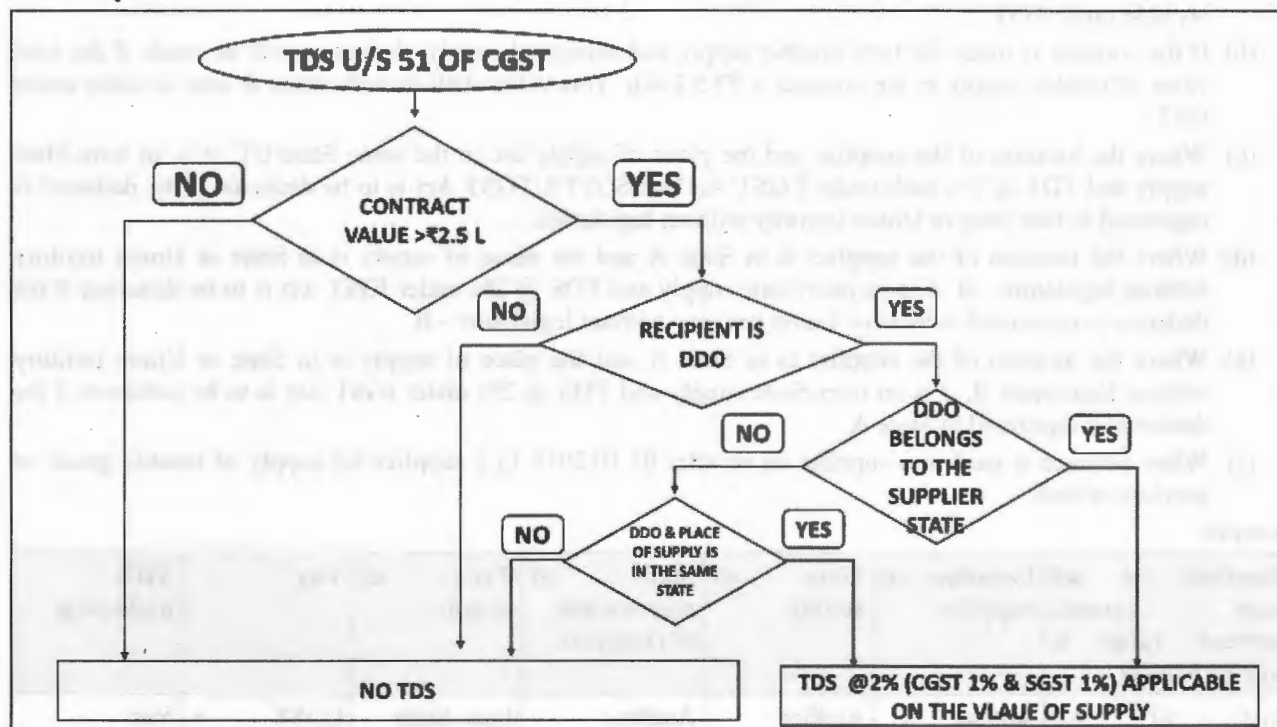


Chapter 27: TDS under GST

Summary:



27.0 The concept of Tax Deducted at Source (TDS) is one of the ways to collect tax based on certain percentages on the amount payable by the receiver on goods/services under Section 51 of the CGST Act, 2017.

Who could be liable to deduct TDS under GST law?

- (a) A department or an establishment of the Central Government or State Government; or
- (b) Local authority; or
- (c) Governmental agencies; or
- (d) 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; or
- (e) A society established by the Central or any State Government or a Local Authority and the society is registered under the Societies Registration Act, 1860.
- (f) Public sector undertakings.

The above category persons also called as Drawing and Disbursement Officers (DDO's) who are required to deduct tax in accordance with the provisions of the GST Laws.

Effective Date (w.e.f. 01.10.2018):

Now, it has been decided that the TDS provision would be made operative with effect from 01.10.2018. Notification No. 50/2018-CT, dated 13.09.2018 has already been issued in this regard by CBIC.

