

## Chapter-X

# Payment of Tax

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- 49. Payment of tax, interest, penalty and other amounts
- 50. Interest on delayed payment of tax
- 51. Tax deduction at source
- 52. Collection of tax at source
- 53. Transfer of input tax credit

### Statutory provision

#### **49 Payment of Tax, Interest, Penalty and other Amounts**

- (1) Every deposit made towards tax, interest, penalty, fee or any other amount by a person by internet banking or by using credit or debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by such other mode and subject to such conditions and restrictions as may be prescribed, shall be credited to the electronic cash ledger of such person to be maintained in such manner as may be prescribed.
- (2) The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41, to be maintained in such manner as may be prescribed.
- (3) The amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of the Act or the rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed.
- (4) The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed.
- (5) The amount of input tax credit available in the electronic credit ledger of the registered person on account of-
  - (a) integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;
  - (b) the central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;
  - (c) the State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax;

- (d) the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax;
  - (e) the central tax shall not be utilised towards payment of State tax or Union territory tax; and
  - (f) the State tax or Union territory tax shall not be utilised towards payment of central tax.
- (6) The balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made thereunder may be refunded in accordance with the provisions of section 54.
- (7) All liabilities of a taxable person under this Act shall be recorded and maintained in an electronic liability register as may be prescribed.
- (8) Every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order, namely:
- (a) self –assessed tax, and other dues related to returns of previous tax periods;
  - (b) self-assessed tax, and other dues related to the return of current tax period;
  - (c) any other amount payable under the Act or the rules made thereunder including the demand determined under Section 73 or 74.
- (9) Every person who has paid the tax on goods and /or services under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the recipient of such goods or services or both.
- Explanation.1- For the purposes of this section,
- (a) the date of credit to the account of the Government in the authorised bank shall be deemed to be the date of deposit in the electronic cash ledger;
  - (b) the expression
    - (i) “tax dues” means the tax payable under this Act and does not include interest, fee and penalty; and
    - (ii) “other dues” means interest, penalty, fee or any other amount payable under this Act or the rules made thereunder.

#### 49.1 Introduction

This section provides for the following:

1. Methodology or mode of payment of tax, interest, penalty, fee or any other amount by a taxable person,
2. This Section prescribes three kinds of ledgers to be maintained by the taxable person.
  - (a) Electronic Cash Ledger;
  - (b) Electronic Input Tax Credit Leger or Electronic Credit Ledger;
  - (c) Electronic Tax Liability Register.

3. The Section further provides for availability of credit in the Cash Ledger or the credit ledger depending on the payment made by the taxable person.
4. It provides for utilization of credit and also prescribes the method of cross utilization of credit.
5. Transfer of input tax credit from UTGST to IGST account when UTGST is utilized for payment of IGST; similar provisions are there in SGST Act also

**In the following analysis, sections referred are generally referred to CGST Act unless otherwise mentioned in specific.**

#### **49.2 Analysis**

##### **A. ELECTRONIC CASH LEDGER:**

The provisions regarding Electronic Cash Ledger and amounts credited into this ledger are dealt with in sub-Section (1) & (3) of Section 49 of the CGST Act.

1. Deposit of Tax, interest, penalty, fee or any other amount by a taxable person can be made by the following modes: -
  - Internet Banking
  - Credit /Debit cards
  - National Electronic Fund Transfer (NEFT)
  - Real Time Gross Settlement (RTGS)
  - <sup>1</sup>Over the Counter payment (OTC) through authorized banks for deposits up to ten thousand rupees per challan per tax period, by cash, cheque or demand draft. This amount restriction is not applicable to remittances by
    - Government Departments
    - Proper Officer or any other Officer recovering outstanding dues or during any investigation or enforcement activity or ad hoc deposit
  - Any Other Mode as may be prescribed.
2. The 'deposit' made by one of the above mentioned modes will be credited to the Electronic Cash Ledger of the taxable person. This ledger shall be maintained in **FORM GST PMT-05<sup>1</sup>**
3. Any person, or a person on his behalf, shall generate a challan in **FORM GST PMT-06** on the Common Portal and enter the details of the amount to be deposited by him towards tax, interest, penalty, fees or any other amount<sup>1</sup>
4. The challan in **FORM GST PMT-06** generated at the Common Portal shall be valid for a period of fifteen days<sup>1</sup>
5. Any payment required to be made by a person who is not registered under the Act, shall be made on the basis of a temporary identification number generated through the Common Portal<sup>1</sup>

6. Date of credit into the account of the Government is deemed to be the **date of deposit** (not the actual date of debit to the account of the taxable person)
7. On successful credit of the amount to the concerned government account maintained in the authorised bank, a Challan Identification Number (CIN) will be generated by the collecting Bank and the same shall be indicated in the challan<sup>1</sup>
8. Where the bank account of the person concerned, or the person making the deposit on his behalf, is debited but no Challan Identification Number (CIN) is generated or generated but not communicated to the Common Portal, the said person may represent electronically in **FORM GST PMT-07** through the Common Portal to the Bank or electronic gateway through which the deposit was initiated<sup>1</sup>
9. The amount available in the Electronic Cash Ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of the Act or Rules. Manner of utilization, conditions and time limit would be prescribed
10. Any amount deducted under section 51 (TDS by Central / State Government or local authority or Government Agencies) or collected under section 52 (TCS by e-commerce operator) and claimed in **FORM GSTR-02** by the registered taxable person from whom the said amount was deducted or, as the case may be, collected shall be credited to his electronic cash ledger

