



## CHAPTER - 9

# TDS & TCS

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Section 51	TDS	180
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*Hello friends*

*you already know the system to TDS (Tax deducted at service) & TCS (Tax collected at service) in Income tax Act.*

	T.D.S.	T.C.S
<b>Meaning</b>	<i>Tax deducted at source similar like "pay as your earn."</i>	<i>Tax collected at source.</i>
<b>Concept</b>	<i>TDS is deducted when recipient of goods or services makes some payment under a contract.</i>	<i>While T.C.S. refers to the tax which is collected by ECO when supplier some goods or services through its portal &amp; the payment for that supply is collected by ECO</i>
<b>Purpose</b>	<i>If acts as powerful instrument to prevent tax evasion &amp; expand the tax net as it provides for the creation of an Audit trail</i>	<i>If acts as powerful instrument to prevent tax evasion &amp; expand the tax net as it provides for the creation of an Audit trail</i>



## Sec 51: Tax deduction at source

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

<b>a</b>	a department or establishment of the Central Government or State Government; or
<b>b</b>	local authority; or
<b>c</b>	Governmental agencies; or
<b>d</b>	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 **1%** (same provision under SGST Act i.e CGST 1% + SGST 1%)

➔ **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*

**Explanation** —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

<b>TDS Rate</b>	<b>CSGT</b>	<b>SGST</b>	<b>IGST</b>	<b>Where value of supply under a contract exceeds ₹2,50,000</b>
	1%	1%	2%	

**N/N 50/2018-CT dt 13/09/2018**

**Sec 51 has been made effective from 01st Oct 2018, for following person**

- ➔ persons specified under clause (a) (b) & (c) of 51(1) of the said Act and
- ➔ the persons specified below under clause (d) of 51(1) of the said Act, namely:

**(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

It has been clarified that an authority or a board or any other body whether set up by an Act of Parliament or a State Legislature or established by any Government with 51% or more participation by way of equity or control, to carry out any function would only be liable to deduct tax at source. **[Circular No. 76/50/2018 GST dated 31.12.2018]**

**(b) Society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860**

**(c) PSU (Public sector undertakings)**

### Non -Applicability of TDS Provision

*“Provided that with respect to persons specified under clause (a) of sub-section (1) of section 51 of the Act, nothing in this notification shall apply to the authorities under the Ministry of Defence, with effect from the 1st day of October, 2018. Notification No. 57/2018 – CT dt 23/10/2018*

*“Provided further that nothing in this notification shall apply to the supply of goods or services or both from a public sector undertaking to another public sector undertaking, whether or not a distinct person, with effect from the 1st day of October, 2018.” Notification No. 61/2018 – CT dt 5/11/2018*

*“Provided also that nothing in this notification shall apply to the supply of goods or services or both which takes place between one person to another person specified under clauses (a), (b), (c) and (d) of sub-section (1) of section 51 of the said Act.”. Notification No.73/2018 – Central Tax dt 31st December, 2018*

**Comment:-** Seeks to exempt supplies made by Government Departments and PSUs to other Government Departments and vice-versa from TDS i.e any supplies made amongst the Government departments , PSU'S or any authority set up by the parliament or by government or society established by Central Government, State Government or local authority then no TDS shall be applicable on such transactions.



<b>Proviso</b>	<b>Provided that no deduction shall be made</b> 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
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**As per Section 2(69): “local authority” means**

- a) “Panchayat” as defined in clause (d) of article 243 of the Constitution;
- b) a “Municipality” as defined in clause (e) of article 243P of the Constitution;
- c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;
- d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;
- e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;
- f) a Development Board constituted under article 371 & article 371J of the Constitution; or
- g) a Regional Council constituted under article 371A of the Constitution

Supplier	PoS	Supply	Recipient	TDS	Remark
Mr.P (MH)	MH	Intra- State	MH Govt. (MH)		
Mr.Q (MH)	Punjab	Inter- State	PSU Punjab		
Mr.R (Punjab)	Punjab	Intra- State	MH Govt.		