When tax deduction is required to be made in GST:

Tax is required to be deducted from the payment made/credited to a supplier, if the total value of supply under a contract in respect of supply of taxable goods or services or both, exceeds ₹2,50,000/- (Rupees two lakh and fifty thousand).

This value shall exclude the taxes leviable under GST (i.e. 'Central tax', 'State tax', 'UT tax', 'Integrated tax' & Cess).

Conditions for & amount of deduction:

Tax deduction is required if all the following conditions are satisfied –

- Total value of taxable supply > ₹2.5 Lakh under a single contract. This value shall exclude taxes & cess leviable under GST.
- 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 > ₹2.5 Lakh. This value shall exclude taxes & cess leviable under GST.
- Where the location of the supplier and the place of supply are in the same State/UT, it is an intra-State supply and TDS @ 1% each under CGST Act and SGST/UTGST Act is to be deducted if the deductor is registered in that State or Union territory without legislature.
- Where the location of the supplier is in State A and the place of supply is in State or Union territory without legislature - B, it is an inter-State supply and TDS @ 2% under IGST Act is to be deducted if the deductor is registered in State or Union territory without legislature - B.
- Where the location of the supplier is in State A and the place of supply is in State or Union territory without legislature B, it is an inter-State supply and TDS @ 2% under IGST Act is to be deducted if the deductor is registered in State A.
- 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.

Example:

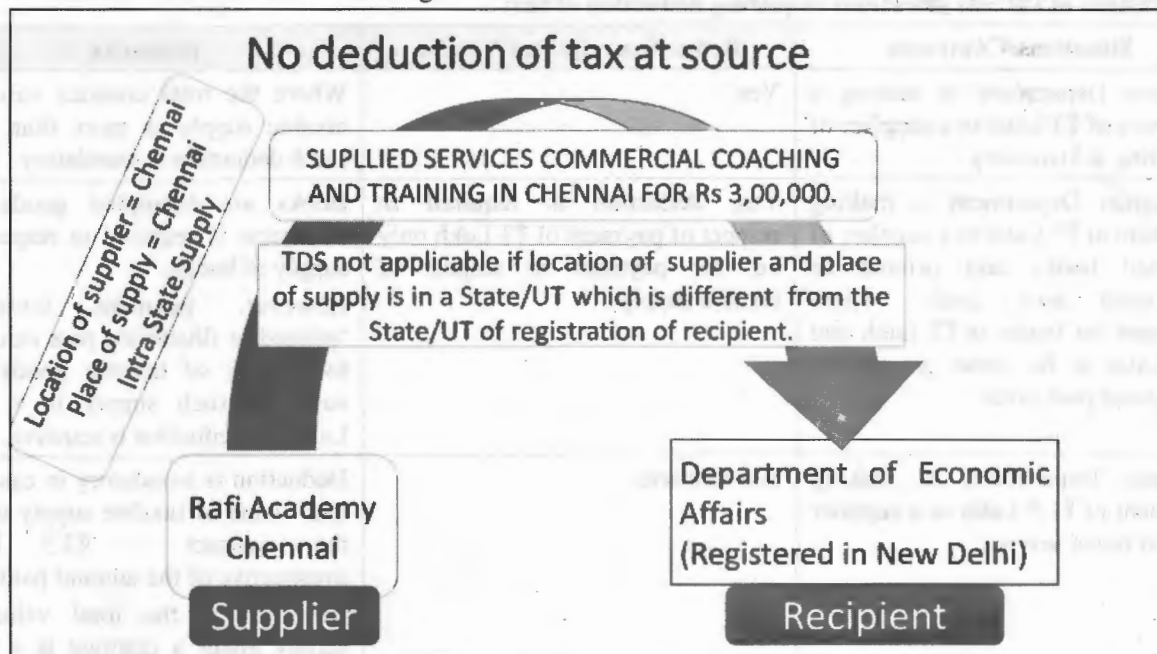
Situation (in all cases taxable contract value is over ₹2.5 lakh)	Location of supplier	Place of supply	State of registration of recipient	Type of supply	Tax	TDS deduction
Govt. of AP purchases taxable goods from a local supplier	Andhra Pradesh	Andhra Pradesh	Andhra Pradesh	Intra-State	CGST SGST	+ Yes
Govt. of TN engages a contractor of TN for renovation of TN Bhavan in New Delhi	Tamil Nadu	New Delhi	Tamil Nadu	Inter-State	IGST	Yes
Govt. of Punjab purchases taxable goods from a supplier in New Delhi	New Delhi	Punjab	Punjab	Inter-State	IGST	Yes
Govt. of AP engages a contractor of New Delhi for renovation of Andhra Bhawan in New Delhi	New Delhi	New Delhi	Andhra Pradesh	Intra-State	CGST SGST	+ No

