

**Q.1 Whether TDS provisions is applicable to taxable supplies received from unregistered suppliers?**

**Ans** As per provisions of section 51 of CGST Act, 2017 read with Section 20 of IGST Act, 2017, deductor is required to deduct TDS at prescribed rates as CGST and SGST/UTGST (in case of intra-state) and as IGST (in case of inter-state) on the payment made or credited to supplier w.r.t. procurement of taxable goods or services.

In terms of provisions of section 22 of CGST Act read with notification issued under IGST Act, the person, who is making intra / inter-state taxable supply and having an aggregate turnover upto prescribed limit computed on PAN India basis, has been exempted from obtaining registration.

Further, on conjoint reading of Section 2(78) and 2(47) of CGST Act, 2017, supply made by aforesaid person would accordingly construe as non-taxable supply and same would be considered as exempt supply.

In view of the above provisions, it can be said that the TDS provisions will not be applicable on exempt supply i.e. procurement made from unregistered supplier.

In addition, as per GSTR FORM -07 (TDS return), GSTIN of deductee is required to be provided since tax deducted would reflect into the electronic cash ledger of said deductee onto GSTN Portal. However, in case of unregistered supplier, the said mechanism would not work and there may unnecessarily accumulation for such small dealers which would have to be claimed as refund by them. This would seem to be against the policy intention of the Government.

On a conspectus of the above, it may be reasonably construed that TDS provisions will not be applicable either on intra-state or inter-state procurement made from unregistered supplier.

**Q.2 Whether TDS provisions are applicable to taxable supplies received from suppliers registered under composition scheme?**

**Ans** As per provisions of Section 51 of CGST Act, 2017 read with N No. 33/2017 (CGST), FCI is required to deduct TDS w.r.t to payment made for the taxable supplies received from registered person whether the supplier is registered as normal taxpayer or under composition scheme.

**Q.3 How the value of contract i.e. Rs. 2.50 Lakh will be decided for applicability of TDS provisions?**

**Ans** For the purpose of deducting TDS, value of contract shall be taken as the contract amount excluding the central tax, State tax, Union territory tax, integrated tax and cess.

Further, it would be pertinent to note that TDS provisions will be applicable when contract value exceeds INR 2.5 Lakh irrespective of the fact that how much is tenure spread of said contract.

**Q.4 When a contract is entered with a party the value of contract is less than Rs. 2.50 Lakh but due to escalation clause (like in case of taxi hiring contract the contract rates is increased on increase in prices of petrol/diesel ) the value of contract exceeds Rs. 2.50 Lakh, then in that case:-**

**(a) Whether TDS is deductible on payment made earlier?**

**Ans** The Government has addressed this kind of scenario in the FAQ released recently and TDS shall have to be deducted on the entire amount while making payment at later stage.

**(b) If yes, then whether interest is payable on TDS now deducted against earlier payments?**

**Ans** Although, the issue of interest in such circumstances has not be addressed in the FAQ's and further clarification can be expected from Government in the future. In our view interest liability should not arise on such TDS payments.

**Q.5 In some rate running contracts value of contract is not known (supply of electrical items, taxi hiring contracts etc.). In this cases payment to supplier may exceeds Rs. 2.50 lakh. But if TDS in this case was not deducted in earlier payments, when total payment under contract was not exceeding Rs. 2.50 lakh. Then while making current payment, when total payment under contract is exceeding Rs. 2.50 lakh, how TDS provisions will apply:-**

**(a) Whether TDS is deductible on payment made earlier?**

**Ans** The GST Law only provides for the value of contract exceeding INR 2.5 lakhs as the basis on which the TDS provisions are going to get triggered.

In case of rate running contracts, FCI would need to determine the tentative amount of supplies which may be procured under such contract basis past experiences and like reasons and accordingly take a view as to whether the TDS provisions would apply in the said case or not.

Accordingly, the TDS provisions can be applied in the same manner as indicated in reply to Question No. 4 (a).

**(b) If yes, then whether interest is payable on TDS now deducted on earlier payments?**

**Ans** Please refer reply of Question- 5(a) above and Question-4.

**Q.6 In case of contract of above Rs. 2.50 lakh entered before 01.10.2018,**

**(a) If part of payment has already been made before 01.10.2018 and payment of less than Rs. 2.50 lakh is due on 01.10.2018. How TDS provisions will be applicable for this case.**

**Ans** TDS provisions would be applicable in respect of payment made or amount credited to the supplier w.e.f. 01.10. 2018 in respect of such contracts.

**(b) Whether TDS provisions will be applicable on value of supplies credited (as liability in books of accounts) in name of supplier before 01.10.2018 but payment of such supply is made on or after 01.10.2018?**

**Ans** In this regard, it is pertinent to mention that the word “payment made or credited to the supplier” may be interpreted as payment made (as entered in the books) or payment credited to the supplier’s bank account. It may not be appropriate to interpret it as crediting a sum in the supplier’s ledger in the books of recipient.

Accordingly, tax deduction is envisaged only on payment and not on accrual.

Further, it is has been clarified by the Government that Tax Deduction is not required where Tax Invoice has been raised before 1.10.2018 and payment is made post 1.10.2018.

**Q.7 On what basis TDS registration has to be taken TAN or PAN basis?**

**Ans** The registration procedures under GST Law gives option of taking GST TDS registration based either on PAN or TAN. In our case, since FCI is having its PAN, TDS registration is to be taken by opting for PAN option.

Further, we would like reiterate that TDS registration would need to be taken at State/UT level basis.