### Provisions related to deductor

**2 Due date of payment of TDS :** 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 TDS Certificate :** ~~The deductor shall furnish to the deductee a certificate mentioning therein the contract value, rate of deduction, amount deducted, amount paid to the Government and such other particulars in such manner as may be prescribed~~

**A certificate of tax deduction at source shall be issued in such form and in such manner as may be prescribed.”;**

**Substituted by F.A. 2020**

**4 Failure to give TDS Certificate :** ~~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,~~

**Omitted by F.A. 2020**

~~the deductor shall pay, by way of a late fee, a sum of 100 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~~

### Rule 66 : Form and manner of submission of return by a person required to deduct tax at source.-

(1) Every registered person required to deduct tax at source under section 51 (hereafter in this rule referred to as deductor) shall furnish a return in **FORM GSTR-7** electronically through the common portal either directly or from a Facilitation Centre notified by the Commissioner.

(2) The details furnished by the deductor under sub-rule (1) shall be made available electronically to each of the **deductees** on the common portal after the due date of filing of FORM GSTR-7.

(3) The certificate referred to in sub-section (3) of section 51 shall be made available electronically to the deductee on the common portal in **FORM GSTR-7A** on the basis of the return furnished under sub-rule (1).

### Provisions related to deductee

**5 Credit to E-cash ledger of deductee :** 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), in such manner as may be prescribed

#### Rule 87(9) : E-cash Ledger

Any amount deducted under section 51 or collected under section 52 and claimed in FORM GSTR-02 by the registered taxable person from whom the said amount was deducted or, as the case may be, collected shall be credited to his electronic cash ledger in accordance with the provisions of rule 87





<b>6</b>	If any deductor fails to pay to the Government the amount deducted as tax under sub-section (1), <b>he shall pay interest in accordance with the provisions of section 50(1) (18% P.A.),</b> in addition to the amount of tax deducted
<b>7</b>	The determination of the amount in default under this section shall be made in the manner specified in section 73 or section 74

**Erroneous Deduction of TDS**

<b>8</b>	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
<b>Proviso</b>	<b>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</b>

**Standard Operating Procedure – CBIC**

**Tax deduction is not required in following situations:-**

**1. Total value of taxable supply  $\leq$  ₹ 2.5 Lakh under a contract**

Finance Department of Pune Mahanagar Palika is making a payment of ₹ 2 Lakh to a supplier for a contract of 'printing & stationery'. Whether TDS is required to be deducted?

**Ans:-**

**2. Contract value  $>$  ₹ 2.5 Lakh for both taxable supply and exempted supply, but the value of taxable supply under the said contract  $\leq$  ₹ 2.5 Lakh.**

Education Department is making payment of ₹ 5 Lakh to a supplier of 'printed books and printed or illustrated post cards' where payment for books is ₹ 2 Lakh and ₹ 3 Lakh is for other printed or illustrated post cards. Whether required to deduct TDS?

**Ans:-**

**3. 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.**

Fisheries Department is making a payment of ₹ 10 Lakh to a contractor for supplying labour for digging a pond for the purpose of Fisheries. Whether required to deduct TDS?

**Ans:-**

**4. 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.**

Health Department is making payment of ₹10 Lakh to a supplier for supply of Hearing Aids. Whether required to deduct TDS on such supply of goods?

**Ans:-**

**5. Goods on which GST is not leviable. For example petrol, diesel, petroleum crude, natural gas, aviation turbine fuel (ATF) and alcohol for human consumption**

Hindustan Aeronautics Limited (public sector undertaking) enters into a contract with Hindustan Petroleum for procurement of ATF and makes a payment of ₹15 lacs for such supply. Determine the applicability of TDS

**Ans:-**

**6. 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]**

**7. 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**

Govt. of Punjab engages a contractor M/s Nirmitee pvt ltd of Delhi for renovation of Bangla Bhawan in Delhi. Determine the applicability of TDS

**Ans:-**

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

Supplier Y of Mumbai enters into an agreement for sale of land worth ₹12,00,000/- to Finance Deptt. of Govt of Goa. Is TDS applicable for the given activity?