When tax deduction is not required to be made under GST:

Tax deduction is not required in following situations:

- Total value of taxable supply ≤ ₹2.5 Lakh under a contract.
- Contract value > ₹2.5 Lakh for both taxable supply and exempted supply, but the value of taxable supply under the said contract ≤ ₹2.5 Lakh.
- Receipt of services which are exempted. For example, services exempted under notification No. 12/2017-Central Tax (Rate), dated 28.06.2017 as amended from time to time.

- (d) Receipt of goods which are exempted. For example, goods exempted under notification No. 2/2017-Central Tax (Rate), dated 28.06.2017 as amended from time to time.
- (e) Goods on which GST is not leviable. For example, petrol, diesel, petroleum crude, natural gas, aviation turbine fuel (ATF) and alcohol for human consumption.
- (f) Where a supplier had issued an invoice for any sale of goods in respect of which tax was required to be deducted at source under the VAT Law before 01.07.2017, but where payment for such sale is made on or after 01.07.2017 [Section 142(13) refers].
- (g) Where the location of the supplier and place of supply is in a State(s)/UT(s) which is different from the State/UT where the deductor is registered.



- (h) All activities or transactions specified in Schedule III of the CGST/SGST Acts 2017, irrespective of the value.
- (i) Where the payment relates to a tax invoice that has been issued before 01.10.2018.
- (j) Where any amount was paid in advance prior to 01.10.2018 and the tax invoice has been issued on or after 01.10.18, to the extent of advance payment made before 01.10.2018.
- (k) Where the tax is to be paid on reverse charge by the recipient i.e. the deductee.
- (l) Where the payment is made to an unregistered supplier.
- (m) Where the payment relates to "Cess" component.

Authorities under Ministry of Defence exempted from TDS provisions:

(Notification No. 57/2018-Central Tax, dated 23.10.2018)

- Central Government has amended the earlier Notification No 50/ 2018-Central Tax, dated 13th September 2018 to exempt certain authorities of Ministry of Defence from the compliance of TDS provisions.
- CBIC has now notified that TDS provisions prescribed under section 51(1)(a) of CGST Act shall not be applicable to authorities under the Ministry of Defence other than those specified in the annexure to notification, w.e.f 1st October 2018.

Exemption from TDS -Supplies made by Government Departments and PSUs to other Government Departments and vice-versa.

Central Government vide N. No. 73/2018-CT, dated 31st December, 2018 notified exemption to supplies made by Government Departments and PSUs to other Government Departments and vice-versa from TDS and thus insert the following proviso after the second proviso, namely:—

“Provided also that nothing in this notification (with effect from 01.10.2018. Notification No. 50/2018-CT, dated 13.09.2018 TDS mandatory) shall apply to the supply of goods or services or both which takes place between one

person to another person specified under clauses (a), (b), (c) and (d) of sub-section (1) of section 51 of the said Act.”

Section 51(1) of the CGST Act, 2017, the Government may mandate—

(b) A department or establishment of the Central Govt., or State Govt., or

(c) Local authority; or

(d) Governmental agencies; or

(e) Such persons or category of persons as may be notified by the Government on the recommendations of the Council, to deduct TDS.

