

# TDS AND TCS

## CHAPTER

# 11



## 11.1 Tax Deduction at Source (TDS) [Sec. 51 of CGST Act]

### Deductors of Tax at Source

Under the GST regime, section 51(1) empowers the Central Government to make it mandatory for the following persons (the deductor) to deduct tax at source (TDS) from payments made to the suppliers of taxable goods and/or services:

- (a) Central/State Government department or establishment;
- (b) Local Authority; and
- (c) Governmental Agencies.



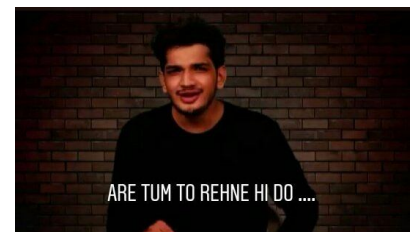
Further, the following persons are also notified u/s 51(1)(d) to deduct TDS, namely:-

- (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;
- (b) Society established by the Central Government or the State Government or a Local Authority;
- (c) Public Sector Undertakings (PSU).

### Categories of persons not liable to deduct TDS

Tax is not liable to be deducted at source in the following cases:-

- (i) When goods or services or both are supplied to the authorities under the Ministry of Defence, other than the authorities specified in the Annexure-A and their offices.
- (ii) When goods or services or both are supplied from a PSU to another PSU, whether or not a distinct person.
- (iii) When supply of goods or services or both takes place between one person to another person specified under clauses (a), (b), (c) and (d) of sec. 51(1) of the said Act.



**Circular** : The provisions of section 51 of the CGST Act are applicable only to such authority or a board or any other body set up by an Act of parliament or a State legislature or established by any Government in which 51% or more participation by way of equity or control is with the Government.

### Deductees

The deductees are the suppliers whose total value of supply of **taxable goods and/or services** under a contract exceeds Rs. 2,50,000/- exclusive of GST & cess as per the invoice. Further, TDS will be deducted even if supplier is a Composition Tax Payer.

### Rate of Deduction

The tax would be deducted @ 1% (CGST) of the payment made to the supplier (the deductee) of taxable goods and/or services, where the total value of such supply, under a contract, exceeds Rs. 2,50,000/- (excluding the amount of CGST, SGST, UTGST, IGST and cess indicated in the invoice). Thus, individual supplies may be less than Rs. 2,50,000/-, but if total value of supply under a contract is more than Rs. 2,50,000/-, TDS will have to be deducted. The deductors have to deduct tax at the rate of 1% from the payment made or credited to the supplier of taxable goods and/or services.

**Note:** It may be noted that Section 20 of IGST Act provides that in the case of inter-state supply, the deductor shall deduct TDS at the rate of 2% from the payment made or credited to the supplier.

Further, the value of supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than GST and GST Cess, if charged separately by the supplier.

### No Tax to be Deducted

When the location of the supplier as well as the place of supply is in a State/ Union territory which is different from the State/Union territory of registration of the recipient, there will be no TDS.

The above statement can be explained in the following situations:

- Supplier, place of supply and recipient are in the same state** : It would be intra-State supply and TDS (CGST plus SGST) 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, IGST would be levied. TDS to be deducted would be TDS (IGST) 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** : The supply would be intra-State supply and CGST and SGST would be levied. In such case, transfer of TDS (CGST + SGST of State B) to the cash ledger of the supplier (CGST + SGST of State A) would be difficult. So, in such cases, TDS would not be deducted.

Location of Supplier	Place of Supply	Registration of Recipient	TDS u/s 51
Rajasthan	Rajasthan	Rajasthan	Yes
Rajasthan	Rajasthan	Madhya Pradesh	No
Rajasthan	Madhya Pradesh	Madhya Pradesh	Yes
Ladakh	Ladakh	Ladakh	Yes

Ladakh	Daman & Diu	Daman & Diu	Yes
Ladakh	Ladakh	Daman & Diu	No

**Value of Supply :** The amount indicated in the invoice excluding the CGST, SGST, UTGST, IGST and GST cess element, is the value of supply.