**Ans:-**

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

Eg. :- Supplier Ajay is a person registered under the GST in Jharkhand who makes taxable supply worth ₹10,000/- to a Local Authority of Jharkhand where value of taxable supply under the contract is for ₹2, 75,000/- the tax invoice for which was issued on 05.09.2018 .

**10. 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**

National Institute of Technology (N.I.T) have entered into a contract worth ₹ 10 Lakh with a supplier XYZ prior to 01.10.2018. N.I.T made a payment of ₹ 7 Lakhs to him prior to 01.10.2018. Should TDS be applicable on ₹ 10 Lakh?

**Ans:-**

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

National Sports authority of India a society controlled by Govt located in Delhi hires a GTA M/s Raj transports Ltd for transport of sports equipments from Delhi to Ghaziabad for which freight charges of ₹ 2,85,000 is paid by National Sports authority of India. Determine the applicability of TDS?

**Ans:-**

### 12. Where the payment is made to an unregistered supplier

Health Department of Karnataka receives a taxable service worth ₹ 2,66,000 from Mansi & co of Maharashtra being an unregistered person under GST. Is TDS applicable in the given case?

**Ans:-**

### 13. Where the payment relates to “Cess” component

M/s ABC Ltd. a Government agency located at Bengaluru purchases BMW car worth ₹15,00,000 including GST cess was charged on the same from Bhandari showroom , Mumbai. Is TDS applicable in the given case?

**Ans:-**

## Practical Illustrations

**Supplier is registered and contract value is inclusive of GST:**

**Illustration 1:-** Supplier Y of Mumbai makes taxable supply worth ₹ 10,000/- & exempted supply worth ₹ 20,000/- in an invoice/bill of supply to Finance Deptt. of GOI located in New Delhi where contract for supply is for ₹ 6,00,000/- (₹.2,60,000 for taxable supply including GST and ₹ 3,40,000 for exempted supply). The rate of GST is 18%. Following payment is being made by Gol to Y: ₹10,000/- (value of taxable Supply) + ₹ 1,800 (Integrated Tax) + ₹ 20,000/- (value of exempted Supply).

**Whether any deduction of tax is required?**

**Ans :- Value of taxable supply in the contract = ₹2,60,000/- (including GST)**

**Value of such contract excluding tax =  $260000 \times 100/118 = ₹ 220340/-$**

**Since, the value of taxable supply in the contract does not exceed ₹ 2.5 Lakh, deduction of tax is not required**

**Illustration 2 :-**

Three separate contracts for supply are given to M/S ABC by the Health Department of the Government of West Bengal and the value of taxable supply is below ₹ 2.5 Lakh in case of each contract though their combined value is more than ₹ 2.5 Lakh

**Ans:-** In given case above no deduction is required to be made since value of taxable supply in neither of the contract exceeds ₹ 2.5 Lakh.

### Important Definitions

**Sec 2(44) Electronic Commerce :** Electronic Commerce  
**means** the supply of goods or services or both,  
**including** digital products over digital or electronic network

**Sec 2(45) Electronic Commerce Operator :** Electronic Commerce Operator  
means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce

Chart

## 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 1%**, 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**

**N/N 51/2018 -CT dt 13/09/2018**

Sec 52 has been made effective from 1/10/2018

**N/N 52/2018 -CT dt 20/09/2018**

The rate of TCS as notified by the CBIC on recommendation of council is 0.5% under CGST Act



### Analysis

No.	Cases	TCS	Remark
1.	VSmart selling his P.D. from own website Vsmart Academy.com		
2.	Vsmart selling his P.D. from K'cart Stores.com where consideration directly received to Vsmart		
3.	VSmart selling his P.D. from Amazon.com where first Amazon collect the payment and then makes remittance to Vsmart		