Illustrations of various situations requiring deduction of tax:

Situations/Contracts	Deduction required Yes/No	Remarks
Finance Department is making a payment of ₹3 Lakh to a supplier of 'printing & stationery'.	Yes	Where the total contract value of taxable supply is more than ₹2.5 Lakh deduction is mandatory.
Education Department is making payment of ₹5 Lakh to a supplier of 'printed books and printed or illustrated post cards' where payment for books is ₹2 Lakh and ₹3 Lakh is for other printed or illustrated post cards.	Yes, deduction is required in respect of payment of ₹3 Lakh only i.e. for payment in respect of taxable supply.	Books are exempted goods; no deduction is required in respect of supply of books. However, payment involving 'printed or illustrated post cards' is for supply of taxable goods and value of such supply is > ₹2.5 Lakh; so deduction is required.
Finance Department, is making payment of ₹1.5 Lakh to a supplier of 'car rental service'	See Remarks	Deduction is mandatory in case the total value of taxable supply under the contract > ₹2.5 Lakh irrespective of the amount paid. However, if the total value of supply under a contract is < ₹2.5 Lakh, deduction is not required.
Health Department executed a contract with a local supplier to supply "medical grade oxygen" of ₹2.6 Lakh (including GST) and is making full payment.	No	Total value of supply as per the contract is ₹2.6 Lakh (including GST). Tax rate is 12%. So, taxable value of supply (excluding GST) stands at $₹2.6L \times 100/112 = ₹2.32L < ₹2.5$ Lakh Hence, deduction is not required.
Municipal Corporation of Kolkata purchases a heavy generator from a supplier in Delhi. Now, it is making payment of ₹5 Lakh and IGST @ 18% on ₹5 Lakh for such purchase.	Yes, deduction is required @ 2%	Deduction is required in case of inter-State supply and if the value of taxable supply under a contract exceeds ₹2.5 Lakh.
Fisheries Department is making a payment of ₹10 Lakh to a contractor for supplying labour for digging a pond for the purpose of Fisheries.	No	This supply of service is exempt in terms of Sl. No. 3 of notification No.12/2017 – Central Tax (Rate) dated 28.06.2017 and hence deduction is not required
Municipality is making payment of ₹5 Lakh to a supplier in respect of cleaning of drains where the value of supply of goods is not more than 25% of the value of composite supply.	No	This supply of service is exempt in terms of Sl. No. 3A of notification No.12/2017 – Central Tax (Rate) dated 28.06.2017 as amended by notification no. 2/2018- Central Tax (Rate) dated 25.01.2018 and hence deduction is not required.

Situations/Contracts	Deduction required Yes/No	Remarks
Government school is making a payment of ₹3 Lakh to a supplier for supply of cooked food as mid-day meal under a scheme sponsored by Central/State Government.	No	This supply of service is exempt in terms of Sl. No. 66 of Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017 as amended and hence deduction is not required.
Health Department is making payment of ₹10 Lakh to a supplier for supply of Hearing Aids.	No	This supply of goods is exempt in terms of Sl. No. 142 of Notification No. 2/2017-Central Tax (Rate), dated 28.06.2017 as amended and hence deduction is not required.

Valuation of supply for deduction of TDS and applicable rates with illustrations:

For the purpose of deduction of TDS, the value of supply shall exclude the taxes leviable under GST (i.e. 'Central tax', 'State tax', 'UT tax', 'Integrated tax' & Cess). Thus, no tax shall be deducted on 'Central tax', 'State tax', 'UT tax', 'Integrated tax' and cess component levied on supply. No deduction of tax and cess should also be made on the value of exempted goods or services or both even if the exempt and taxable supply are billed together.

Note: Suppose three separate contracts for supply are given to M/s ABC by the Health Department of the Government of West Bengal and the value of taxable supply is below ₹2.5 Lakh in case of each contract though their combined value is more than ₹2.5 Lakh; in such case no deduction is required to be made since value of taxable supply in neither of the contract exceeds ₹2.5 Lakh.

Rate of deduction of tax:

There are 4 types of taxes in GST-Integrated Tax (IGST), Central Tax (CGST) and State Tax (SGST)/Union territory Tax (UTGST). The deduction in case of intra-State supply (supply within a State) will be CGST & SGST (in case of Union territory without legislature, it will be CGST & UTGST), and the deduction in case of inter-State supply (supply from one State to another) will be IGST.

