

## Chapter 28: TCS under GST

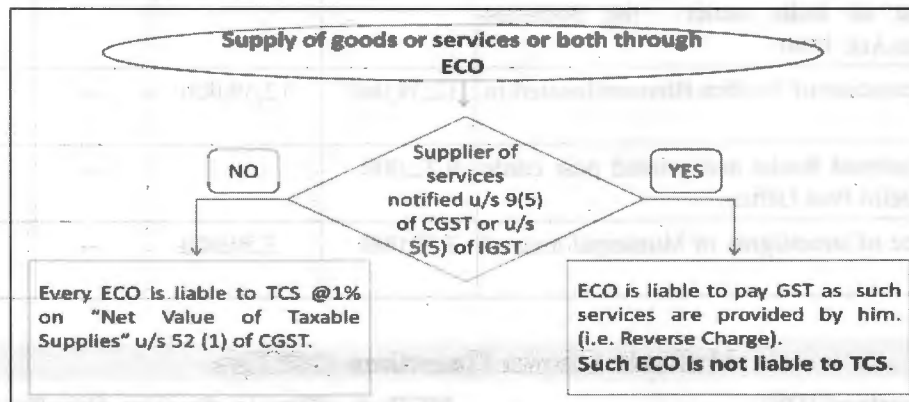
**28.1** The obligation to collect tax at source has been placed upon Electronic Commerce Operators and no other class of suppliers. When an 'Electronic Commerce Operator' receives payment (which is consideration by another person for a supply made by someone else), he must collect TCS at the rate to be notified (this rate will not exceed 1%) and pay it to the Government. This rate is to be applied to the 'net value' as defined in the Explanation to Section 51(1) CGST. An agent is not covered by the TCS provisions.

'**Electronic Commerce Operator**' is defined as any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

'**Electronic Commerce**' is defined as the supply of goods or services or both, including digital products over digital or electronic network.

Under section 52, an Electronic Commerce Operator is liable to collect TCS only if the supply has been made through such Operator by other suppliers and the consideration is collected by the Electronic Commerce Operator. Supplies made by the electronic commerce operator on its own account are not subject to TCS requirements.

**Applicability of Tax Collected at Source (TCS):**



**Effective Date of TCS (w.e.f. 01.10.2018):**

**GST TCS Provisions Effective from 1 Oct 2018 (CGST Section 52): CBIC Notification No. 51/2018 Central Tax, dated 13 Sept 2018.**

**Important Terms under TCS:**

### **1. Tax Collector:**

As per Section 52 of CGST Act every Electronic Commerce Operator shall deduct tax at source on the consideration collected by them where the supplies are made by other supplier through them.

The power to collect the amount shall be without prejudice to any other mode of recovery from the operator.

### **2. TCS Tax Rate:**

Operator shall collect tax @ 1% of the net value of taxable supplies made through it by other suppliers.

### **3. Net Value:**

Net value has to be ascertained in terms of a formula as provided under sub-section (1) of Section 52 of the Act.

**Net Value of Taxable Supplies = [(Aggregate Value of Taxable Supplies of Goods + Services) – (Section 9(5) Services)] – (Aggregate Value of Returned Taxable Supplies + Goods)]**

### **4. Time Period for TCS Tax Payment:**

Sub-section (3) of Section 52 of the Act provides that Tax Collected at Source shall be paid to the Government within 10 days after the end of the month of collection.

### **5. Manner of Payment:**

Any amount Collects as TCS shall be paid by debiting the e-cash ledger and electronic liability register shall be credited accordingly.

**6. Monthly Statement:**

The operator who collects tax shall furnish a statement, electronically, containing all the details regarding:

- (a) Outward supplies of Goods and Services
- (b) Return of goods and services

In **Form GSTR-8** within 10 days from the end of the month in terms of sub-rule (1) of Rule 67 of the rules read with sub-section (4) of Section 52 of the act.

*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.

**7. Annual Statement:**

The operator who collects tax at source shall furnish an annual Statement, electronically, containing all the details, under sub-section (3) of Section 52 of the Act, regarding:

- (a) Outward supplies of Goods and Services
- (b) Return of goods and services during the Financial Year,

Before 31st December following the end of such Financial Year.

**w.e.f. 1-4-2019:**

“Provided that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the statement for such class of registered persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.”;

the following provisos shall be inserted, namely:— “Provided that the Commissioner may, on the recommendations of the Council and for reasons to be recorded in writing, by notification, extend the time limit for furnishing the annual statement for such class of registered persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.”.