**Explanation** **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 sec 9(5),** 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**





**Example :** ABC Ltd is an Electronic Commerce Operator. It provides the following information

Particulars	₹
Aggregate value of taxable supplies of goods by all registered taxable persons through ABC Ltd during the month of December, 2017	13,24,000
(Less) Value of supplies under section 9 (5)	1,00,000
(Less) The aggregate value of taxable supplies returned to the supplier during the said month of December, 2017	1,07,000
Net Value of Taxable Supplies of ABC Ltd for the month of December, 2017	11,17,000
Amount to be collected by ABC Ltd for the month of December, 2017 in terms of Section 52 (1) i.e. 1%	11,170

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

**Payment on monthly basis :** 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

**Monthly Statement :** 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 (GSTR-8), within ten days after the end of such month

**“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.”;**

Newly Inserted by F.A 2019

#### Rule 67 : Form and manner of submission of statement of supplies through an e-commerce operator.-

- (1) Every electronic commerce operator required to collect tax at source under section 52 shall furnish a statement in **FORM GSTR-8** electronically on the common portal, either directly or from a Facilitation Centre notified by the Commissioner, containing details of supplies effected through such operator and the amount of tax collected as required under Sec 52(1)
- (2) The details furnished by the operator under sub-rule (1) shall be made available electronically to each of the suppliers on the common portal after filing of **FORM GSTR-8 for claiming the amount of tax collected in his electronic cash ledger after validation.**

5

**Annual Return:** 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







Newly Inserted by F.A 2019

➡ the amount collected under the said sub-section during the financial year, in such form and manner as may be prescribed (**Form GSTR-9B**), **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 **Omission or Incorrect Statement in Monthly Statement:** 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 Sec 50 (1) .

#### Analysis

#### Errors / Omissions in Monthly Statements

Rectification	Allowed
<b>Manner</b>	Make rectifications in Statement itself ➡ Rectify in statement furnished for the month in which errors/omissions come to notice ➡ Interest @ 18% p.a. is also payable
<b>Time Limitation</b>	Rectification allowed maximum by 10th Oct (after end of FY) However, if relevant annual statement has been filed prior to such date, then rectification is permissible only upto date of furnishing of such annual statement.

- 7 **Claim of Credit in E-Cash Ledger of supplier :** 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

#### Rule 87(9) E-Cash Ledger :

Any amount deducted under section 51 or collected under section 52 and claimed in **FORM GSTR-2** by the registered taxable person from whom the said amount was deducted or, as the case may be, **collected shall be credited to his electronic cash ledger** in accordance with the provisions of Rule 87

#### Matching of Supply details

[GSTR-8 of Operator to be matched with GSTR-1 of Supplier]

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

<b>Explanation</b>	For the purposes of this section, the expression <b>“concerned supplier”</b> shall mean the supplier of goods or services or both making supplies through the operator.
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### Rule 78 : Matching of details furnished by the e-Commerce operator with the details furnished by the supplier.-

The following details relating to the supplies made through an e-Commerce operator, as declared in FORM GSTR-8, shall be matched with the corresponding details declared by the supplier in FORM GSTR-1,

- (a) State of place of supply; and
- (b) net taxable value:

**Provided that** where the time limit for furnishing **FORM GSTR-1** under section 37 has been extended, the date of matching of the above mentioned details shall be extended accordingly.

**Provided further that** the Commissioner may, on the recommendations of the Council, by order, extend the date of matching to such date as may be specified therein.

#### Illustration [ICAI Study material]

- MN Ltd. sold i-phone 6S mobile via i-kart (ECO) to customers worth ₹55,60,000 for Jan, 2018 and some customers returned iphone worth ₹ 9,60,000 so net supply for Jan month would be ₹ (55,60,000) = 46,00,000.
- I-kart will furnish GSTR-8 (by 10 Feb), containing the net outward supply worth ₹ 46,00,000, the details of which will be matched with details of outward supplies furnished in GSTR-1 by MN Ltd.