**List of Authorized Banks for Net Banking and Over the Counter Payments**

Allahabad Bank	Bank of Maharashtra
Andhra Bank	Oriental Bank of Commerce
Bank of Baroda	J & K Bank
Dena Bank	Punjab and Sind Bank
Bank of India	Punjab National Bank
Central Bank of India	State Bank of India
Canara Bank	Syndicate Bank
Corporation Bank	Union Bank of India
HDFC Bank	UCO Bank
IDBI Bank	United Bank of India
ICICI Bank Ltd.	Axis Bank
Indian Bank	Vijaya Bank
Indian Overseas Bank	

**List of Authorized Payment gateways for Credit Card/ Debit Card Payment**

- Axis Bank
- Bank Of Baroda
- HDFC Bank
- ICICI Bank Ltd
- IDBI Bank
- Indian Overseas Bank
- Punjab National Bank
- State Bank Of India

Source: [www.gst.gov.in](http://www.gst.gov.in)

**B. ELECTRONIC CREDIT LEDGER**

1. Sub Section (2) of Section 49 of the CGST Act provides that the self-assessed Input Tax Credit as per return filed by a taxable person shall be credited to its **Electronic Credit Ledger**.
2. This ledger shall be maintained in **FORM GST PMT-02** for each registered person eligible for input tax credit under the Act on the Common Portal and every claim of input tax credit under the Act shall be credited to the said Ledger<sup>1</sup>.
3. The Electronic credit ledger may include the following:
  - ITC on inward supplies from registered tax payers.
  - ITC available based on distribution from input services distributor (ISD).
  - ITC on Input of Stock held/ semi-finished goods or finished goods held in stock on the day immediately preceding the date from which the taxpayer became liable to pay tax Provided he applies for registration within 30 days from the date of his liability.
  - Permissible ITC on inputs held in stock and inputs contained in semi- finished or finished goods held in stock on the day of conversion from composition scheme to regular tax scheme.
  - ITC eligible on payment made on reverse charge basis

The above list is illustrative and not exhaustive.

4. A registered person shall, upon noticing any discrepancy in his electronic credit ledger, communicate the same to the officer exercising jurisdiction in the matter, through the Common Portal in FORM GST PMT-04

**COMMON POINTS FOR ELECTRONIC CASH & CREDIT LEDGER**

1. Where a person has claimed refund of any amount from the electronic cash or credit ledger, the said amount shall be debited to the electronic cash or credit ledger<sup>1</sup>

2. If the refund so claimed is rejected, either fully or partly, the amount debited earlier, to the extent of rejection, shall be credited to the electronic cash or credit ledger by the proper officer by an order made in FORM GST PMT-03

#### MANNER OF UTILISATION OF ITC AND CROSS UTILIZATION

1. The amount available in the electronic credit ledger may be used for making any payment towards output tax payable under the Act or Rules. The manner of utilization, conditions and time lines would be prescribed.
2. The **Electronic Credit Ledger** has only three Major Heads of Credit:

Input tax	Output tax
IGST	IGST CGST SGST
CGST	CGST IGST
SGST	SGST IGST
UTGST	UTGST IGST

3. Hence cross-utilization of credit is available only as above **in that order**. The main restriction is that the CGST credit cannot be utilized for payment of SGST or UTGST and vice versa
4. Sub-Section (6) provides that the balance in the cash or credit ledger after payment of tax, interest, penalty, fee or any other amount may be refunded in accordance with the provisions of section 54 (dealing with refunds)
5. A unique identification number shall be generated at the Common Portal for each debit or credit to the electronic cash or credit ledger, as the case may be<sup>1</sup>. The said UIN must be used to discharge tax liability.

#### C. TAX LIABILITY LEDGER:

1. **Tax Liability Ledger** is required to be maintained electronically for all liabilities of a taxable person in **FORM GST PMT-01**.
2. This ledger shall be debited by the following amounts (liability is created by debiting)
  - the amount payable towards tax, interest, late fee or any other amount payable as per the return furnished by the said person;
  - the amount of tax, interest, penalty or any other amount payable as determined by a proper officer in pursuance of any proceedings under the Act or as ascertained by the said person;
  - the amount of tax and interest payable as a result of mismatch under section 42 or section 43 or section 50; or

- any amount of interest that may accrue from time to time
- 3. This ledger shall be credited for the following payments (liability is discharged by crediting)
  - Tax Deducted at Source under section 51
  - Tax Collected at Source under section 52
  - Reverse Charge on supply of goods or services under sub-section 3 of section 9 of CGST /SGST Act, sub-section 3 of section 5 of IGST Act and sub section 3 of section 7 of UTGST Act
  - Tax on supplies from unregistered suppliers under sub section 4 of section 9 of CGST/SGST Act, sub section 4 of section 5 of IGST Act and sub section 4 of section 7 of UTGST Act
  - Compounding levy under section 10 of CGST Act

#### Order of discharge of tax

Sub-Section (8) prescribes the chronological order in which the liability of a taxable person must be discharged:

1. Self-assessed tax and other dues arising out of returns for **previous tax periods** must be discharged first.
2. Self-assessed tax and other dues relating to the return of the **current tax period**.
3. Any other amount payable under the Act/Rules (liability arising out of demand notice or adjudicated proceedings etc).

#### Presumption that incidence of tax is passed on

Sub-Section (9) of CGST/SGST Act provides that the incidence of tax paid on goods/services is **deemed** to have been passed to the recipient of such goods and /or services. This is subject to the contrary being proved.