**8. Error in Monthly Statement:**

In case any errors or omissions are detected in the statement by the operator other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities then he shall rectify the same in the statement of month of such discovery, subject to Payment of interest under sub-section (6) of Section 52 of the Act.

**9. Exception to Rectification:**

No rectification will be allowed—

- (a) After the due date of furnishing the statement for the month of September following the end of Financial Year, or
- (b) Actual date of Furnishing the Annual Statement, whichever is earlier.

**10. How to Claim TCS Credit:**

Supplier of goods and services can claim the amount of credit in their e-Cash Ledger as collected and reflected by the Operator in Statement under sub-section (7) of Section 52 of the Act.

**11. Matching:**

The Supplies shall match with the corresponding outward supplies of the registered Supplier as the details furnished by the Operator in GSTR-8 shall be made available electronically to each of the suppliers in Part C of

Form GSTR-2A on the Common Portal after the due date of filing of Form GSTR-8 in terms of Rule (2) of Rule 67 read with sub-section (8) of Section 52 of the Act.

### 12. Not Matching:

When the Supplies under sub-section (4) do not match with the corresponding supplies of the supplier then, such discrepancy shall be communicated to both the persons in terms of sub-section (9) of Section 52 of the Act.

### 13. Furnishing Details:

Operator upon whom a notice has been served needs to furnish the details within 15 days from the date of Service of such Notice under sub-section (13) of Section 52 of the Act.

Section 122 of the Act states that any person committing the offences as stated under the section, shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.

### **CBIC's 29 FAQs on GST TCS by E-commerce Operators u/s 52 of CGST Act, 2017**

CBIC has issued a set of 29 Frequently Asked Questions (FAQs) along with their Answers on issues relating to 'GST TCS' by 'E-commerce Operators' under Section 52 of CGST Act, 2017, as under:

### **CBIC's 29 FAQs on GST TCS by E-commerce Operators u/s 52 of CGST Act, 2017 (dt. 28 Sept. 2017).**

Sl. No.	Question	Answer
1	What is Electronic Commerce?	As per <u>Section 2(44)</u> of the CGST Act, 2017, electronic Commerce means the supply of goods or services or both, including digital products over digital or electronic network.
2	Who is an e-commerce operator?	As per <u>Section 2(45)</u> of the CGST Act, 2017, electronic Commerce operator means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.
3	What is Tax Collection at Source (TCS)?	As per <u>Section 52</u> of the CGST Act, 2017 the e-commerce operator, not being an agent, is required to collect an amount calculated at the rate not exceeding <b>one per cent.</b> , as notified by the Government on the recommendations of the Council, of the net value of taxable supplies made through it, where the consideration with respect to such supplies is to be collected by such operator. The amount so collected is called as Tax Collection at Source (TCS).
4	What is the rate of TCS notified by Government?	Rate of TCS is 0.5% under each Act (i.e. the CGST Act, 2017 and the respective SGST Act/UTGST Act respectively) and the same is 1% under the IGST Act, 2017. Notifications No. 52/2018-Central Tax and 02/2018-Integrated Tax both dated 20th September 2018 have been issued in this regard. Similar notifications have been issued by the respective State Governments also.
5	Is it mandatory for e-commerce operator to obtain registration?	Yes. As per <u>section 24(x)</u> of the CGST Act, 2017, every electronic commerce operator has to obtain compulsory registration irrespective of the value of supply made by him.
6	Whether a supplier of goods or services supplying through e-commerce operator would be entitled to threshold exemption?	As per <u>Section 24(ix)</u> of the CGST Act, 2017, every person supplying goods through an e-commerce operator shall be mandatorily required to register irrespective of the value of supply made by him. However, a person supplying services, other than supplier of services under <u>section 9(5)</u> of the CGST Act, 2017, through an e-commerce platform are exempted from obtaining compulsory registration provided their aggregate turnover does not exceed INR 20 lakhs (or INR 10 lakhs in case of specified special category States) in a financial year. Government has issued the notification No. 65/2017-Central Tax dated 15th November, 2017 in this regard.

