

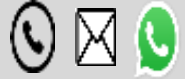


Lawgics

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Section 51 of CGST Act, 2017

51. Tax deduction at source.

- (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.

- (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) A certificate of tax deduction at source shall be issued in such form and in such manner as may be prescribed.
- (4) Omitted
- (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 subsection (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.

Rule 66 – Form and manner of submission of return by a person required to deduct tax at source

(1) Every registered person required to deduct tax at source under section 51 (hereafter in this rule referred to as deductor) shall furnish a return in FORM GSTR-7 electronically through the common portal either directly or from a Facilitation Centre notified by the Commissioner.

(2) The details furnished by the deductor under sub-rule (1) shall be made available electronically to each of the deductees on the common portal after the filing of FORM GSTR-7 for claiming the amount of tax deducted in his electronic cash ledger after validation.

(3) The certificate referred to in sub-section (3) of section 51 shall be made available electronically to the deductee on the common portal in FORM GSTR-7A on the basis of the return furnished under sub-rule (1).

Our Interpretation

Section 51(1)

Person liable to TDS

TDS (Tax Deduction at Source) is a mechanism under which specified Recipient shall deduct tax while making payment to supplier. As per Section 51(1), these specified Recipient are:

- a) A department / establishment of Central Govt or State Govt.
- b) Local Authority
- c) Government Agencies
- d) Such person or class of persons as notified by Government

Following persons are notified under 51(1)(d) of the CGST Act by the Central Government vide Notification No. 50/2018-CT dated 13.9.2018:

- (i) An Authority or Board set up by an Act of parliament or state legislature, having more than 51% or more power of participation
- (ii) Society established by Central Government or State Government
- (iii) Public Sector Undertaking
- (iv) Ministry of Defence

Categories of Persons Not liable to deduct TDS under GST:

Tax is not liable to be deducted at source in the following cases-

1. When Goods and/ or Services are supplied from a public sector undertaking to another public sector undertaking, whether or not a distinct person vide **Notification No.61/2018-CT dated 05-11-2018**.
2. When supply of goods and/or services takes place between one person to another person specified in clauses a,b,c & d of Sec.51 (1) of CGST Act vide **Notification No.73/2018-CT dated 31-12-2018**.
3. Authorities under Ministry of Defence (other than those specified in Annexure A of Notification) are exempt from TDS vide **Notification No.57/2018-CT dated 23-10-2018**.

TDS provisions are effective from 01.10.2018 vide Notification No. 50/2018-CT Dated 13.09.2018.

TDS rate & Threshold limit

TDS rate is 2% (@1% each under CGST Act and SGST Act), when total contract value exceeding is Rs. 2,50,000/- per contract towards taxable supply exclusive of tax & cess as per the invoice. Individual Supplies may be less than Rs.2,50,000/- but if total value under a contract exceeds Rs.2,50,000/-, TDS is required to be deducted.

Tax Deducted at Source under CGST Act = 1% of net value of taxable supplies (i.e., Excluding the amount of Central/State Tax, UTGST, IGST and Cess indicated in the Invoice).

NO TDS Deduction in cases where:

No.	Particulars	Situation A	Situation B	Situation C
1	Supplier's Location	Delhi	Delhi	Delhi
2	Buyer's Location	Delhi	Haryana	Haryana

3	Place of Supply	Delhi	Haryana	Delhi
4	GST Chargeable	SGST + CGST	IGST	SGST + CGST
5	TDS Applicability	Yes	Yes	NO, as no ITC to Recipient

Thus, it can be concluded that when both the supplier and place of supply are different from the location of recipient, then TDS provision would not apply for the simple reason that supplier has to charge SGST + CGST on such transaction and Recipient (Buyer) is not entitled to ITC in such cases and hence, TDS provisions shall **NOT APPLY** to such cases.

TDS on accrual or Cash Basis

TDS applicability arises on earlier of the following:

- (i) Payment to Supplier, or
- (ii) Credit entry in Books of Account

Thus, earlier of the above two, triggers GST applicability and hence advance payment to supplier, if any, by such specified deductor, cast liability on him to deduct and deposit TDS even without any supply being made by the supplier.

Section 51(2) read with Rule 66(1)	<u>Deposit of TDS</u> The deductor after collecting tax as TDS is liable to deposit the same to the Government by 10 th of succeeding month in GSTR-7 for all such deductions made during a month.
Section 51(3) read with Rule 66(3)	<u>TDS Certificate</u> The deductor shall furnish a system generated TDS certificate mentioning details such as the contract value, rate of deduction, amount deducted, amount paid to the Government in GSTR-7A within 5 days of depositing the TDS.
Section 51(4)	<u>Omitted</u> If the deductor fails to issue certificate within 5 days of deposit of TDS, the late fee of Rs. 100/- per day subject to maximum of Rs. 5,000/- shall be charged on the deductor under CGST Act as well as SGST Act. This provision has been <u>Omitted w.e.f. 01.01.2021</u> vide Finance Act, 2020
Section 51(5) read with Rule 66(2)	<u>Claim of TDS by deductee</u> The deductee shall claim TDS in Electronic Cash Ledger. A separate window is provided on the portal to claim TDS reflected in the return of the deductor in GSTR-7 on the GST portal.
Section 51(6)	<u>Interest for default</u> If deductor fails to deposit TDS to the Government in due time, then interest provision as per section 50(1) would apply which means that the interest at the rate of 18% will be charged on such TDS.
Section 51(7)	<u>Default in TDS payment</u> If the deductor did not deposit the TDS so collected, then liability shall be determined in the manner provided u/s 73 or 74.
Section 51(8)	<u>Refund of TDS</u> In case of excess deduction of TDS by the deductor, the refund can be claimed either by the deductor or the deductee, as the case may be, in accordance with provisions of Section 54 of the Act. But in case, the deductee has already claimed TDS in his electronic Cash Ledger, then Refund cannot be claimed by the deductor.

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