THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

GST & INDIRECT TAXES COMMITTEE

KARTAVYA(Kar Yogdaan, Rashtra Nirmaan): A Tax Awareness Initiative

Topics: TDS on Government Contracts and Implications for DDOs

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TDS u/s 51

- Every deductor is required to obtain compulsory registration
- Registration is to be done through common portal
- Where the value of taxable supply under a single contract exceeds Rs. 2.5 Lakhs (excluding GST), then TDS is to be deducted
- Tax is to be deducted while making/crediting payment to the supplier
- Rate of TDS –
  - Inter-State supply: IGST @2%
  - Intra- State supply: CGST@1%
    SGST@1%

Person liable to deduct tax

- A department or establishment of the Central/State Government ; or
- Local authority ; or
- Government agencies; or
- Such person or category of persons as notified by Government

As per notification no 33/2017 –CT, following classes of persons have been notified-

- An authority or a board or any other body-
  - Set up by an Act of Parliament or a State Legislature; or
  - Established by any government , with 51% or more participation by way of equity or control, to carry out function;
- Society established by the Central/State Government or Local Authority
- Public sector undertakings

Meaning of Government

- As per section 2(53) of the CGST Act, 2017, ‘Government’ means the Central Government.
- As per clause (23) of section 3 of the General Clauses Act, 1897 the ‘Government’ includes both the Central Government and any State Government.
- As per clause (8) of section 3 of the said Act, the ‘Central Government’, in relation to anything done or to be done after the commencement of the Constitution, means the President.
- As per Article 53 of the Constitution, the executive power of the Union shall be vested in the President and shall be exercised by him either directly or indirectly through officers subordinate to him in accordance with the Constitution.
- Similarly, as per clause (60) of section 3 of the General Clauses Act,1897, the ‘State Government’, as respects anything done after the commencement of the Constitution, shall be in a State the Governor, and in an Union Territory the Central Government.
- As per Article 154 of the Constitution, the executive power of the State shall be vested in the Governor and shall be exercised by him either directly or indirectly through officers subordinate to him in accordance with the Constitution.

Meaning of Local Authority

'Local authority' as defined under section 2(69) of the CGST Act means:

(a) a Panchayat as defined in clause (d) of Article 243 of the Constitution;

(b) a Municipality as defined in clause (e) of Article 243P of the Constitution;

(c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;

(d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;

(e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;

(f) a Development Board constituted under Article 371 of the Constitution; or

(g) a Regional Council constituted under Article 371A of the Constitution

Meaning of Governmental authority

"Governmental Authority" means 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 90 percent. or more participation by way of equity or control, to carry out any function entrusted to a Municipality under Article 243 W of the Constitution or to a Panchayat under Article 243 G of the Constitution.

"Government Entity" means an authority or a board or any other body including a society, trust, corporation, (i) set up by an Act of Parliament or State Legislature; or (ii) established by any Government, with 90 per cent or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority."

Deduction of tax not required

- Total value of taxable supply under a contract does not exceed Rs. 2.5 Lakhs
- Total value of taxable & exempt supply exceeds Rs. 2.5 Lakhs but the value of taxable supply does not exceed Rs. 2.5 Lakhs
- Receipt of services & goods which are exempted
- Goods on which GST is not leviable & all activities or transaction specified in schedule III
- Where invoice is issued for sale of goods for which tax is to be deducted under VAT law before 01.07.2017 but payment is made after 01.07.2017

Deduction of tax not required

- Where the location & place of supply of the supplier is different from the state/UT where deductor is registered
- Payment related to a tax invoice which has been issued before 01.10.2018
- Any amount paid in advance prior to 01.10.2018, but tax invoice is issued after 01.10.2018
- Where tax is paid on reverse charge mechanism by the deductee
- Where payment is made to an unregistered supplier
- Where payment relates to "Cess" Component

Valuation of supply for determination of TDS

- Value of supply excludes all the taxes leviable under GST
- No tax shall be deducted on "Central tax, State tax, UT tax, Integrated tax and Cess" components

A few examples :

Q1. Supplier M makes taxable supply of Rs. 20,000 to Local authority. Contract value for supply for Rs. 20 Lakhs. Rate of GST is 18% . Supplier and deductor are in the same state.