Sl. No.	Question	Answer
7	Whether e-Commerce operator is required to obtain registration in every State/ UT in which suppliers listed on their e-commerce platform are located to undertake the necessary compliance as mandated under the law?	As per the extant law, registration for TCS would be required in each State/UT as the obligation for collecting TCS would be there for every intra-State or inter-State supply. In order to facilitate the obtaining of registration in each State/UT, the e-commerce operator may declare the Head Office as its place of business for obtaining registration in that State/UT where it does not have physical presence.
8	Foreign e-commerce operator does not have place of business in India since they operate from outside. But their supplier and customers are located in India. So, in this scenario will the TCS provision be applicable to such e-commerce operator and if yes, how will foreign e-commerce operator obtain registration?	Where registered supplier is supplying goods or services through a foreign e-commerce operator to a customer in India, such foreign e-commerce operator would be liable to collect TCS on such supply and would be required to obtain registration in each State/UT. If the foreign e-commerce operator does not have physical presence in a particular State / UT, he may appoint an agent on his behalf.
9	Is it necessary for eCommerce operators who are already registered under GST and have GSTIN, to have separate registration for TCS as well?	E-Commerce operator has to obtain separate registration for TCS irrespective of the fact whether e-Commerce operator is already registered under GST as a supplier or otherwise and has GSTIN.
10	What is meant by “net value of taxable supplies”?	The “net value of taxable supplies” means the aggregate value of taxable supplies of goods or services or both, other than the services on which entire tax is payable by the e-commerce operator, made during any month by a registered supplier through such operator reduced by the aggregate value of taxable supplies returned to such supplier during the said month
11	Whether value of net taxable supplies to be calculated at gross level or at GSTIN level?	The value of net taxable supplies is calculated at GSTIN level.
12	Is every e-commerce operator required to collect tax on behalf of actual supplier?	Yes, every e-commerce operator is required to collect tax where the supplier is supplying goods or services through e-commerce operator and consideration with respect to the supply is to be collected by the said e-commerce operator.
13	At what time should the e-commerce operator collect TCS?	TCS is to be collected once supply has been made through the e-commerce operator and where the business model is that the consideration is to be collected by the ecommerce operator irrespective of the actual collection of the consideration. For example, if the supply has taken place through the ecommerce operator on 30th October, 2018 but the consideration for the same has been collected in the month of November, 2018, then TCS for such supply has to be collected and reported in the statement for the month of October, 2018.
14	Whether TCS to be collected on exempt supplies?	No, TCS is not required to be collected on exempt supplies.
15	Whether TCS to be collected on supplies on which the recipient is required to pay tax on reverse charge basis?	No, TCS is not required to be collected on supplies on which the recipient is required to pay tax on reverse charge basis.

Sl. No.	Question	Answer
16	Whether TCS is to be collected in respect of supplies made by the composition taxpayer?	As per <u>section 10(2)(d)</u> of the CGST Act, 2017, a composition taxpayer cannot make supplies through e-commerce operator. Thus, question of collecting TCS in respect of supplies made by the composition taxpayer does not arise.
17	Whether TCS is to be collected on import of goods or services or both?	TCS is not liable to be collected on any supplies on which the recipient is required to pay tax on reverse charge basis. As far as import of goods is concerned since same would fall within the domain of Customs Act, 1962, it would be outside the purview of TCS. Thus, TCS is not liable to be collected on import of goods or services
18	Is there any exemption on Gold, owing to the fact that rate of GST is only 3% and TCS on it would erode the margin for the seller?	No such exemption from TCS has been granted.
19	Whether payment of TCS through Input Tax Credit of operator for depositing TCS as per <u>Section 52(3)</u> of the CGST Act, 2017 is allowed?	No, payment of TCS is not allowed through Input Tax Credit of e-Commerce operator
20	It is very common that customers of ecommerce companies return goods. How these sales returns are going to be adjusted?	An e-commerce company is required to collect tax only on the net value of taxable supplies made through it. In other words, value of the supplies which are returned (supply return) may be adjusted from the aggregate value of taxable supplies made by each supplier (i.e. on GSTIN basis). In other words, if two suppliers "A" and "B" are making supplies through an ecommerce operator, the "net value of taxable supplies" would be calculated separately in respect of "A" and "B". If the value of returned supplies is more than supplies made on behalf of any of such supplier during any tax period, the same would be ignored in his case.
21	Under <u>Section 52</u> , ecommerce operator collects TCS at the net of returns. Sometimes sales return is more than sales and hence can negative amount be reported?	Negative amount cannot be declared. There will be no impact in next tax period also. In other words, if returns are more than the supplies made during any tax period, the same would be ignored in current as well as future tax period(s).
22	What is the time within which such TCS is to be remitted by the e-commerce operator to the Government account?	The amount collected by the operator is to be paid to appropriate government within 10 days after the end of the month in which the said amount was so collected.
23	How can actual suppliers claim credit of TCS?	The amount of TCS deposited by the operator with the appropriate Government will be reflected in the electronic cash ledger of the actual registered supplier (on whose account such collection has been made) on the basis of the statement filed by the operator in FORM GSTR-8 in terms of Rule 67 of the CGST Rules, 2017. The said credit can be used at the time of discharge of tax liability by the actual supplier.
24	How is TCS to be credited in cash ledger? Whether the refund of such TCS credit lying in the ledger would be allowed at par with the refund provisions contained in <u>section 54(1)</u> of the CGST Act, 2017?	TCS collected is to be deposited by the ecommerce operator separately under the respective tax head (i.e. Central tax/ State tax/Union territory tax/Integrated tax). Based on the statement (FORM GSTR-8) filed by the ecommerce operator, the same would be credited to the electronic cash ledger of the actual supplier in the respective tax head. If the supplier is not able to use the amount lying in the said cash ledger, the actual supplier may claim refund of the excess balance lying in his electronic cash ledger in accordance with the provisions contained in <u>section 54(1)</u> of the CGST Act, 2017.



