

# TAX DEDUCTED AT SOURCE UNDER GST

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Tax deducted at source (TDS) means tax deducted by the recipient upon payment of consideration to the supplier of goods or services or both. The concept of TDS was borrowed from the Income Tax Act, 1961 which was introduced for reducing tax evasion by collecting tax at the time of generation of income. This helps the government to keep a trace on income earned by an individual. Similarly, the government has also brought the mechanism under GST law for keeping a trace of transaction of supply of goods or services or both.

## Specified Persons

As per section 51 of Central Goods and Service Tax Act, 2017 ("CGST Act, 2017")  
"(1) Notwithstanding anything to the contrary contained in this Act, the Government may mandate,

- A department or establishment of the Central Government or State Government; or
- Local authority; or
- Governmental agencies; or
- 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

The Government on recommendations of the Council, has enforced the applicability of section 51 w.e.f. 01-10-2018 vide Notification No.50/2018 Central Tax dated 13-09-2018. The following persons were also notified to whom the provisions of this Section shall apply –

- 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.

# Definition of 'Central Government' and 'State Government'

The term 'Government' has been defined Section 2(53) CGST Act, 2017 and under section 2(9) of Integrated Goods and Service Tax Act, 2017 ("IGST Act,2017") as Government means 'Central Government'. However, the term Central Government has not been defined under the CGST Act,2017 or the IGST Act,2017. Therefore, the relevant reference can be drawn from The General Clauses Act, 1897. Section 3(8) of the General Clauses Act, 1897;

"(8) "Central Government" shall, –

- In relation to anything done or to be done after the commencement of the Constitution, mean the President; and shall include,
- In relation to the administration of a Union territory, the administrator thereof acting within the scope of the authority given to him under article 239 of the Constitution];".

The Hon'ble Indian President is the Head of the State of Republic of India and he is also called the first citizen of India. He is a part of Union Executive along with the Vice-President, Prime Minister, Council of Ministers and Attorney-General of India.

The Executive Powers of the Union shall be vested in the President and shall be exercised by him either directly or through officer's subordinate to him and all executive actions shall be taken in the name of the President in accordance with Article 53 and Article 77 of the Indian Constitution

Thus, the term Central Government means the President and the Officers subordinate to him exercising the powers vested with the President and in the name of the President.

Similarly, the meaning of State Government is not defined under SGST Act 2017. Therefore, the definition can be borrowed from the General Clause Act, 1897 which is as –

(60) "State Government", – (c) as respects anything done or to be done after the commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean, in a State,the governor and in a Union territory, the Central Government;

And shall, in relation to functions entrusted under article 258A of the Constitution to the Government of India, include the Central Government acting within the scope of the authority given to it under that article];

The executive powers of the Governor shall be vested in the Governor and shall be exercised by him either directly or through officer's subordinate to him and all executive action to be taken in the name of Governor in accordance with Article 154 and 166 of Indian Constitution.

Thus, the term State Government means the Governor or the officers subordinate to him who exercise powers of the State vested in the Governor and in the name of the Governor.

## Definition of 'Local Authority'

Local authority is also defined under section 2(69) of CGST Act, 2017 as (69) "local authority" means–

1. A "Panchayat" as defined in clause (d) of article 243 of the Constitution;
2. A "Municipality" as defined in clause (e) of article 243P of the Constitution;

3. A Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;
4. A Cantonment Board as defined in section 3 of the Cantonments Act, 2006;
5. A Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;
6. A Development Board constituted under article 371 and 8article 371J of the Constitution; or
7. A Regional Council constituted under article 371A of the Constitution;

## **Definition of 'Governmental Authority' and 'Government Entity'**

The definition of Governmental Authority and Government Entity is defined under Notification No. 11/2017 – Central Tax (Rate) and 12/2017 – Central Tax (Rate) as –

“Governmental Authority” means an authority or a board or any other body,

1. Set up by an Act of Parliament or a State Legislature; or
  2. Established by any Government, with 90 per cent. or more participation by way of equity or control, to carry out any function entrusted to a Municipality under Article 243 W of the Constitution or to a Panchayat under Article 243 G of the Constitution.
- “Government Entity” means an authority or a board or any other body including a society, trust, corporation,
1. Set up by an Act of Parliament or State Legislature; or
  2. Established by any Government, with 90 percent or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or local authority.”

Therefore, every Governmental Authority and Government Entity are liable to deduct TDS under GST. By law of the land, every government establishment shall have a disbursing officer who is responsible for sanctioning the receipt and payment of Government.

As per Rule 2(xii) of General Financial Rules 2005, “Disbursing Officer” means a head of office and also any gazetted officer so designated by a department of Central Government, a head of department, or an administrator to draw bills and make payment on behalf of the Central Government. The term shall also include a Head of Department or an Administrator where he himself discharges such function.” Every person who is required to deduct TDS under section 51 of the CGST Act, 2017 shall be required to be registered as a ‘TDS Deductor’ under the Act using his TAN/PAN whether or not separately registered.

