

Treading the GST Path – 50!
FAQ on TDS (GST)
(A Team effort of Swamy Associates)

Q 1. What is TDS in GST law?

Section 51 of the CGST Act, 2017 (any reference to CGST Act, would refer to the corresponding State GST Act also) deals with Tax Deduction at Source (TDS) and the same is reproduced below.

51. Tax deduction at source. — (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 :

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.

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.

(2) 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) 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.

(4) 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.

(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.

This is similar to TDS provisions under the Income Tax law. This is applicable in the hands of

(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,

Whenever any taxable supplies are made to the above categories of persons by any supplier, the above persons are liable to deduct 1 % towards CGST and 1 % towards SGST (2 % in case of IGST) and remit the same to Government. This will be credited to the Electronic Cash Ledger of the supplier. The supplier, while discharging his GST liabilities, shall utilise the TDS credit available in his Electronic Cash Ledger.

Q 2. From which date, TDS provisions are effective?

Various sections of the CGST Act have been brought into force from various dates, vide notifications, such as 1/2017 C.T. and 9/2017 C.T. Vide Notification 39/2017 C.T. Dt. 15.09.2017, section 51 has come into force from 18.09.2017. But reference may be made to the following proviso in the notification.

Provided that the said persons shall be liable to deduct tax from the payment made or credited to the supplier of taxable goods or services or both with effect from a date to be notified subsequently, on the recommendations of the Council, by the Central Government.

Hence, though the section had come into effect, the liability to deduct TDS has not commenced. Now, vide Notification 50/2018 C.T. Dt. 13.09.2018, Notification 33/2017 has been superceded and 01.10.2018 has been appointed as the date from which the section 51 would into force and simultaneously the liability to deduct TDS would also commence.

Q 3. Apart from the categories of persons mentioned at clauses (a) to (c) of sub section (1) of Section 51, who are the other persons who are liable to deduct TDS?

As per clause (d) of sub section (1) of Section 51, the Government can notify further categories of persons who is liable to deduct TDS. Vide Notification 50/2018, the following persons have been notified.

(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 fifty-one per cent. 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.

So, TDS would be applicable for the following categories of service recipients from 01.10.2018.

(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, i.e.

(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 fifty-one per cent. 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.

Q 4. Is TDS applicable for supply of goods as well as services?

Yes. TDS is applicable for supply of goods or services or both, if the contract value of such supply is above Rs.2,50,000.

Q 5. What are the responsibilities of the supplier, if they supply goods or services or both to those persons, who are covered under Section 51 (1).

There are no specific statutory responsibilities in the hands of the suppliers. The responsibility to deduct TDS and other associated responsibilities are only to the recipients of the supply, falling under the categories mentioned in Section 51 (1). The suppliers shall only ensure whether the TDS deducted by the deductors are promptly paid; reflecting in their Electronic Cash Ledger and they are issued with certificates by the deductor.

Q 6. How to determine the value limit of RS.2,50,000 to decide on the applicability of TDS?

To quote the relevant provision, "where the total value of such supply, under a contract, exceeds two lakh and fifty thousand rupees". If there is a Purchase order for supply of goods or services or both, for a value exceeding Rs.2,50,000 then TDS provisions would be attracted. Against the Purchase Order, if several supplies are made under several invoices, even if the value of any particular invoice is less than Rs.2,50,000, TDS would apply. For example, as per the Purchase Order placed by a PSU against a supplier "A" for a total value of Rs.5,00,000, on 01.10.2018, A is clearing goods worth Rs.50,000. Even then TDS is applicable for this invoice, as the contract value is more than Rs.2,50,000. If the Purchase Order value itself is less than Rs.2,50,000 no TDS would apply. Single instances of sale would be construed as separate contracts for this purpose.

Further, while determining the value, the CGST, SGST, UTGST and IGST shall not be included. For example if the value of the goods or services being supplied is Rs.2,40,000 plus 18 % GST, totalling RS.2,83,200 TDS provisions will not apply, as the value, excluding GST is less than Rs.2,50,000.

