

VINAY & KESHAVA LLP

CHARTERED ACCOUNTANTS



GST

Goods & Services Tax

Newsletter October 2018

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ARTICLES:

TAX DEDUCTED AT SOURCE UNDER GST

TDS & TCS has been an idea mooted even before GST was implemented in India on 1st July 2017. However, considering the abrupt introduction of GST & the teething issues that it would face the GST council deferred the initial date from 18th September 2017 till 31st March 2018 and again till 30th September 2018. Finally, the GST council set the date of implementation from 1st October 2018 for the TDS & TCS provisions in notification number 50/2018 – Central Tax for TDS and Notification number 51/2018 & 52/2018 – Central Tax for TCS.

WHO IS LIABLE TO DEDUCT TAX AT SOURCE?

1. Department or establishment of the Central Government or State Government
2. Local Authority
3. Governmental agencies

In Notification No. 50/2018 – Central Tax, a Deductor of Tax refers to:

(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

RELEVANT POINTS

1. Registration of TDS Deductors: A TDS deductor has to compulsorily register without any threshold limit. The deductor has a privilege of obtaining registration under GST without requiring PAN. He can obtain registration using his Tax Deduction and Collection Account Number (TAN) issued under the Income Tax Act, 1961.
2. Deposit of TDS with the Government: The amount of tax deducted at source should be deposited to the Government account by the deductor by 10th of the succeeding month. The deductor would be liable to pay interest if the tax deducted is not deposited within the prescribed time limit.

3. **TDS Certificate:** A TDS certificate is required to be issued by deductor (the person who is deducting tax) in Form GSTR-7A to the deductee (the supplier from whose payment TDS is deducted), within 5 days of crediting the amount to the Government, failing which the deductor would be liable to pay a late fee of Rs. 100/- per day from the expiry of the 5th day till the certificate is issued. This late fee would not be more than Rs. 5000/-. 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.
4. **TDS Return:** The deductor is also required to file a return in Form GSTR-7 within 10 days from the end of the month. If the supplier is unregistered, name of the supplier rather than GSTIN shall be mentioned in the return. The details of tax deducted at source furnished by the deductor in FORM GSTR-7 shall be made available to each of the suppliers in Part C of FORM GSTR-2A electronically through the Common Portal. The supplier can take this amount as credit in his electronic cash register and use the same for payment of tax or any other liability including Tax, Interest, Penalty and Fees.

TAX COLLECTED AT SOURCE UNDER GST

WHO IS LIABLE TO DEDUCT TAX AT SOURCE?

- Under Section 2(44) - “Electronic commerce” means the supply of goods or services or both, including digital products over digital or electronic network
- Under Section 2(45) - “Electronic commerce operator” means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

RELEVANT POINTS

- **Registration of TCS Collector & Supplier:** A TCS collector and a supplier has to compulsorily register regardless of the threshold limit. However, if the supplier is covered under section 9(5) of the CGST Act, 2017 mentioned above then they are exempted from taking registration under notification no. 65/2017 – Central Tax and registration is required only if it crosses the threshold limit under Section 22 of the CGST Act, 2017.
- **Deposit of TCS with the Government:** The amount of tax collected at source should be deposited to the Government account by the collector by 10th of the succeeding month. The collector would be liable to pay interest if the tax collected is not deposited within the prescribed time limit.

- **TCS Return:** The collector is also required to file a return in Form GSTR-8 within 10 days from the end of the month. The details of tax collected at source furnished by the deductor in FORM GSTR-8 shall be made available to each of the suppliers in Part C of FORM GSTR-2A electronically through the Common Portal. The supplier can take this amount as credit in his electronic cash register and use the same for payment of tax or any other liability including Tax, Interest, Penalty and Fees.