**Deposit of TDS with the Government :** The amount of tax deducted at source should be deposited to the government account by deductor by 10<sup>th</sup> of the succeeding month.

**TDS Certificate :** A TDS certificate is required to be issued by deductor (the person who is deducting tax) in prescribed form (GSTR-7A) to the deductee (the supplier from whose payment TDS is deducted).

The contents of Form GSTR 7A (TDS Certificate) are given below:

1. TDS Certificate No.
2. GSTIN of deductor
3. Name of deductor
4. GSTIN of deductee
5. (a) Legal name of the deductee  
(b) Trade name, if any
6. Tax period in which tax deducted and accounted for in GSTR-7
7. Details of supplies
8. Amount of tax deducted

**Non - Remittance by the Deductor :** If the deductor has not remitted the amount deducted as TDS to the Government within the prescribed time limit, he is liable to pay interest u/s 50 (@ 18% p.a.) in addition to the amount of tax deducted.

**Reflection of Amount of TDS :** The amount of TDS is reflected in

- (i) Electronic Cash Ledger of deductee and
- (ii) Return filed by deductor under section 39(3) (GSTR-7).

The deductee can claim credit of the tax deducted, in his electronic cash ledger. This provision enables the Government to cross check whether the amount deducted by the deductor is correct and that there is no miss-match between the amount reflected in the electronic cash ledger and the amount shown in the return filed by deductor.

This is similar to existing practice in income tax relating to E-TDS returns filed by deductor and 26AS statement available for viewing the TDS remitted in respect of transactions by deductee.

**Refund on Excess / Erroneous Deduction :** The deductor or the deductee can claim refund of excess deduction or erroneous deduction. However, if the deducted amount is already credited to the electronic cash ledger of the supplier, the same shall not be refunded.

### Other Key Concepts Relating to TDS

**Registration of TDS deductors:**

- (i) A TDS deductor has to **compulsorily register** without any threshold limit whether or not separately registered under this Act.
- (ii) 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.
- (iii) The proper officer shall, after due verification, grant registration within 3 working days from the date of the application. Also, on a request or upon an enquiry or pursuant to any other proceeding under the Act, if the proper officer is satisfied that a person is no longer liable to deduct TDS u/s 51, then, the said officer may cancel the said registration.



### Filing of Returns by person required to deduct tax at source (TDS)

- A. **Monthly return** : Deductor shall furnish a monthly return in Form GSTR-7 electronically through the common portal.
- B. **Last date of filing return** : The details in GSTR-7 should be furnished on / before 10<sup>th</sup> of the month succeeding the calendar month in which tax has been deducted at source.
- C. **TDS details made available to deductees** : The details of TDS furnished by the deductor in GSTR-7 shall be made available electronically to each of the deductees on the common portal after filing of form GSTR-7 for claiming the amount of tax deducted in his electronic cash ledger after validation.

The deductees can take this amount as credit in his Electronic Cash Register and use the same for payment of tax liability.

**Example:** Mr. Nirbhay, a supplier makes a supply worth Rs. 5,00,000/- to BMC of Mumbai and issues the invoice of Rs. 5,00,000 plus 18% GST. While making the payment of Rs. 5,00,000/- to Mr. Nirbhay, the BMC shall deduct 2% of Rs. 5,00,000 (i.e. Rs. 10,000/-) as TDS.

The value for the purposes of TDS shall not include 18% GST. The TDS, so deducted, shall be deposited in the account of Government by 10<sup>th</sup> of the succeeding month.

The value so deposited in Government Account shall be reflected in the electronic cash ledger of Mr. Nirbhay (i.e. deductee) who would be able to use the same for the payment of tax or any other amount. The purpose of TDS is just to enable the Government to have a trail of transactions and to monitor and verify the compliances.

### When tax deduction is not required to be made under GST as per Standard Operating Procedure (SOP) on TDS under GST as clarified by Law Committee of GST Council

Tax deduction is not required in the following situations:

- 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  $\leq$  Rs. 2.5 Lakh.
- Receipt of services which are exempted from GST.
- Receipt of goods which are exempted from GST.

