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An Overview of Section 9(4) of CGST Act, 2017

CA Sreenath Nageri,
Kozhikode

I. Section 9(4) under CGST (Amendment) Act, 2018

*The Government may, on **the recommendations of the Council, by notification, specify a class of registered persons** who shall, in respect of supply of specified categories of goods or services or both received from an **unregistered supplier**, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both."*

On **29th March 2019** through **Notification No. 07/2019 Central Tax (Rate)**-

The Central Government, on the recommendations of the Council, notified the registered person and goods / services that shall be covered under RCM if received from unregistered suppliers in Section 9(4) will be applicable for "**Promoters**" only for the supplies mentioned under – (**effective from 1st April 2019.)**

The term "**Promoter**" shall have the same meaning as assigned to it in in clause (zk) of section 2 of the **Real Estate (Regulation and Development) Act, 2016**

"Promoter" means, —

(i) A person who constructs any independent building or a building consisting of apartments, or converts an existing building into apartments, to sell all or allot the apartments to any other persons and includes his assignees, or

(ii) A person who develops land into the project, whether or not the person also constructs structures on any of the plots, to sell it to other persons, whether with or without structures.

(iii) Any such authority that owns the plots or placed at their disposal by the Government for selling purposes of the plots or apartments.

(iv) A State-level co-operative housing finance society and a primary co-operative housing society that constructs buildings or apartments for its members or in respect of the allottees.

(v) Any person who acts as a builder, contractor, developer, estate developer, or claims to be the holder of the power of attorney from a landowner on which the apartment

or building is constructed, or any plot is developed for the purpose of sale.

(vi) Any person who constructs any building or apartment for sale to the general public.

II. <u>Category of supply of goods and services under sec 9(4):-</u>

1. For Input and input Service for Construction of Project:

- If 'Promoter' (Recipient) purchased input goods and services used in the construction of project from an unregistered person, he is liable to pay GST under RCM on the supplies made from unregistered supplier under Section 9(4) of CGST Act, 2017.
- Minimum **80%** of input or input services or both required are to be purchased from registered person and **20%** can be purchased from an unregistered person. Also, if this condition gets failed, promoter must pay 18% GST under RCM on the shortfall, which means that **GST @18% is payable on value to the extent of shortfall.**
- However, value of input Services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI) are excluded for calculating 80% procurement limit.

2. For Purchase of Cement:

The Notification No. 24/2019-Central Tax (Rate) dated 30.09.2019 has amended the category of Cement from Notification No. 07/2019- Central Tax (Rate).

- As per **Notification No. 24/2019-Central Tax (Rate) dated 30 September 2019** RCM will be applicable on <u>any amount of purchase</u> of '**Cement**' by the "promoter" from an **unregistered supplier** for the construction of project during the financial year (irrespective of the condition of 20%/80%, as in case of input goods and services at point 1 above.) That is, cement purchased from an unregistered person on any amount will attract RCM. Therefore, Promoter has to pay tax under RCM at the applicable GST Rate. Presently, **GST Rate of Tax for cement is 28%.** This tax under RCM will be paid in the same month of purchase.

Which means any **shortfall** in the procurement would be subject to GST, which is to be paid by **promoters at the rate of 18%** on supplies used as inputs or input services and **28% GST** under RCM for any purchase of **cement irrespective of total purchase** from an **unregistered supplier.**

3. *Inputs and input services on which tax is paid on reverse charge basis shall be deemed to have been purchased from registered person. Which means that it will be included while computing the 80% criteria.*

- For Example- Mr. A's purchase is as below:
  - Total value of inputs and input services - Rs 100
  - Purchases of inputs and input services, other than cement - Rs 60
  - Cement purchases (all from unregistered suppliers) - Rs 15 (reverse charge @28% applicable)
  - Input and Input services from Unregistered person – Rs. 25
- Here, Mr A is liable to pay RCM and the calculation is as below:-

Mr A is required to purchase minimum **80%** of input and input services or both from registered person . Ie for Rs.80		
input & input service actually purchased by Mr A from a registered person	**60 Rs**	
Cement purchased by Mr A used in the construction of project from unregistered person.	**15 Rs**	
Other purchases of input & input services from unregistered person	**25 Rs**	
Therefore, Shortfall from the minimum value of goods or services or both required to be purchased by Mr A is **[Liable to pay under RCM on shortfall of 80% - 80 Rs.– Rs. (60 + 15)]**	**5 Rs**	