- 9 **Communication of discrepancy : Where the details of outward supplies furnished by the operator under sub-section (4) (i.e. GSTR-8) do not match with the corresponding details furnished by the supplier under sec 37(GSTR-1) or sec 39,**

the discrepancy shall be communicated to both persons in such manner and within such time as may be prescribed

- 10 **Discrepancy is not Rectified by Supplier :** 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 **Payment of Interest :** 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 sec 50 (1)(i.e. 18% p.a.) on the amount so added from the date such tax was due till the date of its payment





### Rule 79. Communication and rectification of discrepancy in details furnished by the e-commerce operator and the supplier.-

- (1) **Any discrepancy** in the details furnished by the operator and those declared by the supplier shall be made available
  - to the supplier electronically in **FORM GST MIS-3** and
  - to the e-commerce operator electronically in **FORM GST MIS-4**
 on the common portal on or before the last date of the month in which the matching has been carried out.
- (2) **A supplier** to whom any discrepancy is made available under sub-rule (1) **may make suitable rectifications** in the statement of outward supplies to be furnished for the month in which the discrepancy is made available.
- (3) **An operator** to whom any discrepancy is made available under sub-rule (1) **may make suitable rectifications** in the statement to be furnished for the month in which the discrepancy is made available.
- (4) **Where the discrepancy is not rectified** under sub-rule (2) or sub-rule (3),
  - an amount to the extent of discrepancy shall be added to the output tax liability of the supplier in his return in **FORM GSTR-3** for the month succeeding the month in which the details of discrepancy are made available and
  - such addition to the output tax liability and interest payable thereon shall be made available to the supplier electronically on the common portal in **FORM GST MIS-3**.

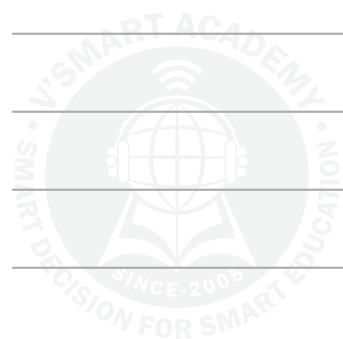
#### Enquiry by GST officer

12	<b>Notice by GST officer :</b> Any authority not below the rank of <b>Deputy Commissioner</b> may <b>serve a notice</b> , 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	<b>Furnishing of information ask by officer :</b> Every operator on whom a notice has been served under sub-section (12) <b>shall furnish the required information within fifteen working days of the date of service of such notice</b>
14	<b>Penalty for not furnishing information to officer :</b> 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, <b>be liable to a penalty which may extend to twenty-five thousand rupees</b>

**Manner of furnishing the details of State/UT in application for registration by TDS deductor / a TCS collector in a State where he doesn't have a physical presence [Rule 12(1A) of the CGST Rules][Notification No. 74/2018 CT dated 31.12.2018] [Notification No. 33/2019 CT dated 18.07.2019]**

When a person is applying for registration to **deduct or** collect tax in accordance with provisions of **sec 51 (TDS) or as the case may be**, sec 52 (TCS) in a State/UT where he does not have a physical presence, he shall mention name of said State/UT in Part A of prescribed application form for registration.

Further, the name of the State/UT in which his principal place of business is located is to be mentioned in Part B of the application form. States/UTs mentioned in Part A and Part B of the application form may be different.



## Clarification on collection of tax at source by Tea Board of India via Circular no 74/48/2018 dt 5/11/2018

### Issue -

Representation has been received from Tea Board, seeking clarification whether they should collect TCS under section 52 of the CGST Act from the sellers of tea (i.e. the tea producers), or from the auctioneers of tea who carry out the auction on behalf of such sellers and buyers or from both.