## **Threshold Limit for applicability of TDS**

TDS shall be applicable on taxable supplies of goods or services or both when the contract value exceeds Rs. 2,50,000/-. The threshold limit of Rs. 2,50,000/- is to be considered exclusive of taxes collected under GST. In the case of a contract having both exempt as well as taxable supply, then TDS is to be deducted only on taxable

portion and if the contract payments are made in instalments, then TDS is to be deducted on each instalment paid or credited to the supplier account.

For instance, Mr. A enters into a contract with Municipal Corporation for providing taxable and exempt supply. The value of Taxable and exempted supply is Rs. 3,00,000 and Rs. 1,50,000/- respectively. Invoices are raised based on percentage of completion method bifurcating the taxable and exempted supply then, TDS is required to be deducted only on taxable supplies as raised in the invoice. If bifurcation is not available, the deductor has to deduct TDS based on the payments made upto Rs. 3,00,000/-.

Proviso to section 51 highlights that no deduction shall be made if the place of supply is different from the State where the recipient is registered. The reason being, the tax deducted and paid to one State cannot be claimed in another State which will result in revenue gain in one state and loss in another state. Hence to avoid revenue loss and blockage of credit to the deductee, the government has brought in proviso to the section 51 of CGST Act, 2017 for non-deduction of TDS under such cases. Thus, if the place of supply and the location of recipient is in the same State i.e. State A and location of supplier is in State B then TDS can be deducted as IGST on such supplies.

## **Value of Supply**

The value of supply for the purpose of deduction of tax under section 51 is as per section 15 of the CGST Act, 2017. The deductee can claim the credit of the amount of TDS deducted and paid by the deductor in his electronic cash ledger.

## **Exemptions given to specified persons from TDS**

To eliminate the burden of compliance between the specified persons, the Government vide notification no.61/2018 and 73/2018 Central Tax, has notified that the provision of TDS will not be applicable on supplies made between one person to another person specified under clause (a), (b), (c) and (d) of sub section (1) of section 51 of CGST Act. Thus, if the supplier and the recipient of the supply are covered under Section 51, then TDS shall not be applicable for the supplies made between them.

The TDS provisions shall not apply to the authorities under the Ministry of Defence as per Notification No. 57/2018.

## **Clarifications issued by CBIC on TDS**

The CBIC, vide circular no. 76/50/2018 dated 31.12.2018 clarified that the requirement of 51% or more participation by way of equity or control is applicable to both clauses i.e. (i) & (ii) mentioned therein. Thus, an authority or board or any other body whether set up by an Act of Parliament or a state legislature or established by any government with 51% or more participation by way of equity or control to carry out any function would only be liable to deduct tax at source.

Also, corrigendum to the above circular has pointed out clearly that TCS under the provision of Income Tax Act, 1961 is not a tax on goods but an interim levy on the possible income arising from sale of goods by the buyer and to be adjusted against the final income tax liability of the buyer.

Therefore, it is been clarified that for the purpose of determination of value of supply under GST, TCS under the Income Tax Act, 1961 would not be includible as it is not having the character of tax.

## **Compliances to be met by TDS deductor**

1. The specified persons shall register under the GST law as a "tax deductor" by using PAN or TAN.
2. The TDS is to be deducted at the time of making the payment to the supplier of taxable goods or services.
3. The deductor is required to remit the tax deducted before 10<sup>th</sup> of succeeding month by filing FORM GSTR – 7 failing which late fee of Rs. 200 per day [Rs. 100 CGST + Rs. 100 SGST] will be levied upto a maximum of Rs. 5,000/- and interest u/s. 50 of CGST Act, 2017 is liable to be paid.
4. Certificate of TDS shall be issued to the deductee as per rule 66, made available within 5 days of depositing to the Government electronically in common portal in FORM GSTR-7A based on the return furnished by deductor.
5. The TDS credit shall appear in the "TDS and TCS Credit received" tab in the GST portal. The deductee can transfer this credit to the Electronic Cash Ledger by selecting and submitting the invoice-details with the help of OTP/DSC. This credit is available to the deductee in the Electronic Cash Ledger for setting off against the GST liability.
6. A composite dealer can also avail the TDS credit in his electronic cash ledger for utilisation against his output tax liability, since the same is not in nature of Input Tax Credit.
7. In case of non-compliance to deduct TDS by any deductor, then he is liable to pay interest u/s. 50(1) of CGST Act, 2017 in addition to the amount of tax to be deducted.
8. Also, penalty u/s. 122 of CGST Act, 2017 can be levied for non-deduction or non-remittance of TDS to the Government.  
In case of excess or erroneous deduction by the deductor, then deductor can file refund for the excess amount under section 54 of CGST Act, 2017 provided the incidence of tax has not been passed on to the deductee.