#### 49.3 Comparative Review

The Electronic Cash Ledger, Electronic Credit Ledger and Tax Liability Register are unique features of the GST law. This would ensure only eligible credits are availed thereby eliminating the need for Forms such as 'C' or 'F' or 'H' etc.

On the other hand assessee would be expected to reconcile their financial ledgers with the corresponding Electronic ledgers.

#### 49.4 FAQ

Q1. What are the three types of Ledgers to be maintained by a taxable person under the GST Law?

Ans. The three types of ledgers to be maintained are: Electronic credit ledger, electronic cash ledger and electronic tax liability register.

Q2. What are the deposit amounts that need to be reflected in the Electronic Cash Ledger?

Ans. Electronic Cash Ledger shall contain details of every deposit made towards tax, interest, penalty or any other amount (including the Tax Deducted at Source u/s 51 and Tax Collected at Source u/s 52).

Q.3 What are the major and minor heads of Credit in the Electronic Cash Ledger?

Ans

Major heads	Minor Heads
IGST	Tax
CGST	Interest
SGST	Penalty
UTGST	Any other amount

Q4. What is meant by Cross-utilization of credit and how is it done in the Electronic Credit Ledger?

Ans. Cross utilization means utilizing IGST/ CGST/ SGST/ UTGST liabilities against Electronic Credit Ledger under IGST/ CGST/ SGST/ UTGST Act. The amount available in the Electronic Credit ledger may be used for making payment towards output tax payable under the Act or Rules.

Q5. Is cross-utilization permissible among Major heads in the Electronic Cash Ledger?

Ans. Yes, cross-utilization is permissible among major heads in the Electronic Cash Ledger except that CGST credit cannot be utilized for payment of SGST/UTGST and vice versa.

Q6. What are the amounts to be reflected in the Electronic Credit Ledger?

Ans. The input tax credit as self-assessed in the details of inward supplies (Form GSTR-2) of a taxable person shall be reflected in the electronic credit ledger.

Q7. Can direct remittances to the Treasury be shown in the Electronic Credit Ledger?

Ans. No, direct remittances to the Treasury cannot be shown in the electronic credit ledger.

Q8. Is there any possibility of refund under the GST Act or is adjustment alone permissible?

Ans. There is a possibility of refund under GST Act.

Q9. What is the order in which tax liability has to be discharged?

Ans. The order in which the liability of a taxable person must be discharged is as under:

1. Self-assessed tax and other dues arising out of returns for previous tax periods must be discharged first.
2. Self-assessed tax and other dues relating to the return of the current tax period.
3. Any other amount payable under the Act/Rules (liability arising out of demand notice or adjudicated proceedings etc).



**49.5 MCQ**

Q1. Deposits towards tax, penalty, interest, fee or any other amount are credited into the ----  
----- of a taxable person:

- (a) Electronic Credit Ledger
- (b) Tax Liability Ledger
- (c) Electronic Cash Ledger
- (d) None of the above

Ans. (c) Electronic Cash Ledger

Q2. The Input Tax Credit as self-assessed by a taxable person is credited into the

- (a) Electronic Credit Ledger
- (b) Tax Liability Ledger
- (c) Electronic Cash Ledger
- (d) None of the above

Ans. Electronic Credit Ledger

Q3. Cross-Utilization of credit of available IGST after utilization towards payment of IGST is done in the following chronological order:

- (a) CGST then SGST/UTGST
- (b) SGST/UTGST then CGST
- (c) CGST, UTGST and SGST simultaneously
- (d) None of the Above

Ans. (a) CGST then SGST//UTGST

Q4. Which of the following Statements is true?

- (a) ITC of CGST is first utilized for payment of CGST and the balance is utilized for payment of SGST/UTGST
- (b) ITC of SGST is first utilized for payment of SGST and the balance is utilized for payment of CGST
- (c) ITC of CGST is first utilized for payment of CGST and the balance is utilized for payment of IGST
- (d) None of the Above

Ans. (c) ITC of CGST is first utilized for payment of CGST and the balance is utilized for payment of IGST

**Statutory provision****50. Interest on delayed payment of tax**

- (1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall, for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen percent, as may be notified by the Government, on the recommendation of the Council.
- (2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which tax was due to be paid.
- (3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty four percent, as may be notified by the Government on the recommendations of the Council.

**50.1 Introduction**

This section lays down the provisions for payment of interest under the Act for delayed payment of tax.

Provisions which are common under CGST (UTGST) and SGST Act have been analyzed hereunder.

**50.2 Analysis**

Section 50 of CGST Act makes it mandatory for a tax payer to pay interest on belated payment of tax i.e. when he fails to pay tax (or part of tax) to the Government's account within the due date.