- 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 the location of the supplier and place of supply is in a State/UT which is different from the State/UT where the deductor is registered.
- g) All activities or transactions specified in Schedule III of the CGST Act, 2017, irrespective of the value.
- h) Where the tax is to be paid on reverse charge by the recipient i.e. the deductor.
- i) Where the payment is made to an unregistered supplier.
- j) Where the payment relates to “Cess” component.

## 11.2 Collection of Tax at Source [Sec. 52 of CGST Act]

- TCS refers to the tax which is collected by the electronic commerce operator (ECO) when a supplier supplies some goods or services through its portal and the payment for that supply is firstly collected by the ECO and then, it is paid by the ECO to the supplier.
- But, the provisions of TCS will not apply, if the payment in respect of supply of goods or services through ECO is directly received in the account of the supplier (i.e. not through ECO).
- The nature of working of ECO can be better understood with the following example:

**Example :** There are many e-commerce operators (hereinafter referred to as an operator) like Amazon, Flipkart, Meesho, etc. operating in India. These operators display on their portal products as well as services which are actually supplied by some other person to the consumer.

The goods and services belonging to the other supplier are displayed on the portals of the operators and consumers buy such goods/services through these portals. On placing the order for a particular product/service, the actual supplier supplies the selected product/service to the consumer.

The price/consideration for the product/service is collected by the Operator from the consumer and passed on to the actual supplier after the deduction of commission by the operator.

### Who is liable to collect TCS?

Every electronic commerce operator (ECO), not being an agent, has been mandated to collect tax at source (TCS) from the net value of the taxable supplies made through it by the other suppliers, whenever the ECO collects the consideration on the behalf of the supplier.



**Rate of TCS :** 0.5 % of the net value of intra-State taxable supplies. 1% of the net value of inter-State taxable supplies.

**Example :** Suppose a certain product is sold at Rs. 1,120 [including GST @ 12%] through an Operator by a supplier. The operator would collect tax @ 1% of the net value of Rs. 1,000 i.e. Rs. 10 in case of inter – State supplies.

### Net Value of the Taxable Supplies

Net Value of the Taxable	=	Aggregate value of taxable supplies of goods and /or services [other than notified services u/s	(-)	Taxable supplies returned
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Supplies	9(5) by all registered persons through ECO]	to suppliers
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Further, the value of a supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than GST and GST Cess, if charged separately by the supplier.

**Deposit of TCS by ECO to Government :** The TCS amount collected by the ECO has to be remitted to the Government within 10 days after the end of the month.

**Example:** If the TCS has been collected in the month of December, the amount has to be remitted into the government on or before 10<sup>th</sup> January.

**Illustration 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?

**Answer :** As per the definitions given in GST law, Mr. X will come under the definition of an “electronic commerce operator”. However, according to Section 52, TCS is required to be collected on the net value of taxable supplies made through it by other suppliers where the consideration is to be collected by the ECO. In cases, where someone is selling their own products through their own website, there is no requirement to collect tax at source as per the provisions of this Section. These transactions will be liable to GST at the prevailing rates.

**Illustration 2 :** If Mr. A purchase goods from different vendors and in turn Mr. A, is selling them on his own website under his own billing, Is TCS required to be collected on such supplies?

**Answer :** No. According to Section 52, TCS is required to be collected on the net value of taxable supplies made through E-commerce operator by other suppliers where the consideration is to be collected by the ECO. In this case, there are two transactions – Mr. A purchase the goods from the vendors, and those goods are sold through his own website. For the first transaction, GST is leviable, and will need to be paid to vendor, on which ITC shall be available to Mr. A. The second transaction is a supply on own account of Mr. A, and not by other suppliers and there is no requirement to collect tax at source. The transaction will attract GST at the prevailing rates.

