

TDS under GST

TDS

► Introduction:

- The concept of Tax Deduction at Source (TDS) was there in the erstwhile VAT Laws.
- GST Law also mandates Tax Deduction at Source (TDS) vide Section 51 of the CGST/SGST Act 2017, Section 20 of the IGST Act, 2017 and Section 21 of the UTGST Act, 2017.
- GST Council in its 28th meeting held on 21.07.2018 recommended the introduction of TDS from 01.10.2018.

SECTION 51 OF THE CGST ACT, 2017



Deductor?

Specified Category (u/s 51(1))

✓ (a) A dept. or an establishment of the CG or SG* ~~Ministry of Defence~~

✓ (b) Local authority



✓ (C) Governmental agencies

Notified Category (u/s 51(1)(d))

- ✓ (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 percent or more** participation by way of equity or control, to carry out any function
- ✓ (b) Society established by the CG or the SG or a LA
- ✓ (c) public sector undertakings*

Persons liable to deduct tax under GST Law:

- ▶ (a) a department or establishment of the Central/ 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.



The following class of persons under clause (d) of section 51(1) of the CGST Act, 2017 has been notified vide notification No. 33/2017 – Central Tax dated 15.09.2017 :-

(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 percent or more participation by way of equity or control, to carry out any function;

(b) society established by the Central/ State Government or a Local Authority under the Societies Registration Act, 1860;

(c) public sector undertaking

Notif No. 50/2018 dated 13th of September, 2018

- ✔ **Appointed 1st of October, 2018 for Sec 51**
- ✔ **Notified specified persons u/s 51(1)(d)**

Relevant provisions of TDS in GST

▶ 2.1 Provisions of Law:

GST Laws provide for tax deduction at source (TDS) by ‘**the deductor**’) from the payment made or credited to ‘the deductee’) at a prescribed rate.

2.2 Effective date:

Notification No. 33/2017 – Central Tax dated 15.09.2017 was issued by the CBIC to enable registration of tax deductors.

- ▶ However, Government suspended the applicability of TDS till 30.09.2018.

Now, it has been decided that the TDS provision would be made operative with effect from **01.10.2018**.

- ▶ Notification No. 50/2018- Central Tax dated 13.09.2018 has already been issued in this regard by CBIC.
- ▶ Similar notifications have been issued by respective State Governments.

RATE - TIME - VALUE



Under 1% CGST + 1%
SGST
(or)
2% under IGST Act



Transaction
basis
Payment made
(or)
Credited



250,000+

- * Under a Contract
- * Invoice Value excl
 - GST
 - Cess

Conditions for & amount of deduction

- a. Total value of taxable supply > Rs.2.5 Lakh under a single contract. This value shall exclude taxes & cess leviable under GST.
- b. If the contract is made for both taxable supply and exempted supply, deduction will be made if the total value of taxable supply in the contract > Rs.2.5 Lakh. This value shall exclude taxes & cess leviable under GST.
- c. Intra-State supply - TDS @ 1% each under CGST Act and SGST/UTGST Act is to be deducted.
- d. Inter-State supply - TDS @ 2% under IGST Act is to be deducted.
- e. When advance is paid to a supplier on or after 01.10.2018 to a supplier for supply of taxable goods or services or both.

For Inter-State supply: IGST: @2%
For Intra-State supply: SGST: @1% CGST: @ 1%

- ▶ Make payment of deducted tax to the Government **within 10 days after the end of the month in which deduction was made**
- ▶ Submit return in **Form GSTR-7 within 10 days after the end of the month in which deduction was made**
- ▶ Furnish system generated TDS certificate in **Form GSTR-7A** to the deductee **within 5 days of crediting payment of TDS to the Government i.e. furnishing FORM GSTR-7**

Special Cases

- ✘ **Exempted Goods or Services or both or RCM Cases U/S 9(3) & 9(4) or UR Supplier Goods on which GST is not leviable**
- ✘ **Eg: Petrol, Diesel, ATF, Alcohol for human consumption etc.,**
- ✔ **Advances for Goods or Services or both RCM Cases U/S 9(3) & 9(4) or Composite Supplier**

Compliances

51(2)



Deposit within **10 days** from the end of the month in which tax is deducted.

-E-Cash Ledger 
-Set-off – Liab. Ledger 

Rule 66



- File return in FORM **GSTR-07**
- by the **10th** of the succeeding month in which such tax deduction is made.