CONSEQUENCES OF NOT COMPLYING WITH TDS / TCS PROVISIONS:

SL.No	Event	Consequence
1.	TDS / TCS not deducted	Interest to be paid along with the TDS / TCS amount; else the amount shall be determined and recovered as per the law
2.	TDS certificate not issued or delayed beyond the prescribed period of five days	Late fee of Rs. 100/- per day subject to a maximum of Rs. 5000/-
3.	TDS / TCS deducted but not paid to the Government or paid later than 10th of the succeeding month	Interest to be paid along with the TDS / TCS amount; else the amount shall be determined and recovered as per the law
4.	Late filing of TDS / TCS returns	Late fee of Rs. 100/- for every day during which such failure continues, subject to a maximum amount of five thousand rupees

RECENT HEADLINES

Watchdog penalises builder for not passing GST benefit to homebuyers

- ❖ In a first ever order against a real estate firm for failing to pass on the GST reduction benefits to homebuyers, the federal anti-profiteering watchdog has ordered Gurgaon-based Pyramid Infratech to refund over Rs. 8.22 crore to 2476 flat owners within the next three months with 18% interest.
- ❖ It has directed the builder to refund or reduce the amount, for every buyer at the time of collecting the last instalment.
- ❖ The authority has also ordered Haryana's tax commissioner to monitor the compliance and submit a report within four months.
- ❖ An investigation by the Director General of Anti-Profiteering (DGAP), the authority said it as "absolute clear" that excess ITC was available to Pyramid Infratech and it was required to be passed on the buyers.
- ❖ Further it stressed that the builder was not being asked to extend this benefit out of his own account and it was only liable to pass on the benefit of ITC to which it had become entitled by virtue of the grant of ITC on the construction service by the government.

Finance Ministry simplifies GST refund claim process for businesses

- ❖ Easing compliance burden for businesses, the Finance Ministry has said GST refunds can be claimed by simply submitting a printout of 'GSTR-2A' form to tax authorities instead of giving all purchase invoices of a month.
- ❖ GSTR-2A is a purchase return auto-generated by the system based on the transaction between a business and its supplier.
- ❖ The Ministry clarifies that "The proper officer shall rely upon form GSTR-2A as an evidence of the account of the supply by the corresponding supplier in relation to which the input tax credit has been availed by the claimant. There may be situations in which Form GSTR-2A may not contain the details of all the invoices relating to the input tax credit availed, possibly because the supplier's Form GSTR-1 was delayed or not filed. In such situations, the proper officer may call for the hard copies of such invoices if he deems it necessary for the examination of the claim for refund," the Ministry said in a clarification.
- ❖ In the clarification to Principal Chief Commissioners, the GST Policy Wing in the Ministry said the proper officer shall not insist on the submission of an invoice (either original or duplicate) the details of which are present in GSTR-2 of the relevant period submitted by the claimant.

CASE LAWS:

1. ADVANCE RULING ON INELIGIBLE ITC OF WORKS CONTRACT U/S 17(5) OF CGST ACT, 2017

The applicant is M/s Jabalpur Entertainment Complexes private limited having a Multiplex, Mall, Food court & SAM retail. The applicant claims ITC on goods or services obtained for repairs and maintenance of the Mall and also on some works contracts services. The cost of such repairs and maintenance are written off to revenue and not capitalized.

Law: - As per Section 17(5) of the CGST Act, 2017 ITC is not available for Works contract of immovable property and good and services received by a taxable person for construction of immovable property.

The AAR held that, the capitalization of expenditure depends on the nature of expenditure and the period of benefit from such expenditure. Mere statement that expenditure is not capitalized does not cannot come to the rescue of the applicant. The eligibility of ITC does not depend on the treatment given to the expenditure. Thus, we are of the opinion that ITC on such goods used for maintenance/repair/renovation of Mall building, an immovable property, shall not be available.

2. ADVANCE RULING ON WHETHER A SUPPLY IS WORKS CONTRACT OR SEPARATE SUPPLY OF GOOD AND SERVICES.

The Applicant is M/s Tag Solar System, a firm engaged in Supply, Commissioning, Installation, Maintenance of Solar Water Pumping Systems within a stipulated time. Applicant wants clarification if such supply is under Chapter 84 / 85 - "Solar Power Generating System" with 5% GST or Works contract of 18% GST.

