

GST Alert **09/2018-19**
Date **15.09.2018**

TDS Provisions and Compliances under GST

Government vide Notification No. 33/2017-Central Tax dated 15.09.2017 had notified Section 51 of CGST Act, 2017 relating Tax Deduction at Source (TDS). However, implementation of it was stalled as the technology platform to implement the same was not available at the time, due to which actual date from which TDS was required to deducted was not notified till now.

Government vide notification no. 50/2018-CTR dated 13.09.2018 has now re-notified applicability of section 51 whereby TDS provisions will become **effective from 1.10.2018** onwards and persons mandated to deduct TDS will have to do so from 1.10.2018

Salient features of TDS Provisions are as under:

1. Following Persons are liable to deduct TDS under section 51 of GST laws:

- a. A department or establishment of the Central Government or State Government
- b. Local authority
- c. Government Agencies
- d. An Authority or a Board or any other body:
 - i. Set by an Act or Parliament or State Legislature; OR
 - ii. Established by any Government

And

having 51% or more Equity and Control to carry out any function

- e. Society established by Central or State Government or local authority under the Societies Registration Act, 1860
- f. Public Sector Undertakings

It may be noted that transaction between 2 Private companies or organisations will not be liable to TDS provisions.

2. Nature of Transactions covered:

Supply of any goods or services provided to the persons specified above shall be liable to TDS in the following situations:

a. In case of Intra State Transaction where all 3 parameters:

i. Location of Supplier,

ii. Place of supply of goods or services and

iii. Location of recipient

are in one state, then TDS @ 2% (CGST 1% + SGST 1%) shall be deducted.

b. Location of Supplier as well as the place of supply are in different states. In such cases, Integrated tax would be levied. TDS to be deducted would be TDS (IGST – 2%).

c. Supplier as well as the place of supply are in one State and the recipient is located in another State. **In such cases, TDS would not be deducted.**

In tabular form, above can be explained as under:

Transactions liable under TDS							
State – A			State – B		TDS		
Supplier	Recipient	Place of Supply	Place of Supply	Recipient	Supply	Tax Payable	TDS
Yes	Yes	Yes			Intra-State	CGST+SGST	Yes
Yes	Yes		Yes		Inter-State	IGST	Yes
Yes			Yes	Yes	Inter-State	IGST	Yes
Yes			State-C	Yes	Inter-State	IGST	Yes
Yes		Yes		Yes	Intra-State	CGST+SGST	No

3. Whether TDS is deductible on Invoices and received prior to 1.10.2018 where payment thereon is being released after 1.10.2018.

As per section 51 (1) of the Act, one is required to deduct tax from the payment made or credited to the supplier of taxable goods or services or both. In other words, Invoices issued prior to 1.10.2018 whose payments are being released on or after 1.10.2018 will also be subject to TDS

4. Whether TDS is deductible on Advances paid prior to 1.10.2018 whose invoices get raised after 1.10.2018.

A larger question arises here, whether TDS is deductible on invoices raised or payments made whichever is earlier as is the case in Income Tax Act or is TDS deductible purely as and when payment is being made. This can be best explained through an example.

Example

A Government Company has given a contract to build a bridge to a contractor for 100 crores. It paid 10 crores as Advance to the contractor in September 2018. In October 2018 contractor raised first invoice of 20 crores. Govt company after adjusting 5 crores advance paid earlier from 20 crores paid the remaining 15 crores in November 2018.

Questions:

1. Is TDS required to be deducted on 20 crores or 15 crores only
2. Is TDS required to be deducted in October 18 or November 18

Section 51 reads as under:

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

The words used are “deduct 1 % FROM the payment made or credited to the supplier”. There is no reference to the words invoice in the above provision. Payments are debited and not credited in the account of supplier and therefore constructive interpretation of above provision would be that as and when payment (in cash or kind) is made or accounted to the account of supplier liability to deduct TDS would arise. Another interpretation could be that as 1% is to be deducted **FROM** the payment being made and not **OF** the payment being made hence one could say that TDS is to be deducted from the value of the supply booked on or after 1.10.2018 but then question arises is TDS required to be deducted on payments being paid in October or thereafter on Invoices booked pre October 18.

In view of above interpretation answer to the above 2 questions in my opinion would be as under:

1. Is TDS required to be deducted on 20 crores or 15 crores only

TDS is to be deducted on 15 crores only because payment of 5 crores was made in September 2018 (pre TDS regime)

2. Is TDS required to be deducted in October 18 or November 18

TDS is required to be deducted in November 2018 because 15 crores are being paid in November 18.