Q 7. Whether the supplier has to deduct / indicate the TDS component in the invoice?

No. It may be recalled that even under the Income Tax law, TDS is the responsibility of the deductor and the TDS component need not be shown separately in the supply invoice.

Q 8. Explain in what type of supplies TDS would be attracted and for what type of supplies TDS would not be attracted?

Reference is invited to the following proviso under sub section (1) of Section 51.

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.

The effect of the above proviso is that if the location of supplier **and** the place of supply is in a State different from the State where the recipient is located, no TDS would be applicable. To clarify, this proviso would be attracted only when location of the supplier **and** the place of supply, are in **a State**, different from the State in which the recipient is registered. If the supplier as well as the place of supply is in State A and the recipient is in State B, this proviso would be attracted and no TDS would be applicable.

The reason being, if the supplier location and place of Supply is in, say the State of Maharashtra, the GST payable would be CGST and Maharashtra SGST. If the recipient in that case is situated in Tamil nadu, paying TDS as Maharashtra SGST by the Tamil Nadu recipient would be operationally difficult. In all other cases, TDS will apply.

The above legal position is explained by way of the following example.

Recipient location	Supplier location	Example	Place of supply	TDS applicable or not and nature of TDS to be paid
TAMIL NADU	TAMIL NADU	A TN supplier, supplying goods to a TN recipient	TAMIL NADU [Sec. 10 (1)(a) of IGST Act]	Yes. CGST and TN SGST
TAMIL NADU	KARNATAKA	A Karnataka supplier, supplying goods to TN buyer	TAMIL NADU [Sec. 10 (1)(a) of IGST Act]	Yes. IGST
TAMIL NADU	KARNATAKA	A Karnataka buyer, billing the goods on TN buyer, but despatching the goods to Andhra Pradesh, as directed by the TN buyer	TAMIL NADU [Sec. 10 (1)(b) of IGST Act]	Yes. IGST
TAMIL NADU	KARNATAKA	A Karnataka supplier, supplying goods to TN buyer, but using the goods in erection, commissioning installation at a Maharashtra site.	MAHARASHTRA [Sec. 10 (1)(d) of IGST Act]	Yes. IGST
TAMIL NADU	DELHI	TN Govt hires the services of a consultant from Delhi to conduct some feasibility study	TAMIL NADU [Sec.12 (2) (a) of the IGST Act]	Yes. IGST.
TAMIL NADU	KARNATAKA	A Chartered Accountant from Karnataka is auditing the accounts of the recipient in TN.	TAMIL NADU [Sec.12 (2) (a) of the IGST Act]	Yes. IGST.
TAMIL NADU	KARNATAKA	An employee of TN recipient, stays in a Hotel in Karnataka	KARNATAKA [Sec. 12 (3) (a) of the IGST Act]	No. Proviso under Section 51 (1)
TAMIL NADU	MAHARASHTRA	A person having his establishment in Maharashtra	TAMIL NADU [Sec. 12 (3) (a)	Yes. IGST

		owns a building in TN, which is rents out for the TN recipient	of the IGST Act]	
TELANGANA	TAMIL NADU	An executing of a PSU in Telengana is attending a training session conducted by a TN person, which is being held in Chennai (TN)	TELENGANA [Sec. 12 (5) (a) of the IGST Act]	Yes. IGST
HARYANA	DELHI	A transporter from Delhi is transporting the goods of a PSU in Haryana	HARYANA [Sec. 12 (8) (a) of the IGST Act]	Yes. IGST
GUJARAT	GUJARAT	A telecommunication company registered in Gujarat is providing telephone connections, internet connection, to a PSU in Gujarat	GUJARAT [Sec. 12 (11) (a) of the IGST Act]	Yes. CGST and Gujarat SGST
MAHARASTRA	MAHARASHTRA	A PSU in Maharashtra is receiving banking services from a Bank in Mumbai	MAHARASTRA [Sec. 12 (12) of the IGST Act]	Yes. CGST and Maharashtra SGST
GUJARAT	DELHI	A Gujarat based PSU is conducting mass recruitment drive in Delhi for which purpose, a Hall in Hotel in Delhi is hired	DELHI [Sec. 12 (3)(c) of the IGST Act]	No.