**50.2.1 Interest - When Payable**

Interest under section 50 of CGST Act is payable in the following three circumstances

1. Sub-section (1) : Delay in payment of tax, in full or in part
2. Sub-section (3) : Undue or excess claim of input tax credit under section 42 (10)
3. Sub-section (3) : Undue or excess reduction in output tax liability under section 43 (10)

It may also be recalled that –

- a) section 42 (10) CGST/SGST Act deals with contravention of provisions for matching of claims for input tax credit by a recipient and
- b) section 43 (10) CGST/SGST Act deals with contravention of provisions for matching of claims for reduction in output tax liability by a supplier

**50.2.2 Rate of Interest**

The actual rate of interest notified by the Government vide *notification no. 13/ 2017 Central tax Dated 28 June 2017* are as follows:

S. No.	CGST Act, 2017 Sections	Section description	Rate of interest
1.	50(1)	Failure to pay tax or part thereof to the Government within period prescribed	18%
2.	50(3)	For undue or excess claim of ITC or reduction of output tax liability	24%
3.	54(12)	Interest on withheld refund	6%
4.	56	Interest on delayed refunds	6%
5.	Proviso to 56	Interest on refund arising from order passed by Adjudicating Authority/ Appellate Authority/ Tribunal/ Court and not refunded within 60 days	9%

### 50.2.3 Manner of Computation of Interest

- The manner of computation of period of interest under sub-section (1) or sub-section (3) has not been addressed in the Rules. It is hence expected that it may be included in the final version of the Rules or may be notified by the Government on a future date, based on the recommendation of the Council. The period of interest shall be from the date following the due date of payment to the actual date of payment of tax.
- Where the **tax admitted** by the taxable person in his return has not been deposited along with the returns, interest is leviable immediately on the payment of the admitted tax.  
It may be noted that, Section 39 (7) lays down the last date for remittance as the last date on which the taxable person is required to furnish such return. Also, Section 2 (117) lays down that a return shall be considered valid only if the tax payable as per the return is paid in full.
- Section 73 (5) & 73 (6) provide that if the tax along with interest has been paid, the adjudicating authority shall not serve any show cause notice.
- Section 73 (8) provides that where a person has been served with show cause notice but has made the payment of tax and penal interest under Section 50 within thirty days of issue of notice, no penalty is payable and all proceedings in respect of that tax amount are deemed to be concluded.
- Thus from a conjoint reading of Section 50 (1), 73 (5), 73 (6) and 73 (8) of the Act, it is evident that where a person makes a voluntary payment of interest along with belated payment of tax whether admitted and on his own or within thirty days from the date of issue of show cause notice, then the proceedings are deemed to be concluded and no penalty is leviable.

### 50.2.4 Other Important Points to Note

- The term 'tax' here means the tax payable under the Act or Rules made thereunder.

2. The phrase 'on his own' used in sub-section (1) indicates that such payment of interest should be made voluntarily (i.e.) even without a demand.
3. There are no specific provisions for payment of interest on the interest amount due.
4. The interest payable under this section shall be debited to the Electronic Tax Liability Register as per sub Rule 1 of Rule 85
5. Such liability for interest can be settled by adjustment with balance in Electronic Cash Ledger but not with balance in Electronic Credit Ledger

### 50.3 Comparative Review

1. This provision is similar to that in service tax and excise laws. In the case of VAT laws, if the payment of tax and interest is after issuance of show cause notice, it is at the discretion of the adjudicating authority to drop the penalty. Some State VAT laws have mandatory penalty provisions.
2. The view laid down by the Hon'ble Supreme Court in [Prathibha Processors v. UOI (1996) 11 SCC 101] that interest is automatic as it is compensatory in nature and not penal in character, holds good even under the subject Act.

### 50.4 FAQ

- Q1. When is a person liable to pay interest?
- Ans. When a person who is liable to pay tax under the provisions of the Act or the respective rules made thereunder, fails to pay the whole/ part of the tax due, to the account of the Government, within the prescribed time, he shall be liable to pay interest.
- Q2. How is the interest computed?
- Ans. Interest is computed for the period for which the tax remains unpaid at the notified rate, i.e., from the date following the day on which tax becomes due to be paid, till the date of payment of tax.
- Q3. Is penalty still payable if a person pays the tax and interest as per show cause notice?
- Ans. Where the person has made payment of tax and interest under Section 50 within thirty days of issue of the show cause notice, no penalty is payable and all proceedings in respect of that tax amount is deemed to be concluded.
- Q4. Is interest leviable on excess claim of Input Tax Credit or undue claim of Input Tax Credit?
- Ans. Yes, interest is also leviable where there is undue or excess claim of ITC under Section 42 (10)
- Q5. Is interest leviable on excess reduction of reduction of Output tax liability ?
- Ans. Yes, interest is also leviable where there is undue or excess reduction in output tax liability under section 43 (10).
- Q6. Is a show cause notice or demand required to determine the liability to pay interest?
- Ans. No, there is no requirement of demand from the department to determine the interest

liability. It is the responsibility of the person liable to pay tax to compute and pay the interest 'on his own'.

**50.5 MCQ**

Q1. Interest is payable on :-

- (a) Belated payment of tax
- (b) Undue/excess claim of Input Tax Credit.
- (c) Undue/Excess reduction in output tax liability
- (d) All of the above

Ans. (d) All of the above

Q2. Interest is calculated :-

- (a) From the date following the day on which tax becomes due to be paid
- (b) Last day such tax was due to be paid
- (c) No periods specified
- (d) None of the above

Ans. (a) From the date following the day on which tax becomes due to be paid

**Statutory provision****51 Tax Deducted 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.

- (3) The deductor shall furnish to the deductee a certificate mentioning therein the contract value, rate of deduction, amount deducted, amount paid to the Government and such other particulars in such manner as may be prescribed.
- (4) If any deductor fails to furnish to the deductee the certificate, after deducting the tax at source, within five days of crediting the amount so deducted to the Government, the deductor shall pay, by way of a late fee, a sum of one hundred rupees per day from the day after the expiry of such five-day period until the failure is rectified, subject to a maximum amount of five thousand rupees.
- (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.

