator), not being an agent, shall collect an amount calculated at such rate **not exceeding one per cent.**, as may be notified by the Government on the recommendations of the Council, of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator.

Explanation.—For the purposes of this sub-section, the expression **-net value of taxable supplies** shall mean the **aggregate value of taxable supplies of goods or services or both**, other than services notified under sub-section (5) of section 9 **(Services on which tax is payable by electronic commerce operator on reverse charge basis)**, made during any month by all registered persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

(2) The power to collect the amount specified in sub-section (1) shall be without prejudice to any other mode of recovery from the operator.

(3) **Time of payment to Government:** The amount collected under sub-section (1) shall be paid to the Government by the operator **within ten days after the end of the month in which such collection is made**, in such manner as may be prescribed.

(4) **Furnishing statement by E.C Operator:** Every operator who collects the amount specified in sub-section (1) shall furnish a statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under sub-section (1) during a month, in such form and manner as may be prescribed, **within ten days after the end of such month:**

Explanation: - For the purposes of this sub-section, it is hereby declared that the due date for furnishing the said statement for the months of October, November and December, 2018 shall be the [07th February, 2019].

Provided that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the statement for such class of registered persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner of Central Tax

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(5) Every operator who collects the amount specified in sub-section (1) shall furnish an annual statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under the said sub-section during the financial year, in such form and manner as may be prescribed, before the thirty first day of December following the end of such financial year.

[Provided that the Commissioner may, on the recommendations of the Council and for reasons to be recorded in writing, by notification, extend the time limit for furnishing the annual statement for such class of registered persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

(6) **Rectification of omission** If any operator after furnishing a statement under sub-section (4) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the statement to be furnished for the

month during which such omission or incorrect particulars are noticed, subject to payment of interest, as specified in sub-section (1) of section 50:

Time limit for rectification: Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of statement for the month of September following the end of the financial year or the actual date of furnishing of the relevant annual statement, whichever is earlier.

(7) **Claim by deductee:** The supplier who has supplied the goods or services or both through the operator shall claim credit, in his electronic cash ledger, of the amount collected and reflected in the statement of the operator furnished under sub-section (4), in such manner as may be prescribed.

(8) **Matching of TDS details with GSTR-1 details** The details of supplies furnished by every operator under sub-section (4) shall be matched with the corresponding details of outward supplies furnished by the concerned supplier registered under this Act in such manner and within such time as may be prescribed.

(9) Where the details of outward supplies furnished by the operator under sub-section (4) do not match with the corresponding details furnished by the supplier under section 37 or section 39, the discrepancy shall be communicated to both persons in such manner and within such time as may be prescribed.

(10) The amount in respect of which any discrepancy is communicated under sub-section (9) and which is not rectified by the supplier in his valid return or the operator in his statement for the month in which discrepancy is communicated, shall be **added to the output tax liability of the said supplier**, where the value of outward supplies furnished by the operator is more than the value of outward supplies furnished by the supplier, in his return for the month succeeding the month in which the discrepancy is communicated in such manner as may be prescribed.

(11) The concerned supplier, in whose output tax liability any amount has been added under sub-section (10), shall pay the tax payable in respect of such supply along with interest, at the rate specified under sub-section (1) of section 50 on the amount so added from the date such tax was due till the date of its payment.

(12) Any authority not below the rank of Deputy Commissioner may serve a notice, either before or during the course of any proceedings under this Act, requiring the operator to furnish such details relating to—

- (a) supplies of goods or services or both effected through such operator during any period; or
- (b) stock of goods held by the suppliers making supplies through such operator in the godowns or warehouses, by whatever name called, managed by such operator and declared as additional places of business by such suppliers, as may be specified in the notice.

(13) Every operator on whom a notice has been served under sub-section (12)

shall furnish the required information within fifteen working days of the date of service of such notice.

(14) Any person who fails to furnish the information required by the notice served under sub-section (12) shall, without prejudice to any action that may be taken under section 122, be liable to a penalty which may extend to twenty-five thousand rupees.

Explanation.—For the purposes of this section, the expression -concerned supplier shall mean the supplier of goods or services or both making supplies through the operator.