Ans- Following payment is to be made by the Local authority to supplier M

Rs. 20,000+ Rs. 1,800(Central Tax) +Rs. 1,800 (State Tax)

Value of Supply =Rs. 20,000

Valuation of supply for determination of TDS

Tax to be deducted from payment

Central tax =1% on Rs. 20,000= Rs. 200; State tax= 1% on Rs. 20,000= Rs. 200

Payment due to M after TDS as per GST provisions =Rs. 23,200

Q2. Supplier X of Assam makes taxable supply Rs. 20,000 & exempted Rs. 40,000 to Finance Dept of West Bengal. Contract value of the supply is Rs. 12 Lakhs [Rs.6 Lakhs(including GST) for taxable supply and rest for exempt supply]. Rate of GST is 18% .

Ans- Following payment is to be made by the Finance Dept of WB

Rs. 20,000+ Rs. 3,600(Integrated tax)+Rs. 40,000 (exempt supply)

Valuation of supply for determination of TDS

Value of taxable supply = Rs. 6 lakhs (including GST)

Value of taxable supply (excluding GST) = Rs. 6 lakhs*100/118= Rs. 5,08,475

Since, the value of taxable supply exceeds Rs. 2.5 Lakhs, deduction of tax is required @2% (because of IGST)

Tax to be deducted from payment

Integrated tax =2% on Rs. 20,000= Rs. 400;

Payment due to X after TDS as per GST provisions =Rs. 63,200

TDS Return

- Every registered TDS deductor is required to file return in Form GSTR 7 electronically within 10th of succeeding month
- Tax deposited by challan will get credited in the electronic cash ledger
- The liability of a deductor in Form GSTR 7 has to be paid by debiting electronic cash ledger
- The deductee shall claim the credit of such deduction in his electronic cash ledger
- All deduction made on or after 1st October, 2018 but before the date of registration may be included in the first return to be furnished after obtaining registration

Few examples

Q1. Local Authority is making payment of Rs. 3 Lakhs to a supplier for "Printing & Stationery"

Ans. Yes. TDS is required to be deducted as total value of taxable supply exceeds Rs. 2.5 Lakhs.

Q.2 Government is making payment of Rs. 7 lakhs to a supplier of "printed books and printed or illustrated post cards" where payment for books is Rs. 2 lakhs and Rs. 5 lakhs is for other printed or illustrated post cards.

Ans. Yes. Deduction is required in respect of payment of Rs. 5 lakhs only i.e., for payment in respect of taxable supply as it exceeds Rs.2.5 lakhs. Books are exempted goods, hence no deduction is required in respect of supply of books.

Few examples

Q3. Health Department entered into a contract with supplier to supply "medical equipment" of Rs. 2.6 lakhs (including GST) & is making full payment. Tax rate is 12%

Ans. Total value of supply as per contract Rs. 2.6 Lakhs(including GST).

So, taxable value of supply stands at Rs.2.6 Lakhs x100/112= Rs. 2.32 Lakhs <Rs. 2.6 Lakhs.

Hence, deduction is not required

Q4. Fisheries Department is making a payment of Rs. 10 Lakhs to contractor for supplying labour for digging a pond for the purpose of fisheries.

Ans. No. Deduction is not required as this supply is exempt as per Notification no 12/2017

Few examples

Q5. Municipal Corporation of Kolkata purchases a heavy generator from a supplier in Delhi amounting to Rs. 5 Lakh and IGST @ 18%.