Law: Chapter 84 /85 85 - "Solar Power Generating System" refers to the goods only. In the case law M/s T.T.G. Industries Ltd. vs Collector of Central Excise (2004) the Hon, Supreme court held that a machine is an immovable property as it could not be shifted without first dismantling it and then re-erecting it to another site.

The AAR held that, the Solar Water Pumping Systems has a permanent location as it's installed at the farmer's field meant for supply of water for making solar energy. Such plant would therefore have an inherent element of permanency and it would not be possible to shift base from time to time. Further, the applicant supplies not just the water pump but also the installation and erection of the same. So, it's not covered under Chapter 84/85 - "Solar Power Generating System". Hence, the applicant is providing a works contract supply as defined u/s 2(119) of CGST Act, 2017 as it's an immovable property. The applicant is liable to GST of 18% on the Works Contract service.

Notifications and Circulars for the period September 2018

- Fourteen Central Tax Notifications issued.
- One Central Tax (Rate) & One Integrated Tax & One Integrated Tax (Rate) & One Union Territory Tax (Rate)
- Eleven Circulars and One Order under CGST issued.

SI No	Subject	Notification / Circular No. & Date of Issue
1	Seeks to notify the rate of tax collection at source (TCS) to be collected by every electronic commerce operator for intra-State taxable supplies	52/2018-Central Tax dt. 20-09-2018
2	Seeks to bring section 52 of the CGST Act (provisions related to TCS) into force w.e.f 01.10.2018	51/2018-Central Tax dt. 13-09-2018
3	Seeks to bring section 51 of the CGST Act (provisions related to TDS) into force w.e.f 01.10.2018	50/2018-Central Tax, dt. 13-09-2018
4	Notification amending the CGST Rules, 2017 (Tenth Amendment Rules, 2018)	49/2018-Central Tax, dt. 13-09-2018
5	Seeks to make amendments (Ninth Amendment, 2018) to the CGST Rules, 2017.	48/2018-Central Tax, dt. 10-09-2018
6	Seeks to extend the due date for filing of FORM GSTR - 3B for newly migrated (obtaining GSTIN vide notification No. 31/2018-Central Tax, dated 06.08.2018) taxpayers [Amends notf. No. 34/2018 - CT].	47/2018-Central Tax dt. 10-09-2018
7	Seeks to extend the due date for filing of FORM GSTR - 3B for newly migrated (obtaining GSTIN vide notification No. 31/2018-Central Tax, dated 06.08.2018) taxpayers [Amends notf. No. 35/2017 and 16/2018 - CT]	46/2018-Central Tax dt. 10-09-2018
8	Seeks to extend the due date for filing of FORM GSTR - 3B for newly migrated (obtaining GSTIN vide notification No. 31/2018-Central Tax, dated 06.08.2018) taxpayers [Amends notf. No. 21/2017 and 56/2017 - CT].	45/2018-Central Tax dt. 10-09-2018
9	Seeks to extend the due date for filing of FORM GSTR - 1 for taxpayers having aggregate turnover above Rs 1.5 crores.	44/2018-Central Tax dt. 10-09-2018
10	Seeks to extend the due date for filing of FORM GSTR - 1 for taxpayers having aggregate turnover up to Rs 1.5 crores.	43/2018-Central Tax dt. 10-09-2018
11	Seeks to extend the time limit for making the declaration in FORM GST ITC-01 for specified classes of taxpayers	42/2018-Central Tax, dt. 04-09-2018
12	Seeks to waive the late fee paid for specified classes of taxpayers for FORM GSTR-3B, FORM GSTR-4 and FORM GSTR-6	41/2018-Central Tax, dt. 04-09-2018
13	Seeks to extend the time limit for making the declaration in FORM GST ITC-04	40/2018-Central Tax, dt. 04-09-2018
14	Seeks to make amendments (Eighth Amendment, 2018) to the CGST Rules, 2017	39/2018-Central Tax dt. 04-09-2018
15	Seeks to insert explanation in an entry in notification No. 12/2017 – Central Tax (Rate) by exercising powers conferred under section 11(3) of CGST Act, 2017.	23/2018-Central Tax (Rate), dt. 20-09-2018
16	Seeks to notify the rate of tax collection at source (TCS) to be collected by every electronic commerce operator for inter-State taxable supplies	02/2018-Integrated Tax dt. 20-09-2018
17	Seeks to insert explanation in an entry in notification No. 9/2017 – Integrated Tax (Rate) by exercising powers conferred under section 6(3) of IGST Act, 2017.	24/2018-Integrated Tax (Rate), dt. 20-09-2018
18	Seeks to insert explanation in an entry in notification No. 12/2017 – Union Territory Tax (Rate) by exercising powers conferred under section 8(3) of UTGST Act, 2017.	23/2018-Union Territory tax(rate), dt. 20-09-2018
19	Circular No. 67/2018 -GST dated 28.09.2018 Modification to the Guidelines for Deductions and Deposits of TDS by the DDO under GST as clarified in Circular No. 65/39/2018-DOR dated 14.09.2018 - reg	67/2018