**Note:** *This section is yet to be notified by Government.*

### 51.1 Introduction

It is to be noted that with an objective of ensuring smooth rollout of GST, the provisions of Tax Deduction at Source (Section 51 of the CGST / SGST Act 2017) and Tax Collection at Source (Section 52 of the CGST/SGST Act, 2017) has been postponed. Thereby, Persons who will be liable to deduct or collect tax at source will be required to take registration, but the liability to deduct or collect tax will arise from the date the respective sections are brought in force. It has further been clarified that persons supplying goods or services through electronic commerce operator liable to collect tax at source would not be required to obtain registration immediately, unless they are so liable under Section 22 or any other category specified under Section 24 of the CGST / SGST Act, 2017.

This Section provides for deduction of tax at source in certain circumstances. The Section specifically lists out the deductors who are mandated by the Central Government to deduct tax at source, the rate of tax deduction and the procedure for remittance of the tax deducted. The amount of tax deducted is reflected in the Electronic Cash Ledger of the deductee.

Provisions which are common under CGST (,UTGST) and SGST Act have been analyzed herein.

**51.2 Analysis**

CGST Act vide Section 2 (55) defines the term Government to *mean* the Central Government. SGST Act vide Section 2 (55) defines the term Government to *mean* the State Government. Section 51 (1), *ibid* refers to TDS related mandating by 'Government' (Central/State Government). Such mandating shall be for the following persons -

Department or Establishment of Central Government
Local Authority.
Government Agencies.
Persons or category of persons notified by the Central Government on recommendation of the Council.

1. The above 'persons' are referred to as deductors.
2. The deductors have to deduct tax at the rate of 1% from the payment made or credited to the supplier of taxable goods and / or services, notified by the Central Government or State Government on the recommendations of the Council. Deduction is required where the total value of supply under 'a contract' exceeds INR 2.5 lakhs. Value of supply shall exclude the tax indicated in the invoice. 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
3. The amount deducted shall be paid to the Central Government within ten days after the end of the month in which such deduction is made.  
Rules relating to Payment of Taxes read (vide Sub Rule 10 of Rule 87) that payment shall be made by debiting the electronic cash ledger (and crediting the electronic tax liability register).
4. The deductor shall furnish a TDS certificate in Form GSTR-7A to the deductee mentioning in it the following:
  - (a) contract value
  - (b) rate of deduction
  - (c) Amount deducted
  - (d) Amount paid to the appropriate Government
  - (e) Any other particulars as may be prescribed
5. This certificate has to be furnished within five days of remittance as mentioned above.
6. Certificate not furnished by the deductor:- If the deductor does not furnish the certificate of deduction-cum- remittance within five days of the remittance, the deductor has to pay a late fee of INR 100 per day from the 6<sup>th</sup> day until the day he furnishes the certificate. The maximum late fee is prescribed as INR 5000.
7. Non-remittance by the deductor: If the deductor does not remit the amount deducted as TDS, he is liable to pay penal interest under Section 50 in addition to the amount of tax deducted.

8. The amount of tax deducted reflected in Electronic Cash Ledger of deductee in the return in Form GSTR-7 filed by deductor shall be claimed as credit.
- This provision enables the Government to cross-check whether the amount deducted by the deductor is correct and that there is no mis-match between the amount reflected in the Electronic Cash Ledger as reflected in the return filed by deductor. One may draw easy analogy from existing practice in income tax related E TDS returns filed by deductor and 26AS statement available for viewing the TDS remitted in respect of his transactions by deductee.
9. Refund on excess collection: The deductor or the deductee can claim refund of excess deduction or erroneous deduction. The provisions of section 54 relating to refunds would apply in such cases. However, if the amount deducted has been credited to the Electronic Cash Ledger of the deductee, the deductor cannot claim refund (only deductee can claim).
10. As mentioned above, UTGST Act 2017, subject to its own provisions, adopts the provisions in CGST Act in respect of Tax Deduction at Source *mutatis mutandis* (Ref: Sec 21 of UTGST Act).

### 51.3 Comparative review

Provisions for deduction of tax at source exist in the VAT laws. There are no TDS provisions in central excise or service tax laws today, though there is a concept of reverse charge. Under most State VAT laws, TDS provisions are applicable on payments made to works contractors. Some States have provisions for TDS on 'transfer of right to use goods'

Comparative table between State VAT Law and CGST Act:

#### TDS Provisions under

S.No.	State VAT Law	CGST Act
1.	Applicable only to works contractors.	Applicable to suppliers notified by the Central Government on recommendations of council.
2.	Two different standard rates	One standard rate viz. 1%
3.	Deductor- every works contractee or awarder of contract	(a) A department or establishment of the Central 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 Central or a State Government on the recommendations of the Council.
4.	Two certificates have to be furnished by the Deductor. 1. Certificate of deduction 2. Certificate of remittance.	One single certificate of deduction –cum-remittance to be furnished by the Deductor within five days of remittance.



5.	If certificate of deduction alone is furnished by the Deductor, burden on the works contractor to prove deduction of tax at source.	No such burden cast on the Deductee. More onus is on the Deductor.
6.	Refund provisions and Credit provisions not clear.	Refund provisions clear. Credit can also be claimed from the amount reflected in the Electronic Cash Ledger.
7.	TDS would apply on payments towards transfer of property in goods in the State. Inter-state supplies are generally not subject to TDS.	TDS would apply on the payment made or credited to the supplier. No TDS on interstate supplies.

