



TDS to be deducted by Govt./Local Authorities on supplies made by an unregistered person?

Description

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- **An Analysis** – Nowhere it is mentioned in section 51 that TDS is not to be deducted on supply made by unregistered person. word '**Supplier**' has been used and not registered person/taxable person
- No specific rule clarifying the same.
- **But** When we check form GSTR-7 to be filed by TDS deductor-**Field GSTIN of Deductee is mandatory field**
- Also in SOP on TDS under GST issued by Law Committee of GST Council, it is mentioned that TDS is not to be deducted when Payment is made to **Unregistered Supplier** ?
- <https://cbic-gst.gov.in/pdf/SOP-TDS-AS-ON-18-February-2019.pdf...>
- Only on the basis on last 2 points it is concluded that TDS is not to be deducted on supply from unregistered dealer.
- Concerns to be raised with [@cbic_india](#)
- Why Sec 51 or any rule specifically exclude unregistered person. Why the section or rule has not been amended for specifying the same.
- Law & procedure governed through Forms/SOP without clear Legal Binding of Section/Rule is not an ideal scenario.
- Also I would request professionals to check the GST Book/s which you are referring , if you find any explanation is provided regarding this point!!

Section 51. Tax deduction at source.-

(1) Notwithstanding anything to the contrary contained in this Act, the Government may mandate,-

- (a) a department or establishment of the Central Government or State Government; or
- (b) local authority; or
- (c) Governmental agencies; or

(d) 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 .

¹ [(3) A certificate of tax deduction at source shall be issued in such form and in such manner as may be prescribed .]

(4) ² [****]

(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 sub-section (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.

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

Tax deduction is not required in following situations:

- a) Total value of taxable supply < Rs. 2.5 Lakh under a contract.
- b) Contract value > Rs. 2.5 Lakh for both taxable supply and exempted supply, but the value of taxable supply under the said contract < Rs. 2.5 Lakh.
- c) 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 coke, 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 GST/GST 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 as 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 "Cash" component.

Category

1. GST

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Author

abhashh