20	Circular No. 66/2018 -GST dated 26.09.2018 GST on Residential programmes or camps meant for advancement of religion, spirituality or yoga by religious and charitable trusts	66/2018
21	Circular No. 65/2018 -GST dated 14.09.2018 Guidelines for Deductions and Deposits of TDS by the DDO under GST	65/2018
22	Circular No. 64/2018 -GST dated 14.09.2018 Modification of the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances, as clarified in Circular Nos. 41/15/2018-GST dated 13.04.2018 and 49/23/2018-GST dated 21.06.2018 - regarding	64/2018
23	Circular No. 63/2018 -GST dated 14.09.2018 Clarification regarding processing of refund claims filed by UIN entitles	63/2018
24	Circular No. 62/2018 -GST dated 12.09.2018 Levy of GST on Priority Sector Lending Certificate-reg.	62/2018
25	Circular No. 61/2018 -GST dated 04.09.2018 E-way bill in case of storing of goods in godown of transporter.	61/2018
26	Circular No. 60/2018 -GST dated 04.09.2018 Processing of refund applications filed by Canteen Stores Department (CSD).	60/2018
27	Circular No. 59/2018 -GST dated 04.09.2018 Clarification on refund related issues.	59/2018
28	Circular No. 58/2018 -GST dated 04.09.2018 Recovery of arrears of wrongly availed CENVAT credit under the existing law and inadmissible transitional credit.	58/2018
29	Circular No. 57/2018 -GST dated 04.09.2018 Scope of Principal-agent relationship in the context of Schedule I of the CGST Act.	57/2018
30	Extension of time limit for submitting the declaration in FORM GST TRAN-1 under rule 117(1A) of the Central Goods and Service Tax Rules, 2017 in certain cases	Order-04/2018-GST

Due dates of GST for the month of October 2018

2018		October				
MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
01	02	03	04	05	06	07
08	09	10	11	12	13	14
15	16	17	18 GSTR - 4 (July - Sep 18)	19	20 GSTR 3B GSTR 5 GSTR 5 A (July - Sep 18)	21
22	23	24	25	26	27	28
29	30	31 * GSTR - 1 (Sep 18)	01	02	03	04
05	06	Notes: * * Monthly return for tax payer with Annual Turnover more than Rs. 1.50 Cr				

Disclaimer:

The conclusion reached and views expressed in the Newsletter are matters of opinion based on our understanding of the facts, anticipated tax laws and anticipated rules. However, there can be no assurance that the tax authorities or regulators may take a position contrary to our views. Further, the content of this newsletter should not be used as a supporting to frame any opinions.

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