

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 10th 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.

**NOTE :** The time limit for furnishing the TDS return u/s 51 of the CGST Act, 2017 in FORM GSTR-7 for the months of October, 2018 to July, 2019 is extended till 31.08.2019. [NN 26/2019 - C.T., dated 28.06.2019]

**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:

- a) Total value of taxable supply  $\leq$  Rs. 2.5 Lakh under a contract.
- b) 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.
- c) Receipt of services which are exempted from GST.
- d) 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 payment relates to a tax invoice that has been issued before 01.10.2018.
- i) 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.
- j) Where the tax is to be paid on reverse charge by the recipient i.e. the deductee.
- k) Where the payment is made to an unregistered supplier.
- l) Where the payment relates to "Cess" component.

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

Statutory Provisions	
Sec. 52	Collection of Tax at Source
Sub-sec.	Particulars
(1)	Notwithstanding anything to the contrary contained in this Act, every <b>electronic commerce operator</b> (hereafter in this section referred to as the "operator"), not being an agent, shall collect an amount calculated at <b>such rate not exceeding 1%</b> , as may be notified by the Government on the recommendations of the Council, <b>of the net value of taxable supplies</b> made through it by other suppliers <b>where the consideration with respect to such supplies is to be collected by the operator.</b>

4. A 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 or from both.
5. The matter has been examined. In exercise of the powers conferred under sub-section (1) of section 168 of the CGST Act, for the purpose of uniformity in the implementation of the Act, it is hereby 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).

#### **Frequently Asked Questions on TCS under GST as clarified by Law Committee of GST Council**

S. N.	Question	Answer
1.	Is it mandatory for every e-commerce operator to obtain registration?	No. As per section 24(x) of the CGST Act, 2017, every electronic commerce operator who is required to collect TCS u/s 52 (not every electronic commerce operator) has to obtain compulsory registration irrespective of the value of supply made by him.
2.	Whether a supplier of goods or services supplying through e-commerce operator would be entitled to threshold exemption?	As per Section 24(ix) of the CGST Act, 2017, every person supplying goods or services through an e-commerce operator who is required to collect TCS u/s 52 shall be mandatorily required to register irrespective of the value of supply made by him. However, as per NN 65/2017 - CT, dated 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 are exempted from obtaining compulsory registration provided their aggregate turnover does not exceed Rs. 20 lakhs (or Rs. 10 lakhs in case of specified special category States) in a financial year.
3.	Whether TCS is required to be collected by e-commerce operators on supply of services by unregistered suppliers through their portal?	In respect of supplies made by the service suppliers who are not liable for registration, e-commerce operators are not required to collect TCS on supply of services being made by such suppliers through their portal.
4.	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?	As per the extant law, 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.
5.	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?	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.
6.	Is it necessary for e-Commerce operators who are already registered under GST and have GSTIN, to have separate registration for TCS as well?	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.
7.	At what time should the e-commerce operator collect TCS?	TCS is to be collected once supply has been made through the e-commerce operator and where the business model is that the consideration is to be collected by the e-commerce operator irrespective of the actual collection of the consideration. For example, if the supply has taken place through the e-commerce operator on 30 <sup>th</sup> October, 2020 but the consideration for the same has been collected in the month of November, 2020, then TCS for such supply has to be collected and reported in the statement for the month of October, 2020.
8.	Whether TCS to be collected on exempt supplies?	No, TCS is not required to be collected on exempt supplies.
9.	Whether TCS to be collected on supplies on which the recipient is required to pay tax on reverse charge basis?	No, TCS is not required to be collected on supplies on which the recipient is required to pay tax on reverse charge basis.
10.	Whether TCS is to be collected in respect of supplies made by the composition taxpayer?	As per section 10(2)(d) of the CGST Act, 2017, a composition taxpayer cannot make supplies through e-commerce operator. Thus, question of collecting TCS in respect of supplies made by the composition taxpayer does not arise.
11.	Whether TCS is to be collected on import of goods or services or both?	TCS is not liable to be collected on any supplies on which the recipient is required to pay tax on reverse charge basis. As far as import of goods is concerned since same would fall within the domain of Customs Act, 1962, it would be outside the purview of TCS. Thus, TCS is not liable to be collected on import of goods or services.
12.	Whether payment of TCS through Input Tax Credit available with ECO for depositing TCS as per Section 52(3) of the CGST Act, 2017 is allowed?	No, payment of TCS is not allowed through Input Tax Credit of e-Commerce operator.
13.	It is very common that customers of e-commerce companies return goods. How these sales returns are going to be adjusted?	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 e-commerce 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.
14.	Under Section 52, e-commerce operator collects TCS on the net of returns. Sometimes sales return is more than sales and hence can negative amount be reported?	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).