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Analysing developments impacting business

TDS AND TCS PROVISIONS UNDER GST NOTIFIED

17 September 2018 The Ministry of Finance, vide Notification No. 50/2018-Central Tax and Notification No. 51/2018-Central Tax, both dated 13 September 2018, has appointed 1 October 2018 as the day on which the provisions relating to the Tax Deducted at Source (TDS) under Section 51 of the Central Goods and Services Tax Act (CGST Act) and Tax Collected at Source (TCS) under Section 52 of the CGST Act will come into effect.

A brief overview of the aforesaid statutory provisions is given below:

➤ **TDS provisions**

Section 51 of the CGST Act mandates certain specified entities (which are closely related to the Government) to deduct TDS (at the rate of 1% of the value of supply) while making payment to a supplier making intra-state supply of goods or services exceeding INR 2.5 Lakhs. Similar provisions exist under the State GST legislations and hence, the cumulative deduction that will be made is 2% of the value of the supply. Effective 1 October 2018, the following entities would be required to deduct TDS:

- a. A department or establishment of the Central Government or State Government; or
- b. Local authority; or
- c. Governmental agencies; or
- d. 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,
 - ii. with fifty-one per cent or more participation by way of equity or control, to carry out any function;
- e. Society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860 (21 of 1860);

f. Public sector undertakings.

➤ **TCS provisions**

As per Section 52 of the CGST Act, an e-commerce operator who collects consideration for supply of goods or services made through it is required to retain and deposit with the Government an amount equivalent to 1% of the net aggregate value of the supplies made through it. A similar provision also exists under the State GST legislations, making the total deduction equivalent to 2% of the net aggregate value of the supplies.

Comment

The notification of the TDS and TCS provisions was long due since the enactment of the GST laws on 1 July 2017. The rationale behind having the TDS provisions is to help in monitoring the transactions with the Government which may involve substantial consideration and further to ensure GST compliance therein. The notification of the TCS provisions has a wider impact on e-commerce operators having a turnover of less than INR 20 lakhs and who operate on a collect model, as they will have to now compulsorily seek registration under the CGST Act and discharge the TCS obligations from 1 October 2018. The TCS provisions may be open to challenge in the writ courts on the ground of differential treatment, as other entities who fall below the threshold are not required to get themselves registered.

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