Rate of such deduction is @ 2% [i.e. 1% each on CGST & SGST/UTGST component] on the amount paid/credited in respect of intra-State supply & @ 2% [as IGST] on the amount paid/credited in respect of inter-State supply.

Example 1: Supplier X makes supply worth ₹11,800/- (inclusive of GST) to a Municipality where contract for supply is for ₹15,00,000/-. The rate of GST is 18%. Supplier and the deductor are in the same State.

Find the following:

- Whether TDS to be deducted by Municipality?
- Net payment to Supplier X after TDS?

Answer:

- Yes.
- Following payment is being made by this Municipality to X: ₹10,000 (value of Supply) + ₹900 (Central Tax) + ₹900 (State Tax).

Value of supply = ₹10,000/- (₹11,800 x 100/118)

Tax to be deducted from payment: Central Tax = 1% on ₹10,000/- = ₹100/-; State Tax = 1% on ₹10,000/- = ₹100/-

Payment due to X after TDS as per GST provisions: ₹11600/- (i.e. ₹11,800 - 200)

Example 2: Supplier Y of Mumbai makes taxable supply worth ₹10,000/- & exempted supply worth ₹20,000/- in an invoice/bill of supply to Finance Deptt. of GoI located in New Delhi where contract for supply is for ₹6,00,000/- (₹2,60,000 for taxable supply including GST and ₹3,40,000 for exempted supply). The rate of GST is 18%. Following payment is being made by GoI to Y: ₹10,000/- (value of taxable Supply) + ₹1,800 (Integrated Tax) + ₹20,000/- (value of exempted Supply). Whether any deduction of tax is required?

Answer: No.

Value of taxable supply in the contract

= ₹2,60,000/- (including GST)

Value of such contract excluding tax = $260000 \times 100/118 = ₹2,20,340/-$

Since, the value of taxable supply in the contract does not exceed ₹2.5 Lakh, deduction of tax is not required.

Example 3: Supplier ZA is a person registered under the composition scheme in Jharkhand who makes taxable supply worth ₹10,000/- to a Local Authority of Jharkhand where value of taxable supply under the contract is for ₹2,55,000/-

Find the TDS if any?

Answer:

Following payment is being made by the Local Authority of Jharkhand to ZA:

₹10,000/-

Value of taxable supply under the contract is ₹2,55,000/- which is more than ₹2.5 Lakh and hence deduction of tax is required.

TDS towards:

CGST = 1% on ₹10,000 = ₹100

SGST = 1% on ₹10,000 = ₹100

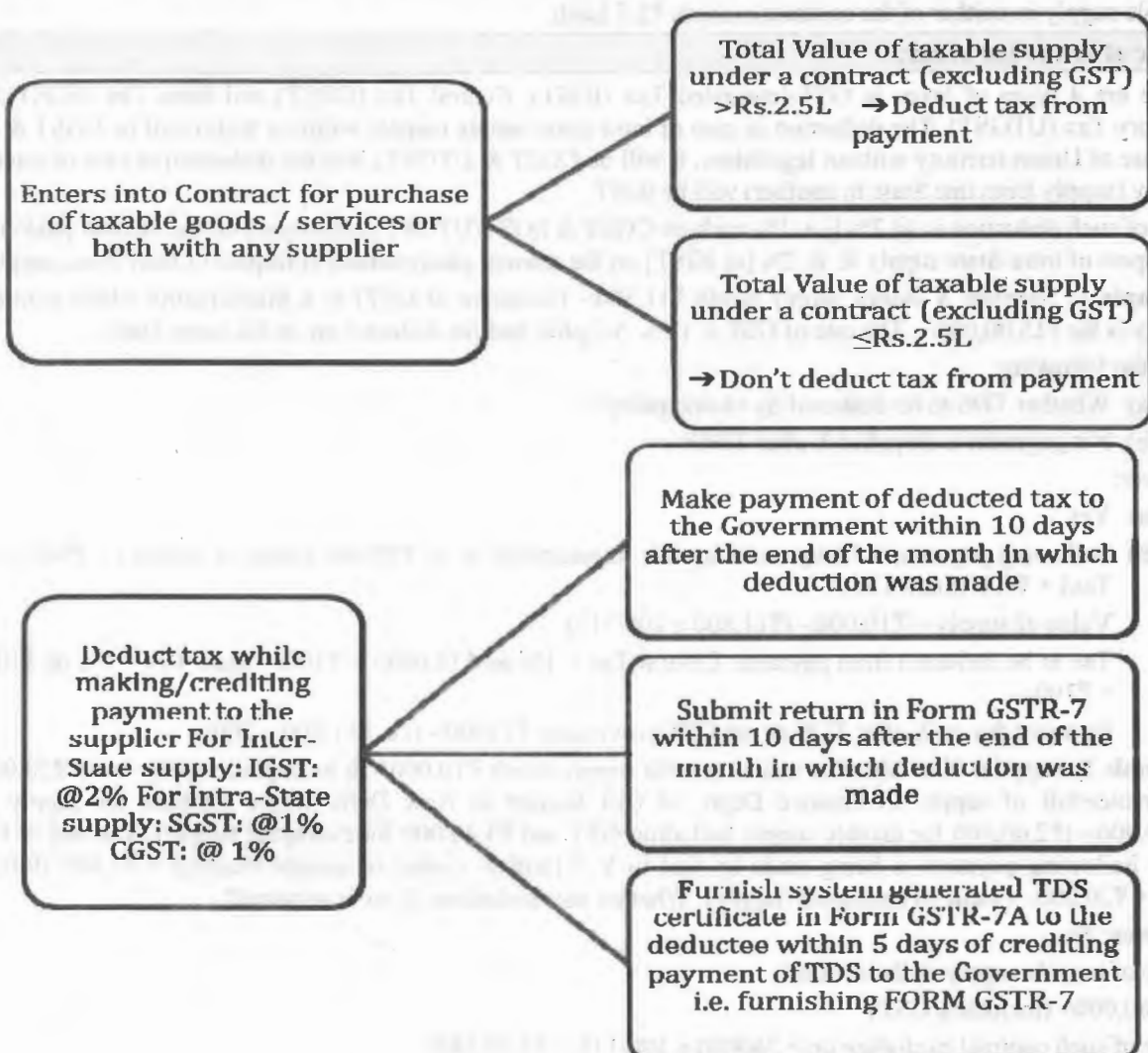
Total TDS = ₹200

Brief Diagrammatic presentation of the TDS provisions in GST:

Deductor is required to take registration [Sec 24(vi)]

Registration to be done through the common portal www.gst.gov.in by using PAN/TAN.

It is in addition to normal registration.



Details of tax deducted and tax collected to be made available to the deductee and collectee respectively on the common portal after filing of GSTR-7 and GSTR-8 respectively [Rule 66(2) of the CGST Rules] [Notification No. 31/2019-CT, dated 28.06.2019]

Sub-rule (2) of rule 66 has been amended to lay down that the details of TDS furnished by the deductor in GSTR-7 shall be made available electronically to each of the deductees on the common portal after filing of Form GSTR-7 for claiming the amount of tax deducted in his electronic cash ledger after validation.