- In this scenario, Mr A is liable to pay GST on Rs.5 @ 18% under reverse charge. Because, there is a shortfall of 5% in supplies received from unregistered person.
- Also, he is liable to pay under RCM for total purchase of Cement from unregistered person, irrespective of % total purchase (Notification No. 24/2019-Central Tax (Rate) dated 30.09.2019)]
  - That is, on 15 Rs @ 28% under reverse charge (**GST Rate of Tax for cement is 28%)**

4. <u>For Purchase Capital goods:</u>

- "Promoter" is liable to pay GST under RCM for purchase of any **capital goods** from any unregistered supplier for construction of project during the financial year. **(Notification No. 07/2019- Central Tax (Rate)).**

<u>Analysis of Sec 9(3) and Sec 9(4)</u>

- Section 9(3) is applicable to notified goods or services where recipient is liable to pay tax, irrespective of whether the supplier is registered or not.
- However, Section 9(4) is applicable to notified goods or services supplied by unregistered person to registered person where recipient is liable to pay tax.

A Spot – GST Tax deducted at source

CA. Prithive Ravi,
Chennai

I am delighted to give a brief about the GST - TDS under section 51 of CGST act which was effective from 01-10-2018.

Section 51 of CGST Act 2017 deals and explains the provisions of TDS deduction and remittance to the Government.

I. Who is liable to deduct Tax?

A Deduction of Tax by the government agencies (till now) or any other agencies from the payment made to the supplier of taxable goods or services or both where the total value of such supply **under a contract, exceeds two lakh and fifty thousand rupees.**

(*Term Contract has not been defined in GST Act. Hence, the same should be referred from Indian Contract Act, 1872 where Contract means "an agreement enforceable by law is a contract".)*

1. Central Government and its department of Central Government
2. State Government and its departments
3. A Union Territory and its departments
4. Department of the Government like Revenue, Economic affairs or Disinvestment which are attached to respective ministry of Finance of Central Government.
5. Local Authority as defined under the Articles of Constitution
6. Government Agencies
7. Established by any government, with 51% or more participation by way of equity or control, to carry out any function established by the CG, SG or a Local Authority under the Societies Registration Act 1860
8. Public Sector Undertakings

However, Government may on the recommendation of council notify other categories of persons also for the purpose of expanding the coverage of TDS.

II. Rate at which the GST-TDS to be deducted?

► *1% CGST + SGST 1% (For Intra-State supplies)*

► *2% IGST (For Inter-State Supplies)*

III. Threshold for deduction of Tax?

Tax to be deducted only if Total Value of Supply under the Contract exceeds Rs.2,50,000/- (*In case of a supply received from the registered person exceeds Rs.2,50,000/- then the GST TDS needs to be applied*).

IV. Non-Applicability of GST-TDS ?

- Where the location of supplier and place of supply both are in same state but place of recipient of supply is another state, **no TDS shall be deductible**
- GST Council has also clarified in the Standard Operating Procedure (SOP) issued by dated 28/09/2018 that no TDS is required to be deducted "**where the payment is made to an unregistered dealer"** (Hence this provision is applicable only in case of registered Supplier)
- Supply of **Exempted goods and services** are out of the purview of GST TDS

V. Time Limit for Deducting Tax under GST?

Tax has to be deducted at the time of **Payment** to the Supplier of Taxable goods or services (as per the FAQ released by CBIC).

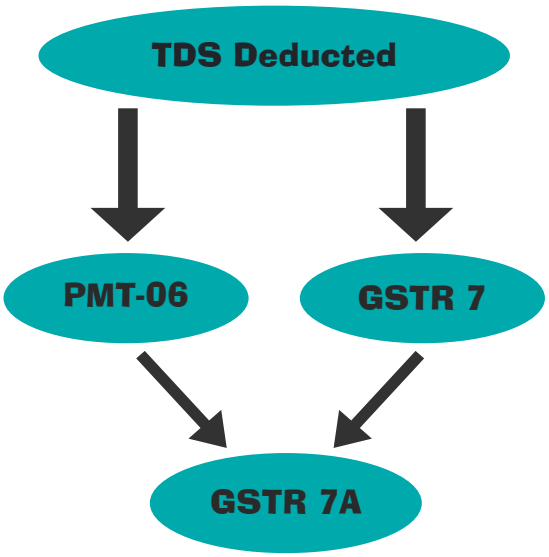
VI. Time Limit to deposit TDS deducted?

By **10th of Succeeding month** in which tax was deducted is the time limit to deposit the TDS to the Government along with GSTR 7 giving the details of deductions and deductees.