Further, language of section 194C of the Income tax is a bit different in this regards interpretation of which is that TDS is required to be deducted on payment or invoice credited to the books whichever is earlier – section reads as under:

194C. (1) Any person responsible for paying any sum to any resident (hereafter in this section referred to as the contractor) for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and a specified person shall, **at the time of credit of such sum to the account of the**

contractor or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to—

(i) one per cent where the **payment is being made or credit is being given to an individual** or a Hindu undivided family;

(ii) two per cent where the payment is being made or credit is being given to a person other than an individual or a Hindu undivided family,

of such sum as income-tax on income comprised therein.

(2) Where any sum referred to in sub-section (1) is credited to any account, whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

(3) Where any sum is paid or credited for carrying out any work mentioned in sub-clause (e) of clause (iv) of the Explanation, tax shall be deducted at source—

(i) **on the invoice value** excluding the value of material, if such value is mentioned separately in the invoice; or

(ii) on the whole of the invoice value, if the value of material is not mentioned separately in the invoice.

We believe that above issue will create confusion in the transition period, we have represented the same to the relevant authorities to issue necessary clarifications.

5. Other key provisions are as under

A. TDS deduction is to be done if the total value of such supply, under a contract, exceeds Rs. 2.50 lacs. Thus, individual supplies may be less than Rs. 2,50,000/-, but if contract value is more than Rs. 2,50,000/-, TDS will have to be deducted.

B. TDS is to be deducted at following rates:

CGST – 1% + SGST – 1% = **Total – 2%**

OR

IGST – 2%

C. TDS will be deducted on the basic taxable value shown in the Tax invoice, in other word Value on which TDS is to be deducted shall be excluding CGST, SGST, IGST or Cess, if any.

- D. TDS so deducted must be paid to Government within 10 days from the end of the month in which deduction is made.
- E. Any excess payment or erroneous deduction shall be eligible as a refund to the deductor or deductee as per section 54 of CGST Act, 2017.
- F. Refund shall not be granted to deductor, if the amount has already been credited to electronic cash ledger of deductee.

6. Procedural aspects regarding TDS

- A. Person liable to deduct TDS is required to take separate registration vide form GST REG-07
- B. TDS deductor has to compulsorily register without any threshold limit. The deductor can obtain 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.
- C. The proper officer may grant registration after due verification and issue a certificate of registration in FORM GST REG-06 within a period of 3 working days from the date of submission of the application
- D. Recipient person who deducts TDS will have to file a return in form GSTR 7 on monthly basis, on filing of this, TDS so deducted will get reflected in Part C of GSTR 2A of the Supplier.
- E. Due date for filing GSTR 7 would be 10th of the month succeeding the month in which TDS is deducted. Therefore due dates for depositing TDS as well as filing TDS return both are same, as is the case with GSTR 3B. For eg. GSTR 7 for the month of October 18 will have to be filed on or before 10.11.2018.
- F. As per section 51 (5) of the Act read with rule 60 (6) of the CGST Rules supplier will have to show the TDS in his GSTR 2 after which the same will get credited to his Electronic Cash Ledger. Currently GSTR 2 is suspended and one cannot file the same. Hence same will have to be shown in table 6.2 of GSTR 3B for claiming the same.

- G. The deductor is required to give a TDS certificate in form GSTR 7A with following details:
- Contract Value
 - Rate of Deduction
 - Amount Deducted
 - Amount paid to Government
 - Any other particulars as may be prescribed by the Government
- H. The deductor shall be required to give a TDS certificate in form GSTR 7A within 5 days of filing return in form GSTR 7. TDS certificate shall be auto generated on the basis of information furnished in GSTR 7.
- I. If the certificate is not given to the supplier within the prescribed time limit, then the deductor shall be liable for payment of late fee of Rs. 200 (CGST 100 + SGST 100 or IGST 200) per day **per certificate** to be calculated from the expiry of such 5 days to the day he furnishes the certificate. Maximum penalty cap would be Rs. 10,000 (CGST 5,000 + SGST 5,000 or IGST 10,000)
- J. Penalty for late filing of TDS return is also Rs. 200 per day maximum to Rs. 10000/-.

We sincerely hope that the technology backend is ready for this important step.

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