### Facts -

The buyer in the said auction makes payment of a consolidated amount to an escrow account maintained by the Tea Board. The said consolidated amount is towards the value of the tea, the selling and buying brokerages charged by the auctioneers and also the amount charged by the Tea Board from sellers, auctioneers and buyers.

Thereafter, Tea Board pays to the **sellers (i.e. tea producers)**, from the said escrow account, **for the supply of goods** made by them (i.e. tea) and to the **auctioneers for the supply of services** made by them (i.e. brokerage).

### Clarification -

it is clarified, that TCS at the notified rate, in terms of section 52 of the CGST Act, shall be collected by Tea Board respectively from the –

- (i) **sellers (i.e. tea producers) on the net value of supply of goods i.e. tea;** and
- (ii) **Auctioneers on the net value of supply of services (i.e. brokerage).**

## Various Illustrations & their solutions by CBIC

### 1. Whether a supplier of goods or services supplying through ecommerce operator would be entitled to threshold exemption?

#### Ans:-

As per Section 24(ix) of the CGST Act, 2017, every person supplying goods through an ecommerce operator shall be mandatorily required to register irrespective of the value of supply made by him.

However, a person supplying services, other than supplier of services under section 9 (5) of the CGST Act, 2017, through an e-commerce platform are exempted from obtaining compulsory registration provided their aggregate turnover does not exceed INR 20 lakhs (or INR 10 lakhs in case of specified special category States) in a financial year [N/N 65/2017 –CT dt 15/11/2017].

### 2. Whether TCS is required to be collected by ecommerce operators on supply of services by unregistered suppliers through their portal?

#### Ans:-

As per Section 24(ix) of the CGST Act, 2017, every person supplying goods or services through an ecommerce operator is mandatorily required to register.

However, vide N/N 65/2017 –CT dt 15/11/2017 a person supplying services, other than supplier of services under section 9 (5) of the CGST Act, 2017, through an e-commerce platform were exempted from obtaining compulsory registration provided their aggregate turnover does not exceed INR 20 lakhs (or INR 10 lakhs in case of specified special category States) in a financial year.

Since such suppliers are not liable for registration, ecommerce operators are not required to collect TCS on supply of services being made by such suppliers through their portal.

### 3. Whether e-Commerce operator is required to obtain registration in every State/UT in which suppliers listed on their e-commerce platform are located to undertake the necessary compliance as mandated under the law?

#### Ans:-

As per the GST act, registration for TCS would be required in each State / UT as the obligation for collecting TCS would be there for every intra-State or inter-State supply.

In order to facilitate the obtaining of registration in each State / UT, the e-commerce operator may declare the Head Office as its place of business for obtaining registration in that State / UT where it does not have physical presence.

***It may be noted that each State/UT has indicated one administrative jurisdiction where all e-commerce operators having business (but not having physical presence) in that State/UT shall register.*** The proper officer for the purpose of registration of ECOs has also been notified by each State/UT.



**4. Foreign e-commerce operator do not have place of business in India since they operate from outside. But their supplier and customers are located in India. So, in this scenario will the TCS provision be applicable to such ecommerce operator and if yes, how will foreign e-commerce operator obtain registration?**

**Ans:-** Where registered supplier is supplying goods or services through a foreign e-commerce operator to a customer in India, such foreign e-commerce operator would be liable to collect TCS on such supply and would be required to obtain registration in each State / UT.

It may be noted that each State/UT has indicated one administrative jurisdiction where all e-commerce operators having business (but not having physical presence) in that State/UT shall register.