VII. Valuation for the purpose of GST-TDS ?

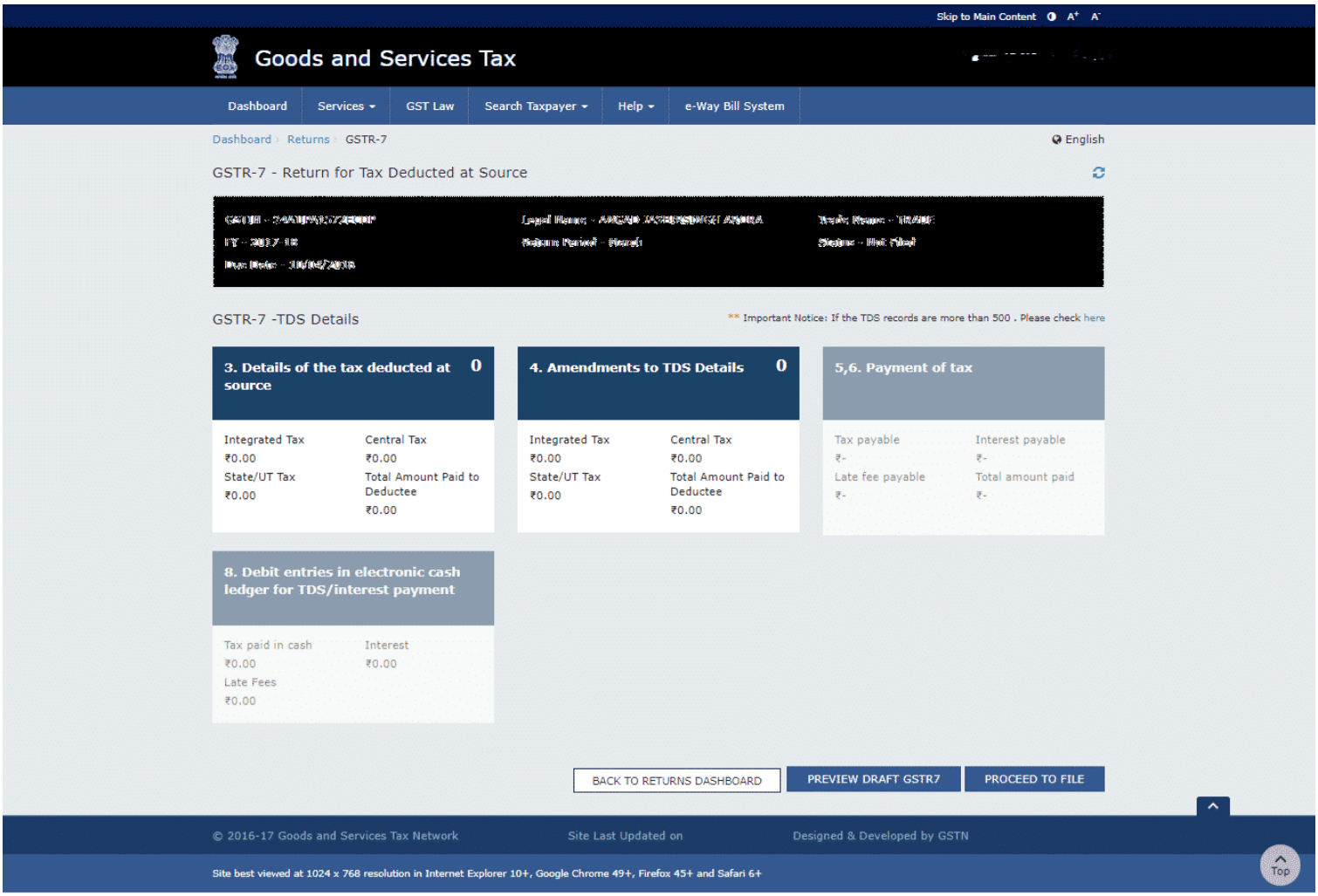
The value of supply shall be taken as the amount **excluding the Central tax, State tax, Union territory tax, Integrated tax and cess indicated in the invoice**. Therefore, consider the taxable value without GST for calculating the threshold limit as well