#### 51.4 FAQ

Q1. Who are the 'persons' who can deduct tax at source under Section 51 of CGST Act?

Ans. The following persons are to deduct tax as per the provisions of Section 51 of the CGST Act:

- (a) A department or establishment of the Central or State Government,
- (b) Local authority,
- (c) Governmental agencies,
- (d) Such persons or category of persons as may be notified, by the Central or a State Government on the recommendations of the Council.

Q.2 Under what circumstances can the Deductors mentioned in Section 51 deduct tax at source?

Ans. The Deductors u/s 51 are required to deduct tax from the payment made or credited to the supplier of taxable goods and/ or services, notified by the Central Government on the recommendations of the Council, where the total value of such supply, under a contract, exceeds rupees 2.50 lakh, exclusive of the tax as per the invoice.

Q3. What is the rate of tax deduction at source?

Ans. The prescribed rate of tax to be deducted at source is a 1% from the payment made or credited to the supplier of taxable goods and / or services.

Q4. What is the time limit for remittance of the deducted tax by the Deductor into the credit of the Government?

Ans. The amount deducted shall be paid to the credit of the Government within 10 days from the end of the month in which such deduction is made.

Q5. What is the nature of certificate to be furnished by the Deductor to the Deductee and what is the time limit?

Ans. The Deductor shall furnish a certificate in in Form GSTR-7A mentioning therein the contract value, rate of deduction, amount deducted, amount paid to the appropriate Government and such particulars as may be prescribed in this behalf, to the Deductee. This certificate is to be furnished within five days of crediting the amount so deducted to the appropriate Government, failing which, the Deductor would be liable to pay late fee being rupees one hundred per day during which the failure continues but subject to Maximum of rupees 5000.

Q6. Can the Deductee claim credit of the remittance of TDS amount by the Deductor?

Ans. Yes, the Deductee can claim credit of the tax deducted, in his electronic cash ledger. This deduction would also be reflected in the return of the Deductor filed under sub-section (3) of Section 39, in the manner prescribed.

Q7. Can tax, once deducted, be claimed as a refund? Who can claim refund?

Ans. Yes, it is possible to claim refund arising on account of excess or erroneous deduction, and this would be governed by the provisions of Section 54. Fine text of refund rules may please be referred.

Such refund may be claimed either by the Deductor or the Deductee, but not both. Further, no refund would be available to the Deductor once the amount deducted has been credited to the electronic cash ledger of the Deductee.

### 51.5 MCQ

Q1. The deduction of tax by the Deductor under Section 51 of CGST Act is at the rate of:

- (a) 2%
- (b) 3%
- (c) 1%
- (d) None of the above.

Ans. (c) 1%

Q2. The amount of tax deducted by the Deductor has to be paid to the credit of the appropriate Government within ..... days after the end of the month in which such deduction is made:

- (a) 20 days
- (b) 10 days
- (c) 15 days
- (d) 5 days

Ans. (b) 10 days

Q3. The time limit for furnishing the deduction –cum- remittance certificate by the Deductor to the Deductee is:

- (a) 10 days

- (b) 20 days
- (c) 5 days
- (d) None of the above.

Ans. (c) 5 days

Q4. The Deductee can claim credit of the remittance made by the Deductor in his,

- (a) Electronic Credit Ledger
- (b) Tax liability Ledger
- (c) Electronic Cash Ledger
- (d) None of the above.

Ans. (c) Electronic Cash Ledger

Q5. If excess or erroneous deduction has been made by the Deductor and this amount is credited to Electronic Cash Ledger of the Deductee, refund can be claimed by,

- (a) Deductor
- (b) Deductee
- (c) Both Deductor and Deductee
- (d) None of the above

Ans. (d) Deductee (Subject to fine text of related Rules)

Q6. Tax deduction shall be made if -

- (a) A contract is for an amount exceeds Rs 25 lakh
- (b) A contractor supplies goods or services or both exceeding Rs 2.5 lakh in a year
- (c) A contractee receives goods or services or both exceeding Rs 2.5 lakh in a year from various contractors
- (d) None of the above

Ans. (b) A contractor supplies goods or services or both exceeding Rs 2.5 lakh in a year

### Statutory provision

#### 52. Tax Collected at Source

- (1) Notwithstanding anything to the contrary contained in this Act, every electronic commerce operator (hereafter in this section referred to as the "operator"), not being an agent, shall collect an amount calculated at such rate not exceeding one per cent., as may be notified by the Government on the recommendations of the Council, of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator.

Explanation.—For the purposes of this sub-section, the expression "net value of taxable

supplies” shall mean the aggregate value of taxable supplies of goods or services or both, other than services notified under sub-section (5) of section 9, made during any month by all registered persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

- (2) The power to collect the amount specified in sub-section (1) shall be without prejudice to any other mode of recovery from the operator.
- (3) The amount collected under sub-section (1) shall be paid to the Government by the operator within ten days after the end of the month in which such collection is made, in such manner as may be prescribed.
- (4) Every operator who collects the amount specified in sub-section (1) shall furnish a statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under sub-section (1) during a month, in such form and manner as may be prescribed, within ten days after the end of such month.
- (5) Every operator who collects the amount specified in sub-section (1) shall furnish an annual statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under the said sub-section during the financial year, in such form and manner as may be prescribed, before the thirty first day of December following the end of such financial year.
- (6) If any operator after furnishing a statement under sub-section (4) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the statement to be furnished for the month during which such omission or incorrect particulars are noticed, subject to payment of interest, as specified in sub-section (1) of section 50:

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of statement for the month of September following the end of the financial year or the actual date of furnishing of the relevant annual statement, whichever is earlier.