The proper officer for the purpose of registration of ECOs has also been notified by each State/UT. If the foreign e-commerce operator does not have physical presence in a particular State / UT, he may appoint an agent on his behalf

**5. Is it necessary for e-commerce operators who are already registered under GST and have GSTIN, to have separate registration for TCS as well?**

**Ans:-** E-Commerce operator *has to obtain separate registration for TCS irrespective of the fact whether e-Commerce operator is already registered* under GST as a supplier or otherwise and has GSTIN

**6. Whether value of net taxable supplies to be calculated at gross level or at GSTIN level?**

**Ans:-** The value of net taxable supplies is calculated at GSTIN level.

**7. State the supplies on which TCS is not required to be collected?**

**Ans:-**

- On exempt supplies
- Supplies under reverse charge ambit, wherein recipient is liable to pay tax
- On supplies made by a composition taxpayer, as per sec 10(2)(d) he cannot make supplies through e-commerce operator & thus question of collecting TCS does not arise

On Import of goods or services or both, As this under reverse charge ambit

**8. I) It is very common that customers of ecommerce companies return goods. How these sales returns are going to be adjusted?  
II) Under Section 52, ecommerce operator collects TCS at the net of returns. Sometimes sales return is more than sales and hence can negative amount be reported?**

**Ans:-**

I) An e-commerce company is required to collect tax only on the net value of taxable supplies made through it. In other words, value of the supplies which are returned (supply return) may be adjusted from the aggregate value of taxable supplies made by each supplier (i.e. on GSTIN basis).

In other words, if two suppliers "A" and "B" are making supplies through an ecommerce operator, the "net value of taxable supplies" would be calculated separately in respect of "A" and "B". If the value of returned supplies is more than supplies made on behalf of any of such supplier during any tax period, the same would be ignored in his case.

ii) Negative amount cannot be declared. There will be no impact in next tax period also. In other words, if returns are more than the supplies made during any tax period, the same would be ignored in current as well as future tax period(s).

**9. Under multiple ecommerce models, Customer books a Hotel via ECO-1 who in turn is integrated with ECO-2 who has agreement with the hotelier. In this case, ECO-1 will not have any GST information of the hotelier. Under such circumstances, which e-commerce operator should be liable to collect TCS?**

**Ans:-** TCS is to be collected by that e-Commerce operator who is making payment to the supplier for the particular supply happening through it, which is in this case, will be ECO-2.

**10. Certain e-commerce operators who have been unable to obtain registration in the month of October, 2018 but have already collected TCS for the said month have expressed challenges in relation to the filing of such details in GTSR-8. It has been asked as to how these details are to be furnished on the common portal?**

**Ans:-** E-commerce operators, who have been unable to obtain registration in the month of October, 2018 but have already collected TCS for the said month, may furnish the details of TCS collected in the month of October, 2018 in the first return in FORM GTSR-8 to be filed after obtaining registration.



**Case Studies on ECO [ICAI Material]**

**Case Study 1:**

Mr. X is a supplier selling his own products through a web site hosted by him. Does he fall under the definition of an “electronic commerce operator”? Whether he is required to collect TCS on such supplies?

**Case Study 2:**

If we purchase goods from different vendors and are selling them on our website under our own billing. Is TCS required to be collected on such supplies?



FAQ - CBIC

Question 1:

Foreign e-commerce operator do not have place of business in India since they operate from outside. But their supplier and customers are located in India. So, in this scenario will the TCS provision be applicable to such e-commerce operator and if yes, how will foreign e-commerce operator obtain registration?

Answer:-

Where registered supplier is supplying goods or services through a foreign e-commerce operator to a customer in India, such foreign e-commerce operator would be liable to collect TCS on such supply and would be required to obtain registration in each State / UT. If the foreign e-commerce operator does not have physical presence in a particular State / UT, he may appoint an agent on his behalf.

Question 2:

Under multiple e-commerce model, Customer books a Hotel via ECO-1 who in turn is integrated with ECO-2 who has agreement with the hotelier. In this case, ECO-1 will not have any GST information of the hotelier. Under such circumstances, which e-commerce operator should be liable to collect TCS?

Answer:-

TCS is to be collected by that e-Commerce operator who is making payment to the supplier for the particular supply happening through it, which is in this case will be ECO-2.