Process of GST TDS

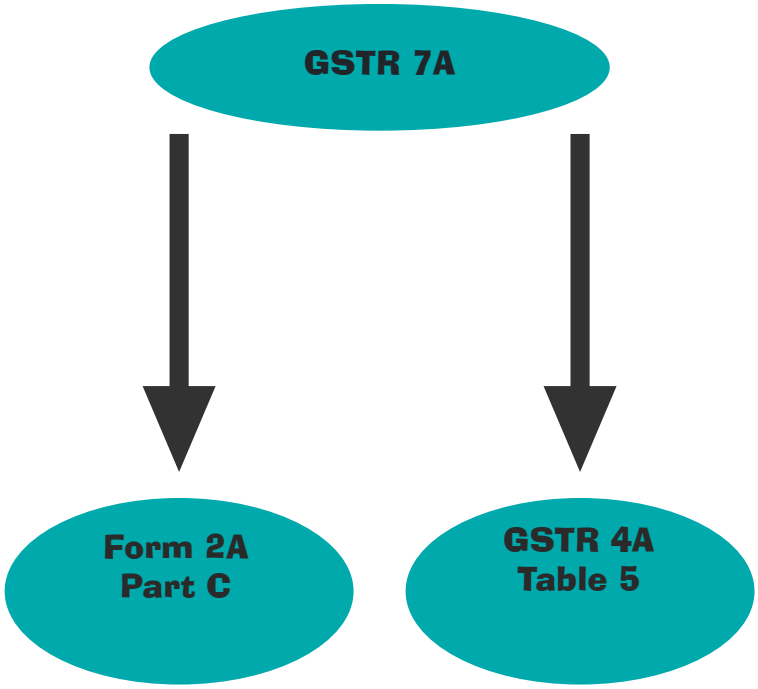


Supply Description	Supplier	POS	Recipient	Applicability
Govt of Kerala engages a contractor from Karnataka for renovation work in Karnataka	Karnataka	Karnataka	Kerala	No
Govt of Kerala purchases taxable goods from TN	TN	Kerala	Kerala	Yes

A Glimpse of GSTR 7 online form -



After 5 days of crediting the amount to the government, deductor must issue TDS Certificate to the deductee without fail. TDS deducted and paid shall be auto populated for Regular and Composite dealers in the below category –



The Auto populated TDS can be utilized by the deductee for payment of taxes, interest etc.,

VIII. Consequences of Non – Compliance

- Tax deducted if not paid to the government, Interest will be charges at 18 % per annum to the deductor
- Further Section 73 and 74 of the CGST act applies for penal provision against the law to the deductor
- There shall be levied a penalty of Rs. 10,000/- or an amount equivalent to tax not deducted or tax shortly deducted or collected/ shortly collected but not deposit to the Government, whichever is higher.

VIII. Additional points considered in understanding the provision better

1. In the case of wrong deduction, deductor or deductee either of them can **claim refund** under the provision of law.
2. As per the provision of section 24(vi), persons who are required to deduct TDS under section 51 shall take registration whether such persons are separately registered under the GST Act or not.
3. TDS is applicable on advance payment made for supply of goods or services under a contract, where contract value exceeds 2,50,000 (excluding GST).
4. GST Council has also clarified that no TDS is required to be deducted "**where the tax is to be paid on reverse charge by the recipient".**
5. TDS need to be deducted in respect of the payment made for the taxable supplies received from registered person **whether the supplier is registered as normal taxpayer or under composition scheme.**
6. It will be noted that TDS provisions will be applicable when contract value exceeds INR 2.5 Lakh irrespective of the fact that how much is tenure spent for the completion of the said contract.

MCA Updates

1. Commencement notification dated 24.03.2021Pdf(24 KB) dated 24th March, 2021. CG has appointed the 24th March 2021 as the date on which the provisions of section 23 and 45 of the said act shall come into force.

2. In exercise of the powers conferred by sub-section (1) section 467 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following amendments in Schedule III to the said Act with effect from 1st day of April, 2021.

3. Companies (Audit and Auditors) Amendment Rules, 2021.

   a. In the Companies (Audit and Auditors) Rules, 2014, in rule 11,- (1) clause (d) shall be omitted. – Disclosure of Specified Bank Notes.

   b. after clause (d), the following clauses shall be inserted, namely:-

(e). (i) Whether the management has represented that, to the best of it's knowledge and belief, other than as disclosed in the notes to the accounts, no funds have been advanced or loaned or invested (either from borrowed funds or share premium or any other sources or kind of funds) by the company to or in any other person(s) or entity(ies), including foreign entities ("Intermediaries"), with the understanding, whether recorded in writing or otherwise, that the Intermediary shall, whether, directly or indirectly lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the company ("Ultimate Beneficiaries") or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries;

(ii).(Whether the management has represented, that, to the best of it's knowledge and belief, other than as disclosed in the notes to the accounts, no funds have been received by the company from any person(s) or entity(ies), including foreign entities ("Funding Parties"), with the understanding, whether recorded in writing or otherwise, that the company shall, whether, directly or indirectly, lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the Funding Party ("Ultimate Beneficiaries") or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries; and

(iii). Based on such audit procedures that the auditor has considered reasonable and appropriate in the circumstances, nothing has come to their notice that has caused them to believe that the representations under sub-clause (i) and (ii) contain any material mis-statement.