Q 9. A municipality in rural Andhra Pradesh is not supplying any goods or services and hence do not require any GST registration. Do they required to deduct TDS when they receive supplies?

Yes. As per Section 24 (vi) of the CGST Act, the municipality has to obtain registration and comply with TDS.

Q 10. What is the rate at which TDS has to be deducted?

In case of intra-state supplies involving CGST and SGST TDS of 1 % as CGST and 1 % as SGST has to be deducted by the recipient. In case of inter-state supplies involving IGST 2 % TDS has to be deducted as IGST.

Q 11. How TDS has been made applicable to IGST also?

As per clause (x) of section 20 of the IGST Act, the provisions of CGST ACT with regard to TDS are made applicable to IGST also. Further, the second proviso to section 20 fixes the rate of TDS @ 2 %.

Q 12. If the deductor has deducted TDS but the same is not reflecting the Electronic Cash Ledger of the supplier, can a supplier pay his GST liabilities, after deducting the TDS component?

No. The GST liability of the supplier based on the invoices has to be paid with the balance available in Electronic Cash Ledger and Electronic Credit Ledger. Once the deductor pays the TDS and files the return properly, then the same shall reflect in the supplier's Electronic Cash Ledger, which can be utilised subsequently.

Q 13. What are the obligations of the TDS Deductor?

- (i) The person responsible for deduction, if not already registered with GST shall apply for registration (Rule 12 of CGST Rules, 2017)
- (ii) The deductor shall pay the TDS deducted, within 10th of the succeeding month.
- (iii) Within five days of such payment, the Deductor shall issue a Certificate of deduction of tax at source, to the supplier.
- (iv) The deductor shall file a return in form GSTR 7 on or before 10th of succeeding month {Sec. 39 (3)}.

The detailed procedures to be followed by the Drawing and Disbursing Officers has been explained in CBIC's Circular No. 65/39/2018 DOR Dt. 14.09.2018

Q 14. What are the penal liabilities of the deductor?

If the deductor fails to issue certificate to the supplier, within five days of payment of TDS, he shall be liable to a late fee of Rs. 100 per day of delay, subject to maximum of Rs.5,000 (to the Government and not to the supplier!).

If the deductor fails to pay the TDS to Government account within the due date, the same can be recovered from him under section 73 or 74, along with interest under Section 50 (1).

Q 15. Pl given an example of TDS calculation.

Example 1.

Bill Value	:	Rs.3,00,000
CGST @ 6 %	:	Rs. 18,000
SGST @ 6 %	:	Rs. 18,000
Total	:	Rs.3,36,000

CGST TDS @ 1 % on Rs.3,00,000 = Rs.3,000 and SGST TDS @ 1 % on Rs.3,00,000 = Rs.3,000.

Example 2.

Bill Value	:	Rs.3,00,000
IGST @ 12 %	:	Rs. 36,000
Total	:	Rs.3,36,000

IGST TDS @ 2 % on Rs.3,00,000 = Rs.6,000.

Q 16. A PSU is receiving services of an Advocate where the liability to pay GST is on the service recipient, under reverse charge? Whether TDS provisions will apply in this case also? If so, how the TDS paid can be adjusted against the liability.

As per sub section (3) of section 9 of the Act the Government can notify the category of supplies where the tax shall be paid by the recipient, and all provisions of the Act shall apply to such recipient "as if he is the person liable for paying the tax". The said sub section (3) of Section 9 is reproduced below.