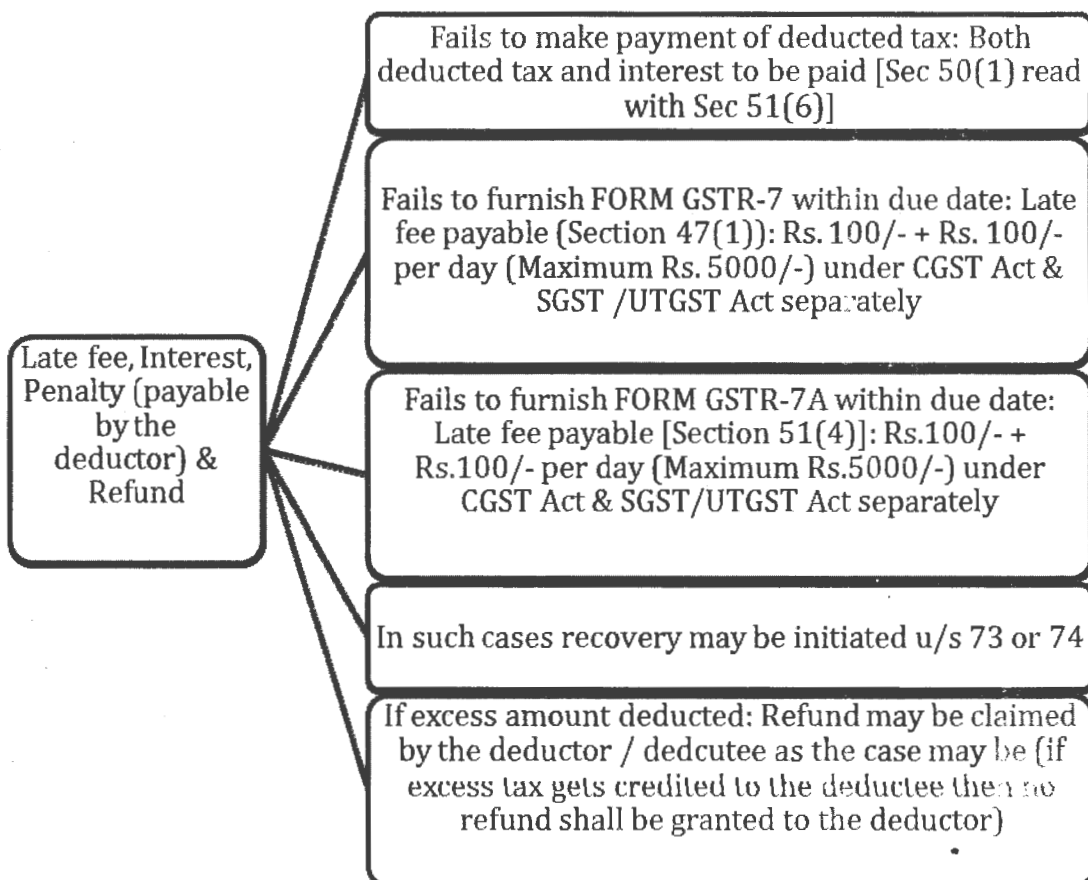
Similarly, the details of TCS furnished by operator in GSTR-8 were made available to each supplier in Part C of Form GSTR-2A on the common portal after the due date of filing of Form GSTR-8 under rule 67(2) of the CGST Rules.

Sub-rule (2) of rule 67 has been amended to provide that the details of TCS furnished by the deductor in GSTR-8 is made available electronically to each of the deductees on the common portal after filing of Form GSTR-8 for claiming the amount of tax collected in his electronic cash ledger after validation.

As per Finance Act, 2020, Deductor of TDS need not issue certificate of TDS (Sec. 51):

Deductor of GST TDS is not required to issue any TDS certificate. It means the deductee can take credit of tax deducted on the basis of details of tax deducted and uploaded by the deductor under section 39(3) of CGST Act, 2017.

The details are available in the GSTR-7 return filed by the deductor will be auto populated in GSTR-2A of deductee. Hence, any further certificate is not required.



Example 4: X Ltd supplier has received two different purchase orders from Education Department a unit of State Government of Tamil Nadu specified under Section 51. The details of two purchase orders are—

- (a) Purchase Order No. 001 for ₹3,00,000 (inclusive of tax ₹60,000)
- (b) Purchase Order No. 002 for ₹3,50,000.

Person has received goods in the month of July 20XX. The bills are approved and payment is made on 15-8-20XX.

Find the following—

- Quantum of TDS and person liable to deduct TDS u/s 51.
- Last date of payment of TDS
- Date of furnishing certificate to supplier (i.e. Form GSTR-7A)
- Date of furnishing return (i.e. From GSTR-7)
- Penalty for late furnishing of Form GSTR-7A

Answer:

- TDS @2% on Purchase Order No. 002 = ₹7,000
(₹3,50,000 x 2%)

Person liable to deduct TDS is Education Department of T.N. State.