Sl. No.	Question	Answer
25	Is the e-commerce operator required to submit any statement? What are the details that are required to be submitted in the statement?	Yes, every operator is required to furnish a statement, electronically, containing the details of outward supplies of goods or services effected through it, including the supplies of goods or services returned through it, and the amount collected by it as TCS during a month within 10 days after the end of such month in FORM GSTR-8. The operator is also required to file an annual statement by 31st day of December following the end of the financial year in which the tax was collected in FORM GSTR-9B
26	Whether interest would be applicable on non-collection of TCS?	As per <u>section 52(6)</u> of the CGST Act, 2017, interest is applicable on omission as well in case of incorrect particulars noticed. In such a case, interest is applicable since it is a case of omission. Further penalty under <u>section 122(vi)</u> of the CGST Act, 2017 would also be leviable
27	What will be the place of supply for ecommerce operator for recharge of talk time of the Telecom Operator/recharge of DTH/in relation to convenience fee charged from the customers on booking of air tickets, rail supplied through its online platform?	As per <u>section 12(11)</u> of the IGST Act, 2017, the address on record of the customer with the supplier of services is the place of supply
28	Under multiple ecommerce model, Customer books a Hotel via ECO-1 who in turn is integrated with ECO-2 who has agreement with the hotelier. In this case, ECO-1 will not have any GST information of the hotelier. Under such circumstances, which e-commerce operator should be liable to collect TCS?	TCS is to be collected by that e-Commerce operator who is making payment to the supplier for the particular supply happening through it, which is in this case will be ECO-2.
29	Are there any additional powers available to tax officers under this Act?	As per <u>section 52(12)</u> of the CGST Act, 2017, any authority not below the rank of Deputy Commissioner may serve a notice requiring the operator to furnish the details of their supplies of goods or services or both as well as stock of goods held by the suppliers within 15 working days of the date of service of such notice

**Example 1:**

Peter England is a trader who sells his ready-made clothes online on Amazon India. He receives an order for ₹12,000 in the month of July 20XX, inclusive of tax and commission 2%. Amazon charges a commission of ₹200. Applicable GST ₹1,800. Find the TCS in the hands of Amazon.

*Note:* there are sales returns of Peter England products from other customer for ₹2,000 in the month of July 20XX.

**Answer:** Amazon would therefore need to deduct 1% tax (TCS) on the amount, excluding the money paid as commission and GST. Amazon would thus be deducting tax for ₹80 (1% of ₹8000).

Working note:

Supply of goods	₹	= 12,000
Less: sales returns		= (2,000)
Balance		= 10,000
Less: GST 18%		= (1,800)
Less: Commission		= (200)
Net value of taxable supplies		= 8,000
Tax Collected at Source 1%		= 80

**Example 2:**

Flipkart Online Services Pvt. Ltd an Electronic Commerce Operator (ECO) has supplied product 'A' from supplier Sri Ram Ltd to various customers aggregating to ₹50 lakhs for the month of July 20XX. Further there are sales returns of product 'A' sold in the month of May, June and July 20XX amounting to ₹20 lakhs during the month of July 20XX.

Find the following:

- (a) Who is liable to pay GST and TCS?
- (b) Amount of TCS.
- (c) Due date of deposit of TCS?

**Answer:**

- (a) GST is liable to pay by Sri Ram Ltd. (i.e. supplier of Goods). TCS is required to deposit into Government account by Electronic Commerce Operator.
- (b)  $\text{TCS} = ₹30,000 [(\text{₹}50 \text{ lakhs} - 20 \text{ lakhs}) \times 1\%]$
- (c) Due date of deposit of TCS = 10th Aug 2017