### Filing of Monthly & Annual Statement by ECO

- An electronic statement [in Form GSTR – 8] has to be filed by ECO containing details of the outward supplies of the goods/or services effected through it, including the supplies returned through it and the amount collected by it as TCS during the month within 10 days after the end of each month in which supplies are made.
- Additionally, the ECO is also mandated to file an Annual Statement [in Form GSTR – 9B] on or before 31<sup>st</sup> day of December following the end of financial year.
- The Commissioner has been empowered to extend the due date for furnishing of monthly and annual statement by the person collecting tax at source.
- Further, the ECO shall not be allowed to furnish GSTR – 8 after the expiry of a period of 3 years from the due date of furnishing the said statement, except where the Government allows.
- **Rectification of errors/omissions in GSTR-8 :** If after submission of GSTR-8, the ECO discovers any discrepancy therein on his own [not being the result of any scrutiny, audit, inspection or

enforcement proceedings] it should rectify such discrepancy in GSTR-8 to be filed for the month during which such discrepancy is noticed, subject to payment of interest u/s 50.

The rectification is not allowed after 30<sup>th</sup> November following the end of the financial year or the actual date of filing of the relevant annual statement [GSTR-9B], whichever is earlier.

### Claim of TCS amount by the supplier

The registered supplier who has supplied the goods or services or both through the e-commerce operator shall claim credit, in his electronic cash ledger, of the amount collected and reflected in TCS Statement furnished in Form GSTR-8 by such operator.

### Notice to Operator

- An officer not below the rank of deputy commissioner can issue notice to an operator, asking him to furnish detail relating to volume of the goods/services supplied, stock of the goods lying in the warehouse/godowns, etc.
- The operator is required to furnish such details within 15 working days.
- In case an operator fails to furnish the information, besides being liable for penal action u/s 122, it shall also be liable for penalty up to Rs. 25,000 (CGST).

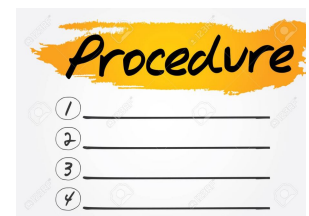


### Other Key Points Relating to Registration under GST

- Section 24(x) of CGST Act, 2017 makes it mandatory for every e-commerce operator who is required to collect tax at source to get registered under GST. The threshold limit of Rs. 20 lakhs (Rs. 10 lakhs for special category states) is not applicable to them.
- Further, section 24(ix) of the CGST Act, 2017 makes it mandatory for every person who supplies goods or services through such operator to get registered under GST.
- However, service suppliers supplying services through such ECOs have been exempted from registration until their turnover crosses threshold limit for registration.
- Similarly, suppliers supplying goods through such ECOs have also been exempted from registration until their turnover crosses threshold limit for registration in the preceding and current financial year, subject to fulfillment of certain specified conditions.

**Procedure of Registration by ECO:** Any person required to deduct tax in accordance with the provisions of section 52 shall electronically submit a registration application through the common portal. The proper officer shall, after due verification, grant registration within 3 working days from the date of the application.

Also, on a request or upon an enquiry or pursuant to any other proceeding under the Act, if the proper officer is satisfied that a person is no longer liable to collect TCS u/s 52, then, the said officer may cancel the said registration.



### Special procedure to be followed by ECO in respect of supply of goods made through it by the persons exempted from obtaining registration (hereinafter referred to as the said person)

- (i) the ECO shall allow the supply of goods through it by the said person only if enrolment number has been allotted on the common portal to the said person;

- (ii) the ECO shall not allow any inter-State supply of goods through it by the said person;
- (iii) the ECO shall not collect TCS u/s 52(1) in respect of supply of goods made through it by the said person; and
- (iv) the ECO shall furnish the details of supplies of goods made through it by the said person in the statement in FORM GSTR-8 electronically on the common portal.

Further, where multiple ECOs are involved in a single supply of goods through ECO platform, "the ECO" shall mean the ECO who finally releases the payment to the said person for the said supply made by the said person through him.