- (7) The supplier who has supplied the goods or services or both through the operator shall claim credit, in his electronic cash ledger, of the amount collected and reflected in the statement of the operator furnished under sub-section (4), in such manner as may be prescribed.
- (8) The details of supplies furnished by every operator under sub-section (4) shall be matched with the corresponding details of outward supplies furnished by the concerned supplier registered under this Act in such manner and within such time as may be prescribed.
- (9) Where the details of outward supplies furnished by the operator under sub-section (4) do not match with the corresponding details furnished by the supplier under section 37,

the discrepancy shall be communicated to both persons in such manner and within such time as may be prescribed.

- (10) The amount in respect of which any discrepancy is communicated under sub-section (9) and which is not rectified by the supplier in his valid return or the operator in his statement for the month in which discrepancy is communicated, shall be added to the output tax liability of the said supplier, where the value of outward supplies furnished by the operator is more than the value of outward supplies furnished by the supplier, in his return for the month succeeding the month in which the discrepancy is communicated in such manner as may be prescribed.
- (11) The concerned supplier, in whose output tax liability any amount has been added under sub-section (10), shall pay the tax payable in respect of such supply along with interest, at the rate specified under sub-section (1) of section 50 on the amount so added from the date such tax was due till the date of its payment.
- (12) Any authority not below the rank of Deputy Commissioner may serve a notice, either before or during the course of any proceedings under this Act, requiring the operator to furnish such details relating to—
- (a) supplies of goods or services or both effected through such operator during any period; or
  - (b) stock of goods held by the suppliers making supplies through such operator in the godowns or warehouses, by whatever name called, managed by such operator and declared as additional places of business by such suppliers, as may be specified in the notice.
- (13) Every operator on whom a notice has been served under sub-section (12) shall furnish the required information within fifteen working days of the date of service of such notice.
- (14) Any person who fails to furnish the information required by the notice served under sub-section (12) shall, without prejudice to any action that may be taken under section 122, be liable to a penalty which may extend to twenty-five thousand rupees.

Explanation. —For the purposes of this section, the expression “concerned supplier” shall mean the supplier of goods or services or both making supplies through the operator.

**Note: This section is yet to be notified by Government.**

### 52.1 Introduction

This Section provides for collection of tax at source in certain circumstances. The Section specifically lists out the tax collecting persons who are mandated by the Central Government to collect tax at source, the rate of tax collection and the procedure for remittance of the tax collected. The amount of tax collected is reflected in the Electronic Cash Ledger of the person from who tax collected.

Provisions which are common under CGST, UTGST and SGST Act have been analyzed herein.

**52.2 Analysis**

- (i) Every E-Commerce Operator shall collect TCS at a rate not exceeding 1% on the net value of transaction in which he collects consideration of the supply. Please note that if there is returning of supplies to Suppliers, then the same shall be reduced from the gross value; TCS shall be worked on such net figure only(after such reduction). It is pertinent to note the following definitions here –
- Section 2 (44), –
- “electronic commerce” means the supply of goods or services or both, including digital products over digital or electronic network;
- Section 2 (45), –
- “electronic commerce operator” means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce
- (ii) The amount collected so shall be paid to the Central/State Government respectively within ten days after the end of the month in which such collection is made.
- (iii) In case the E-commerce operator fails to collect to tax under sub-section 1 of section 52 or collects an amount which is less than the amount required to be collected under said sub-section or where he fails to pay to the government the amount collected as tax under sub-section 3 of section 52, he shall be liable to penalty under clause (vi) of sub-section 1 of section 122 of the Act, i.e. Rs.10,000 or the amount of TCS involved, whichever is higher.
- (iv) E-Commerce operator shall furnish details of outward supplies of goods or services or both made through it, including the supplies returned through it and the amount collected by it in sub-section 1, in Form GSTR-8 within the 10 days after end of the month in which supplies are made.
- (v) The details of tax collected at source furnished by an E-commerce operator under section 52 in Form GSTR-8 shall be made available to the supplier in Part D of FORM GSTR - 2A electronically through the Common Portal and such taxable person may include the same in FORM GSTR-2.”
- (vi) Section 52 (5) of CGST Act requires filing of Annual Statement by E-Commerce operator on or before 31<sup>st</sup> December following the year end (31<sup>st</sup> March of relevant year).
- (vii) The amount of tax collected is reflected in Electronic Cash Ledger of supplier since related monthly return is filed by E-Commerce Operator.
- (viii) Any mismatch between the data submitted by the E-Commerce operator in his monthly returns and that of suppliers making supplies through him shall cause due ‘mismatch enquiry’ from the proper officer; and either party may rectify the erroneous data. If rectification is not carried out by supplier his offence get confirmed. Short remittance, if any, identified thus will have to be paid by erring supplier (who under reported the turnover) with interest calculated as per Section 50.

- (ix) Any authority, in the rank of Deputy Commissioner or above it can issue a notice – during, or before a proceeding under this Act - to E Commerce Operator seeking information on –
- (a) supplies of goods or services or both effected through such operator during any period; or
  - (b) stock of goods held by the suppliers making supplies through such operator in the godowns or warehouses, by whatever name called, managed by such operator and declared as additional places of business by such suppliers, as may be specified in the notice.