51(3)

- Issue TDS certif. in FORM **GSTR-7A**
- within five days** of date of remittance of TDS to the Govt.

Matching Concept

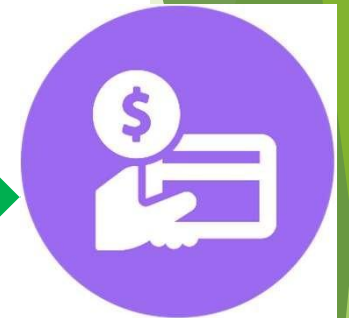


**Deductor files
GSTR 7**



TDS Credit received		
TDS credit received		0
Total Accepted Count	Total Accepted Taxable Value	Total Accepted Tax Deducted
0	0.00	0.00
Total Rejected Count	Total Rejected Taxable Value	Total Rejected Tax Deducted
0	0.00	0.00

**Auto-Population in
PART C of
GSTR 2A/4A
(Deductee)**



**Credit in
E- Cash Regsiter
51(5)**



- ▶ □ Failure to furnish the certificate in form GSTR-7A - Section 51(4)

- ▶ Rs. 200 per day (CGST + SGST)
- ▶ from the day after the expiry of such five day period until the failure is rectified, subject to a maximum amount of five thousand rupees.

- ▶ □ Late filing of TDS Returns - Sec 47

- ▶ Rs. 200 per day (CGST + SGST)
- ▶ during such failure continues, subject to a maximum amount of five thousand rupees

Late fee, Interest, Penalty (payable by the deductor) & Refund

- ▶ Fails to make payment of deducted tax: Both deducted tax and interest to be paid [**Sec 50(1) read with Sec 51(6)**]
- ▶ Fails to furnish FORM GSTR-7 within due date: Late fee payable (**Section 47(1)**): **Rs. 100/- + Rs. 100/- per day (Maximum Rs. 5000/-)** under CGST Act & SGST /UTGST Act separately
- ▶ Fails to furnish FORM GSTR-7A within due date: Late fee payable [**Section 51(4)**]: **Rs.100/- + Rs.100/- per day (Maximum Rs.5000/-)** under CGST Act & SGST/UTGS
- ▶ **In such cases recovery may be initiated u/s 73 or 74**
- ▶ If excess amount deducted: Refund may be claimed by the deductor / deductee as the case may be (if excess tax gets credited to the deductee then no refund shall be granted to the deductor)



Section 51(6)

Belated deposit

The deductor shall pay **interest** u/s 50(1) at a rate of **18%**

Section 51(7)

Defaulted in TDS Obligation

- Bonafide Case – Sec 73
- Mala-fide Case – Sec 74

Section 122(1)(v)

Penalty

- Rs. 10,000 (or)
- Tax not deducted/ evaded / Short Deduction

In case the amount is claimed by the taxable person in his electronic cash ledger

Refund to deductor is not possible in such case. However, deductee can claim a refund of tax subject to refund provisions of the act. Practically it is not possible to claim any erroneous deduction of TDS by the deductor.

In case the amount is not so claimed by the dealer

Refund of erroneous excess TDS deducted is possible to deductor, subject to refund provision and procedure of the act.

DETAILS	SECTION	RULES	FORMS
TDS DEDUCTION, RATE & CONDITION	51	66	
COMPULSORY REGISTRATION FOR DEDUCTORS	24(6)		
APPLICATION FOR REG.	25	12(1)	REG-07
GRANT OF REG. CERTIFICATE	25	12(2)	REG-06
CANCELLATION OF REG.		12(3) r/w 22	REG-08
PAYMENT OF TDS	51(2)	85(4)	PMT-05
PAYMENT THROUGH GST CHALLAN		87(2) & 87(3)	PMT-06
CONTACT BANK IF AMOUNT DEBITED BUT CIN NOT GENERATED		87(8)	PMT-07
TDS RETURN	51(5) r/w 39(3)	66(1)	GSTR-7A
ISSUE OF CERTIFICATE OF DEDUCTION	51(3)	66(3)	GSTR-7A
LATE FEE FOR LATE GSTR-07	47(1)		
LATE FEE FOR LATE GSTR-7A	51(4)		
INTEREST	51(6) r/w 50(1)		
PENAL PROVISION	51(7) r/w 73&74&122(1)(v) and 20(XXV)& 4 th provisio of sec 20 of IGST	142	DRC 1 TO DRC 8