Special procedure to be followed by ECO in respect of supply of goods made through it by the persons opted for Composition Scheme (hereinafter referred to as the said person)

- (i) the ECO shall not allow any inter-State supply of goods through it by the said person;
- (ii) the ECO shall collect TCS u/s 52(1) in respect of supply of goods made through it by the said person and pay to the Government as per provisions of 52(3); and
- (iii) the ECO shall furnish the details of supplies of goods made through it by the said person in the statement in FORM GSTR-8 electronically on the common portal.

#### **Clarification regarding GST on Services Supplied by Restaurants through E-Commerce Operators [Circular]**

Sl.	Issue	Clarification
1.	Would ECOs have to still collect TCS u/s 52 ?	As 'restaurant service' has been notified u/s 9(5) of the CGST Act, 2017, the ECO shall be liable to pay GST on restaurant services provided w.e.f. 01.01.2022, through ECO. Accordingly, the ECOs will no longer be required to collect TCS.  On other goods or services supplied through ECO, which are not notified u/s 9(5), ECOs will pay TCS in terms of section 52.
2.	Would ECOs have to mandatorily take a separate registration w.r.t supply of restaurant service [notified u/s 9(5)] through them even though they are registered to pay GST on services on their own account?	As ECOs are already registered under GST (as a supplier of their own goods or services), there would be no mandatory requirement of taking separate registration by ECOs for payment of tax on restaurant service u/s 9(5).
3.	What would be the aggregate turnover of person supplying 'restaurant service' through ECOs?	It is clarified that the aggregate turnover of person supplying restaurant service through ECOs shall include the aggregate value of supplies made by the restaurant through ECOs. Accordingly, for threshold consideration or any other purpose in



		the Act, the person providing restaurant service through ECO shall account such services in his aggregate turnover.
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### Clarification on TCS liability in case of multiple E-commerce Operators in one transaction, in the context of Open Network for Digital Commerce (ONDC) [Circular]

1. In the current platform-centric model of e-commerce, the buyer interface and seller interface are operated by the same ECO. This ECO collects the consideration from the buyer, deducts the TCS u/s 52 of the CGST Act, credits the deducted TCS amount to the GST cash ledger of the seller and passes on the balance of the consideration to the seller after deducting their service charges.
2. In the case of the ONDC Network or similar other arrangements, there can be multiple ECOs in a single transaction – one providing an interface to the buyer and the other providing an interface to the seller. In this setup, buyer-side ECO could collect consideration, deduct their commission and pass on the consideration to the seller-side ECO.

**Issue:** Which ECO should deduct TCS and make other compliances u/s 52 of CGST Act in such situations, as in such models having multiple ECOs in a single transaction, both the Buyer-side ECO and the Seller-side ECO qualify as ECOs as per Sec. 2(45) of the CGST Act.

**Case 1:** In a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and where the supplier-side ECO himself is not the supplier in the said supply, who is liable for compliances u/s 52 including collection of TCS?



**Clarification:** In such a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and where the supplier-side ECO himself is not the supplier of the said goods or services, the compliances u/s 52 of CGST Act, including collection of TCS, is to be done by the supplier-side ECO who finally releases the payment to the supplier for a particular supply made by the said supplier through him.

e.g.: Buyer-side ECO collects payment from the buyer, deducts its fees/commissions and remits the balance to Seller-side ECO. Here, the Seller-side ECO will release the payment to the supplier after deduction of his fees/commissions and therefore will also be required to collect TCS, pay the same to the Government and also make other compliances u/s 52 of CGST Act.

In this case, the Buyer-side ECO will neither be required to collect TCS nor will be required to make other compliances in accordance with sec. 52 of CGST Act with respect to this particular supply.

**Case 2:** In a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and the Supplier-side ECO is himself the supplier of the said supply, who is liable for compliances u/s 52 including collection of TCS?



Clarification: In such a situation, TCS is to be collected by the Buyer-side ECO while making payment to the supplier for the particular supply being made through it.

e.g. Buyer-side ECO collects payment from the buyer, deducts its fees and remits the balance to the supplier (who is itself an ECO as per the definition in Sec. 2(45) of the CGST Act). In this scenario, the Buyer-side ECO will also be required to collect TCS, pay the same to the Government and also make other compliances u/s 52 of CGST Act.

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