This shall be a notice which need to be responded within 15 days from the date of receipt by the E Commerce Operator. Failure to submit the required details will cause penalty under Section 52 (14) of the Act which may extend to Rs. 25,000.

- (x) UTGST Act 2017, subject to its own provisions, adopts the provisions in CGST Act in respect of Tax Collection at Source *mutatis mutandis* (Ref: Sec 21 of UTGST Act).

### 52.3 FAQ

Q1. Who are the 'persons' liable to make collection of tax under Section 52 of CGST/SGST Act?

Ans. E Commerce operator (as defined in Section 2 (45)) is the person to collect the tax on net value of taxable supply by him/her.

Q2. What is a Net Value of Taxable Supply for the purpose of TCS U/s 52 of the Act?

Ans. The expression “net value of taxable supplies” shall mean the aggregate value of taxable supplies of goods or services or both, other than services notified under sub-section (5) of section 9, made during any month by all registered persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

Q3. Which format of monthly return has to be filed by E Commerce Operator?

Ans. Tax collecting E Commerce operator shall use GSTR 8 return to make statement of outward supplies made through him in that particular month.

CGST Rules on Returns read as follows –

“The details of tax collected at source furnished by an e-commerce operator under section 52 in FORM GSTR-8 shall be made available to the concerned supplier\* in Part D of FORM GSTR - 2A electronically through the Common Portal and such taxable person may include the same in FORM GSTR-2.”

Q4. Whether an E Commerce operator collected tax should file any annual return? What is the format thereof?

Ans. Section 52 (5) of CGST/SGST Act requires filing of Annual Statement by E Commerce operator on or before 31<sup>st</sup> December following the year end (31<sup>st</sup> March of relevant

year). However, Rule 80 of Rules on Returns at present excludes explicitly the tax collecting parties under Section 52. Rule 80, *ibid*, reads as follows -

*(1) Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return as specified under sub-section (1) of section 44 electronically...*

This contradiction, may be set right by law makers before making fine text of rules.

Q5. What is the penalty if an E Commerce operator failed to respond as required in a notice issued by Deputy Commissioner or an officer of higher rank?

Ans. Failure to submit the required details will cause penalty Under Section 52 (14) of the Act upto Rs. 25,000. *In addition to this*, penalty under section 122 of the Act 'shall' also be there (Rs. 10,000 or the amount of TCS involved, whichever is higher).

#### 52.4 MCQ

Q1. Tax Collection at Source under Section 52 of CGST Law shall be at the rate of:

- (a) 1%
- (b) 2%
- (c) 0.5%
- (d) A percentage not exceeding 1%.

Ans. (d) A percentage not exceeding 1%

Q2. The amount of tax collected by the E Commerce Operator has to be paid to the credit of the appropriate Government within ..... days after the end of the month in which such TCS is made:

- (a) 5 days
- (b) 10 days
- (c) 15 days
- (d) 20 days

Ans. (b) 10 days

Q3. E Commerce operators should file:

- (a) Monthly returns only
- (b) Annual return only
- (c) Quarterly return only
- (d) Monthly Returns as well as Annual Return

Ans. (d) Monthly Returns as well as Annual Return

Q4. A notice to E Commerce operators seeking information can be issued by:

- (a) Superintendent



- (b) Inspector
- (c) Assistant Commissioner
- (d) Deputy Commissioner

Ans. (d) Deputy Commissioner

Q5. E Commerce operator received notice which sought information as per Section 52 of the CGST Act but he failed to duly respond to the same. The penalty -

- (a) Shall not be there
- (b) Penalty U/s 52 shall be there
- (c) Penalty U/s 122 may be there
- (d) Both the penalty U/s 52 as well as 122 shall be there

Ans. (d) Both the penalty U/s 52 as well as 122 shall be there

### Statutory provision

#### 53. Transfer of input tax credit

53. On utilisation of input tax credit availed under this Act for payment of tax dues under the Integrated Goods and Services Tax Act in accordance with the provisions of sub-section (5) of section 49, as reflected in the valid return furnished under sub-section (1) of section 39, the amount collected as central tax shall stand reduced by an amount equal to such credit so utilised and the Central Government shall transfer an amount equal to the amount so reduced from the central tax account to the integrated tax account in such manner and within such time as may be prescribed

#### 53.1 Introduction

This Section provides simple but important modus operandi in respect of post CGST/SGST/UTGST utilisation towards IGST liability.

#### 53.2 Analysis

U/s 49 (5) (b) (c) and (d) of the Act, SGST / CGST / UTGST credits can be utilised by a tax payer on priority basis to respective SGST / CGST / UTGST dues first. Then, in case of CGST, balance, if any, can be used pay towards IGST. If used so, there shall be reduction in central tax caused by Central Government and equal credit shall be ensured to IGST in the prescribed manner.

Such treatment shall be ensured by the Central Government for UTGST and SGST also in respective cases.

For better clarity, it may please be noted that equivalent provision is there vide Section 18 of Integrated Goods and Services Act 2017.

**53.3 FAQ**

Q1. If CGST is utilised to pay towards dues of IGST how the Central Government shall ensure due credit to IGST?

Ans. There shall be reduction in CGST on such utilisation; the Central Government shall transfer equivalent amount to the credit of IGST account.

**53.4 MCQ**

Q1. Section 53 of CGST/SGST Act, 2017 provides for transfer of amount (equivalent to CGST credit utilised) by Central Government to:

- (a) CGST A/c
- (b) SGST A/c
- (c) UTGST A/c
- (d) IGST A/c

Ans. (d) IGST A/c