Note: Purchase Order No. 001, value after deducting tax ₹2,40,000 (i.e. ₹3,00,000 – 60,000) and not attract TDS provision u/s 51 of CGST Act, 2017

(b) Last date of payment of TDS is 10-09-20XX

(i.e. Specified person shall be paid to the credit of the appropriate Government within 10 days after the end of the month in which such deduction is made)

(c) Date of furnishing certificate to supplier (i.e. Form GSTR-7A)

Last date = 15-9-20XX

(i.e. certificate is required to be furnished within 5 days of crediting the amount to the appropriate Government)

(d) Date of furnishing return (i.e. From GSTR-7)

Last date of furnishing return = 10-09-20XX

(i.e. Submit return in Form GSTR-7 within 10 days after the end of the month in which deduction was made).

(e) Penalty for late furnishing of Form GSTR-7A

If the certificate is not furnished (in our example by 15-9-20XX) the person will be liable for payment of late fee of ₹100 per day from 16-9-20XX until the failure is rectified or ₹5,000 whichever is less.

Note: Late filing of return with only IGST payment then there is no penalty.

Example 5: Manihar Enterprises, registered in Delhi, is engaged in supply of various goods and services exclusively to Government departments, agencies etc. and persons notified under section 51 of the CGST Act, 2017. It has provided the information relating to the supplies made, their contract values and the payment due against each of them in the month of October, 20XX as under:

S.No.	Particulars	Total contract value (inclusive of GST) (₹)	Payment due in October, 20XX (₹)
(i)	Supply of stationery to Fisheries Department, Kolkata	2,60,000	15,000
(ii)	Supply of car rental services to Municipal Corporation of Delhi	2,95,000	20,000
(iii)	Supply of a heavy machinery to Public Sector Undertaking located in Uttarakhand	5,90,000	25,000
(iv)	Supply of taxable goods to Delhi office of National Housing Bank, a society established by Government of India under the Societies Registration Act, 1860	6,49,000	50,000
(v)	Interior decoration of Andhra Bhawan located in Delhi. Service contract is entered into with the Government of Andhra Pradesh (registered only in Andhra Pradesh).	12,39,000	12,39,000
(vi)	Supply of printed books and printed post cards to a West Delhi Post Office [Out of total contract value of ₹ 9,72,000, contract value for supply of books (exempt from GST) is ₹7,00,000 and for supply of printed post cards (taxable under GST) is ₹ 2,72,000.]	9,72,000	50,000 for books & 20,000 for printed post cards
(vii)	Maintenance of streetlights in Municipal area of East Delhi* [The maintenance contract entered into with the Municipal Corporation of Delhi also involves replacement of defunct lights and other spares. However, the value of supply of goods is not more than 25% of the value of composite supply.] *an activity in relation to any function entrusted to a Municipality under article 243W of the Constitution	3,50,000	3,50,000

You are required to determine amount of tax, if any, to be deducted from each of the receivable given above assuming the rate of CGST, SGST and IGST as 9%, 9% and 18% respectively.

Will your answer be different, if Manihar Enterprises is registered under composition scheme?

(CA Final RTP May 2019)

Answer:

S. No.	Particulars	Total contract value (₹)	Payment due (₹)	Tax to be deducted		
				CGST (₹)	SGST (₹)	IGST (₹)
(i)	Supply of stationery to Fisheries Department, Kolkata	2,60,000	15,000	--		
(ii)	Supply of car rental services to Municipal Corporation of Delhi	2,95,000	20,000	--		
(iii)	Supply of a heavy machinery to Public Sector Undertaking located in Uttarakhand	5,90,000	25,000			500
(iv)	Supply of taxable goods to Delhi office of National Housing Bank, a society established by Government of India under the Societies Registration Act, 1860	6,49,000	50,000	500	500	
(v)	Interior decoration of Andhra Bhawan located in Delhi	12,39,000	12,39,000	--		
(vi)	Supply of printed books and printed post cards to a West Delhi Post Office	9,72,000		--		
(vii)	Maintenance of streetlights in Municipal area of East Delhi	3,50,000	3,50,000	--		