Ans. Yes. Deduction is required @ 2%

Deduction is required in case of inter-state supply & if value of taxable supply under a contract exceeds Rs. 2.5 Lakhs

Q6. Municipality is making payment of Rs. 6 Lakhs 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

Ans. No. Deduction is not required as this supply is exempt as per Notification no 12/2017

Few examples

Q7. Government school is making a payment of Rs. 4 lakhs to a supplier for supply of cooked food as mid-day meal under a scheme sponsored by Central/State Government

Ans. No. Deduction is not required as this supply is exempt as per Notification no 12/2017

Q8. Health Department is making payment of Rs. 10 Lakhs to a supplier for supply of Hearing Aids.

Ans. No. Deduction is not required as this supply is exempt as per Notification no 12/2017

Few examples

Q9. Municipal Corporation of Delhi has ordered supply of taxable goods to a supplier registered in Chandigarh for supply in Chandigarh itself. Is this transaction liable for deduction of tax at source?

Ans. No tax shall be deducted when the location of supplier and place of supply is in a State/UT which is different from the State/UT of the registration of the recipient.

Q.10 Can tax, once deducted, be claimed as a refund? Who can claim refund?

Ans. Yes, it is possible to claim refund arising out of excess or erroneous deduction, as per the provisions of Section 54 of the CGST Act. Such refund may be claimed either by the deductor or the deductee, but not both. Further, deductor cannot claim refund once the amount deducted has been credited to the electronic cash ledger of the deductee.

Few examples

Q.11 M/s Ram Brothers entered into 2 contracts with a Department of Govt. for supply of goods valued at ` 2,20,000 and ` 2,10,000. DDO has issued a cheque of ` 4.30 lacs to him. Should the DDO deduct tax?

Ans. No tax will be deductible as each taxable supply under a contract is not exceeding 2,50,000.

Q.12 Can a Composition Dealer take tax credit of Tax deducted at source?

Ans. Yes, Composition dealer can also take credit and adjust this amount against his output tax liability, as this amount is not an input tax credit.

Q.13 Will tax be deductible on supplies received from outside India?

Ans. No, as this sort of transaction is covered under reverse charge.

Q.14 Whether tax will be deductible on payment made or credited to an unregistered person?

Ans. No.

Various types of authorities

Gujarat State Road Development Corporation ([2021] 132 taxmann.com 257) (AAR – Gujarat)

- wholly owned company and entrusted it with the development of roads and bridges. Thus, we find that GSRDC satisfies the definition of Government Entity.
- it constructs roads, sideways, paths on the land which falls under the jurisdiction of Municipality and Panchayat.
- We note that roads and bridges are activities entrusted to a municipality under article 243W of our Constitution and to a Panchayat under article 243G of our Constitution.
- Hence, it satisfies the definition of governmental authority also
- Services treated to be exempt in nature

MSV International Inc [[2021] 123 taxmann.com 1 (AAR - HARYANA)]

- Applicant is engaged in providing independent engineering consultancy services, for projects in different parts of country for construction of roads and bridges, solid waste management, water supply and sanitation, urban development, buildings and enforcement
- not an activity in relation to function entrusted to Panchayat or Municipality under article 243G or article 243W
- Pure services not exempted from GST

Various types of authorities

IL & FS Education and Technology Services Ltd [[2019] 102 taxmann.com 363 (AAAR-ODISHA)]

- Appellant was providing services under ICT project, involving creation of infrastructure in schools and rendition of services including training, being a composite supply of goods and services, having distinctly separate components to Odisha Knowledge Corporation Limited (OKCL)
- OKCL was a body corporate and registered under Companies Act 1956 as a Company - Appellant failed to produce any documentary evidence as to how provision of service to OKCL qualified to be a provision of service to Central Government, State Government or Union Territory Administration - Even if some percentage of shares were owned by Government of Odisha in OKCL, company OKCL could not be construed as Government

NHPC Ltd ([2022] 140 taxmann.com 31 (AAAR-UTTARAKHAND))

- Works contract service provided by sub-contractors to PWD, who in turn is providing works contract service to NHPC, is not exempt as
- relevant entry only exempts service provided by government entity to another government entity

Padmavathi Hospitality & Facilities Management Service [[2021] 133 taxmann.com 324 (AAR - TAMILNADU)]