(f). Whether the dividend declared or paid during the year by the company is in compliance with section 123 of the Companies Act, 2013.

(g).4[Whether the company, in respect of financial years commencing on or after the 1st April, 2022,] has used such accounting software for maintaining its books of account which has a feature of recording audit trail (edit log) facility and the same has been operated throughout the

year for all transactions recorded in the software and the audit trail feature has not been tampered with and the audit trail has been preserved by the company as per the statutory requirements for record retention.]

4. Amendment to Schedule V of the Companies Act., 2013:

a) Under Heading Remuneration - In Section 1 after the words "managerial person or persons", the words or other director or directors shall be inserted;

b) Table A shall be substituted:

"Explanation.– For the purposes of Section I, Section II and Section III, the term "or other director shall mean a non-executive director or an independent director.

New Table A

Sl	Where the effective capital (in rupees) is	Limit of yearly remuneration payable shall not exceed (in Rupees) in case of a managerial person	Limit of yearly remuneration payable shall not exceed (in rupees) in case of other director
1	(i) Negative or less than 5 crores.	60 lakhs	12 Lakhs
2	5 crores and above but less than 100 crores.	84 Lakhs	17 Lakhs
3	100 crores and above but less than 250 crores.	120 Lakhs	24 Lakhs
4	250 crores and above.	120 lakhs plus 0.01% of the effective capital in excess of Rs.250 crores:	24 Lakhs plus 0.01% of the effective capital in excess of Rs.250 crores

Income Tax Updates

1) User can now download and fill the offline utility for ITR 1 & 4 (AY 2021-22). The utility for other ITRs will be enabled shortly

2) ITR submission for AY 2021-22 will be made available shortly

3) For AY 2021-22, the ITR1 to 4 can be filled using single JSON Utility. Import of Prefill file is mandatory in utility Refer the attachment for more details.

4) Excel & Java version of ITR utilities will be discontinued from AY 2021-22

5) New Form 10A is available for e-Filing for registration or provisional registration or intimation or approval or provisional approval.

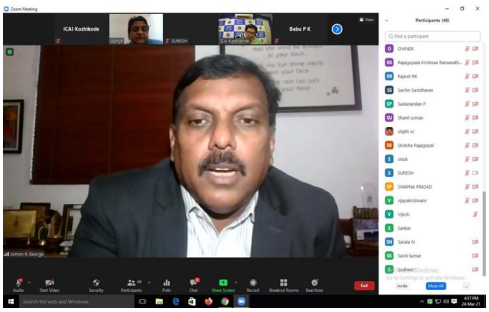
ACTIVITIES - MARCH, 2021

39th Annual Changeover of Kozhikode Branch of SIRC of ICAI,
Chief Guest : **Sri. Pradeep Kumar,** ***MLA, Kozhikode. Guests of Honour:*** **Mr. SujithRam Parayil,** ***Joint Managing Director, KVR Group,*** **CA. Babu Abraham K,** ***Central Council Member, ICAI and*** **CA. Jomon K. George,** ***Regional Council Member, ICAI*** **- 06.03.2021**

Seminar on Bank Audit, ***Speaker :*** **CA. A. Mony ,** ***Calicut &*** **CA. Rajmohan R,** ***Trichur*** **- 13.03.2021**

Seminar on Bank Audit, ***Speaker :*** **CA. Sanil S Kurup,** ***Calicut*** **- 17.03.2021**

Seminar on Bank Audit, *Speaker:* CA. Rajmohan R, *Trichur* - 17.03.2021



VCM on Bank Audit, *Speaker* :CA. AbijitSanzgiri, *Mumbai* - 24.03.2021

Upcoming Programmes - April, 2021

April

24 CPE Seminar on Income Tax budget amendments and Trust Amendments.

28 CPE Seminar on code of ethics and Auditing Standards.
Speaker - CA. Jomon K George

Contributions to e-newsletter

Contributions in the form of articles, poems, jokes, travelogues etc. are invited from members for consideration in the monthly e-Newsletter. Interested members may email their contribution to *icaikoznewsletter@gmail.com* along with name, membership number and mobile number.