(3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both

The concept of TDS is that a tax payable by a person is deducted by the person who is making payment to such person, so that the tax is deducted at source itself. In respect of the cases notified under Section 9 (3), there is no liability at all in the hands of the supplier, requiring the recipient to deduct a part of the tax at source, as the entire tax is going to be paid only by the recipient. Further, since

the entire liability is to be discharged only by the recipient directly, the question of deducting TDS, issuing a certificate, crediting of such TDS into the Electronic Cash Ledger of the supplier, adjustment of such credit by the supplier while paying his tax liability would all become impractical.

Hence, even though there is no express provision to the effect that in case of RCM no TDS needs to be deducted, by harmonious reading of various provisions of law, it is felt that in cases where the service recipients themselves are liable to pay tax under reverse charge, there will be no applicability of TDS.

Q 17. What is the relevance of Notification 9/2017 C.T. Dt. 28.06.2017?

The said notification is reproduced below.

In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts intra-State supplies of goods or services or both received by a deductor under section 51 of the said Act, from any supplier, who is not registered, from the whole of the Central tax leviable thereon under sub-section (4) of section 9 of the said Act, subject to the condition that the deductor is not liable to be registered otherwise than under sub-clause (vi) of section 24 of the said Act.

2. This notification shall come into force with effect from the 1st day of July, 2017.

As per sub section (4) of section 9 of the where taxable supplies are made by an unregistered person to a registered person, the service recipient shall be liable to pay GST under reverse charge. This RCM was in force upto 12.10.2017 and has since been suspended vide Notification 38/2017 C.T. (Rates) Dt. 13.10.2017 upto 31.03.2018, which has since been further extended upto 30.09.2019 vide subsequent amendments.

The above notification provides exemption to those who are liable to TDS, from payment of any GST under RCM under Section 9 (4), if they are registered with the Department only for the purpose of TDS but are otherwise not liable to be registered.

In view of suspension of the reverse charge liability under Section 9 (4) itself, upto 30.09.2019 this notification is of no consequence as now.

Q 18. Is TDS deductible / payable on Advances?

As per Section 12 and 13 of the CGST Act, dealing with time of supply of goods and services respectively, GST is payable upon receipt of advance payment also. But as per Notification 66/2017 C.T. Dated 15.11.2017, the liability to pay GST on advances is not applicable for goods. The said Notification is reproduced below.

In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act) and in supersession of notification No. 40/2017-Central Tax, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 1254(E), dated the 13th October, 2017, except as respects things done or omitted to be done before such supersession, the Central Government, on the recommendations of the Council, hereby notifies the registered person who did not opt for the composition levy under section 10 of the said Act as the class of persons who shall pay the central tax on the outward supply of goods at the time of supply as specified in clause (a) of sub-section (2) of section 12 of the said Act including in the situations attracting the provisions of section 14 of the said Act, and shall accordingly furnish the details and returns as mentioned in Chapter IX of the said Act and the rules made thereunder and the period prescribed for the payment of tax by such class of registered persons shall be such as specified in the said Act.

It may be observed that the above notification is not an exemption notification, but a notification issued under Section 148, which reads as,

148. Special procedure for certain processes. — The Government may, on the recommendations of the Council, and subject to such conditions and safeguards as may be prescribed, notify certain classes of registered persons, and the special procedures to be followed by such persons including those with regard to registration, furnishing of return, payment of tax and administration of such persons.

Vide the above notification the time of supply of goods for all persons other than those who have opted for composition scheme, shall be as per Section 12 (2) (a), i.e.

(a) the date of issue of invoice by the supplier or the last date on which he is required, under sub-section (1) of section 31, to issue the invoice with respect to the supply.

It may be noted that the liability to deduct TDS would arise, as per Section 51, when payments are made for the supplies. For deduction and payment of TDS by deductor, the time of supply in the hands of the supplier is not at all relevant. The advances made towards supply of goods are also payment against such supplies and since there is no exemption as such, from payment of GST on advances for supply of goods, TDS is applicable even when advance payments are made against the supply of goods.