- applicant is providing 'Comprehensive facility management services' of housekeeping, cleaning and security services only to Government hospitals
- services supplied being pure services provided by way of activities in relation to any functions entrusted to Panchayat/Municipality, same are exempt from GST

Various types of authorities

Kochi Metro Rail Ltd [[2020] 119 taxmann.com 38 (AAR - KERALA)]

- Where applicant has been established as a Special Purpose Vehicle for implementation, operation and maintenance of Kochi Metro Rail Project in City of Kochi and
- it is a joint venture company with equal equity contribution of Government of India and Government of Kerala and by a Government order dated 13-6-2016
- it has been entrusted with task of executing and operating Integrated Water Transport Project at Kochi on behalf of Government of Kerala,
- services rendered by applicant to Government of Kerala is classifiable as pure services falling under Service Classification Code 998339 and services are exempted from payment of GST

Structures India ANZ Project Management Services [2022] 145 taxmann.com 407 (AAR – Kerala)

- Services rendered by applicant in relation to construction of bridges, roads, schools etc., to Kerala PWD are activities in relation to any function entrusted to Panchayat under article 243G of Constitution or to Municipality under article 243W of Constitution
- However, HLL Infratech Services Ltd. being public sector undertaking under administrative control of Ministry of Health and Family Welfare, Government of India, neither Central Government nor State Government. Hence, not exempt.

Thank You

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Various models of working with government

Concessions

- The concession arrangement is that the private sector (concessionaire) is responsible for full delivery of the services including operation & maintenance, collection of fee, management, construction and rehabilitation of the system
- Assets are owned by the government (including the concession period)
- The government will establish standards and ensure that the concessionaire meet them
- The concessionaire collects fees/tariffs from the users as determined in the concession contract
- Thus, the role of the government shifts from provider of service to that of a Regulator

Build Operate Transfer

- the project company or operator generally obtains its revenues through a fee charged from the utility/ government rather than tariffs charged to consumers
- BOT is a specialized nature of concession. Hence, the distinction between Concession and BOT is quite narrow, and mainly in its usage of the terms.
- In BOT, the private partner provides the capital required for investment
- The private partner owns the assets, sufficient enough to recover investment costs through user charges
- The private party collects user charges
- The public sector agrees to purchase a minimum level of output produced by the facility
- At the end of the contract, the ownership of asset reverts back to the government.

Various models of working with government

Build – Own – Operate – Transfer (BOOT)

- form of project financing, wherein a private entity receives a concession from the private or public sector to finance, design, construct, and operate a facility stated in the concession contract.
- This enables the project proponent to recover its investment, operating and maintenance expenses in the project.
- Due to the long-term nature of the arrangement, the fees are usually charged during the concession period.
- The rate of increase is often tied to a combination of internal and external variables, allowing the proponent to reach a satisfactory internal rate of return for its investment.

Design – Build - Operate (DBO)

- In DBO Project the public sector owns and finances the construction of new assets.
- The private sector designs, builds and operates the assets to meet certain agreed outputs.
- The documentation for a DBO is typically simpler than a BOT or Concession as there are no financing and will typically consist of a turnkey construction contract plus an operating contract, or a section added to the turnkey contract covering operations.
- The Operator is taking no or minimal financing risk on the capital and will typically be paid a sum for the design-build of the plant, payable in instalments on completion of construction milestones, and then an operating fee for the operating period.
- The operator is responsible for the design and the construction as well as operations.

Various models of working with government

Management contract

- It is an arrangement whereby the government contracts out the operation & maintenance of public service (utility, hospital, port, water supply etc.)
- The required infrastructure is already created and the private parties provide working capital for daily maintenance
- The Government retains the assets, continues major capital investments and sets tariff
- Private party is responsible for the management, and is paid for the costs of labour and operating costs and incentives
- Potential Strengths-
  - Operational gains from private sector management
  - Assets remain with the government and continue major investments
  - Contracts are easy to develop