TDS is also applicable on advances paid for supply of services.

Q 19. Is TDS applicable for supplies received from a person, who has opted for composition scheme?

As per sub section (4) of Section 10, the person who has opted for composition scheme shall not collect any tax from the recipient. The concept of TDS envisages that when a person claims payment along with tax from specified recipients, the recipients shall deduct a portion of the tax while making payment to the supplier and remit such tax directly to the Government, and give credit of the same to the supplier, who shall adjust such tax against discharge of his tax liabilities. In case of supplies made by composition persons, when no tax is collected by the supplier from the recipient, the very basis of TDS is absent. Further, practically, the rate at which TDS is to be deducted is more than even the rate of tax under composition scheme. Even though there are no express provisions to the effect that no TDS is applicable in case of supplies received from composition persons, by a harmonious reading of the legal provisions, it is felt that TDS is not applicable for the supplies received from composition assesses.

Q 20. Is TDS applicable on receipt of supply of goods or services, which are exempted from payment of GST?

Section 51 mandates TDS only in case of "payments made to the suppliers of taxable goods or services or both". Exemption notifications are issued under Section 11 of the Act, whereby the tax leviable on goods or services or both can be exempted wholly or partly. If certain goods or services are exempted from payment of GST wholly, they cannot be considered as "taxable goods or services" and hence there shall be no applicability of TDS in such cases.

It may be noted that the term "taxable supply" as defined in section 2 (108) means supply of goods or services or both which is leviable to tax under this Act and by this definition, even exempt supplies are first taxable supplies, as there is a levy on them too. But, Section 51 does not use the expression taxable supply, but taxable goods, which term has to be given its natural meaning. Any other interpretation would defeat the purpose of granting exemption.

Q 21. Government / PSU is receiving supplies from a person, whose aggregate turnover is below Rs.20 lakhs and hence not registered under GST. But the goods or services supplied by him are otherwise liable to GST. Whether TDS applicable in such cases?

Such cases are covered under Section 9 (4) of the Act. In view of answer to Q 16, no TDS is applicable in such cases.

Q 22. A purchase order for supply was issued by Government whose value is Rs.2,40,000. As the amount was less than Rs.2,50,000, no TDS was deducted while making payment. As per the price escalation clause contained in the Purchase Order, the price was later raised to Rs.2,60,000 and the supplier is claiming Rs.20,000. What is the implication under TDS?

The non deduction of TDS at the first instance when payment of RS.2,40,000 was made is correct. Subsequently, since the contract value is revised to RS.2,60,000 TDS becomes applicable. So, when payment of Rs.20,000 is made on that Rs.20,000 appropriate TDS has to be deducted.

Q 23. Can the deductor pay TDS through the Input Tax credit available with them?

No. As per Section 41 (2), ITC can be used only for payment of output tax liabilities.

Q 24. What are the remedies for the supplier, if the deductor does not issue the Certificate in time, does not pay the deducted tax in time or does not file the return in time?

For delayed issue of Certificate by deductor a penalty of Rs.100 per day, subject to a maximum of Rs.5,000 is payable by the deductor. For late payment of TDS, appropriate interest is payable by the deductor. For delayed filing of return also, the deductor is liable for late fee, as per Section 47 (1) of the Act.

But all these penalties and late fees are only to Government and not to the supplier! May be these penal measures on deductors would act as a deterrent and ensure compliance on their part.

Q 25. If any of the specified persons, buys goods on High Sea Sales basis, what is the TDS implication?

In case of High Sea Sale, the liability to pay IGST would arise, upon clearance of the goods by filing Bill of Entry, by the High Sea Sales Buyer (specified persons for TDS purpose). The High Sea Sale seller is not at all liable to pay any GST for the transaction. This is somewhat similar to reverse charge liability under Section

9 (3). Since the supplier is not having any GST liability, there is no requirement to deduct TDS when payment is made for the high sea sale purchase, by the specified persons.

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