

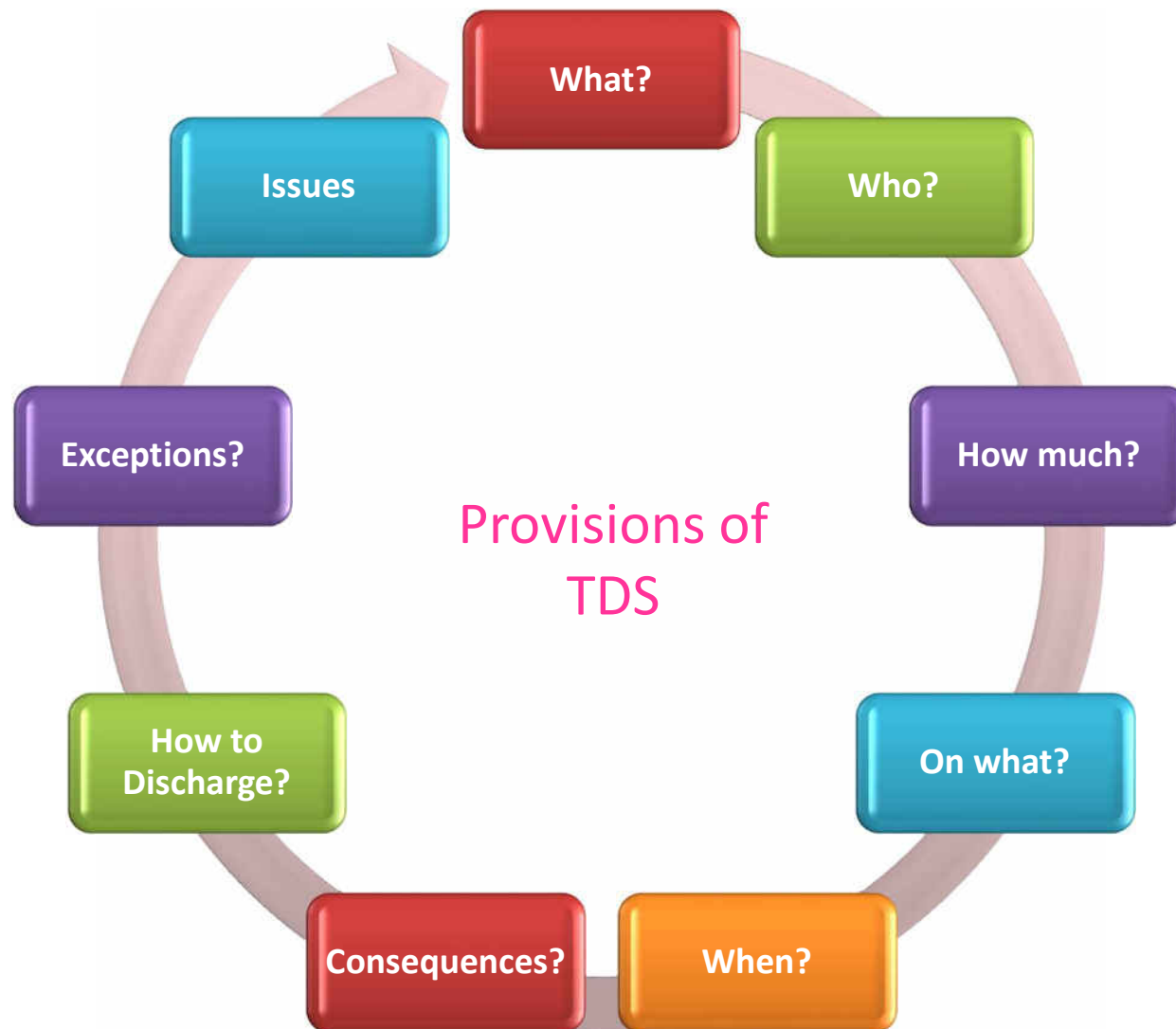
PROVISIONS OF TDS/TCS IN GST

Presented by:
CA Jayesh Gogri

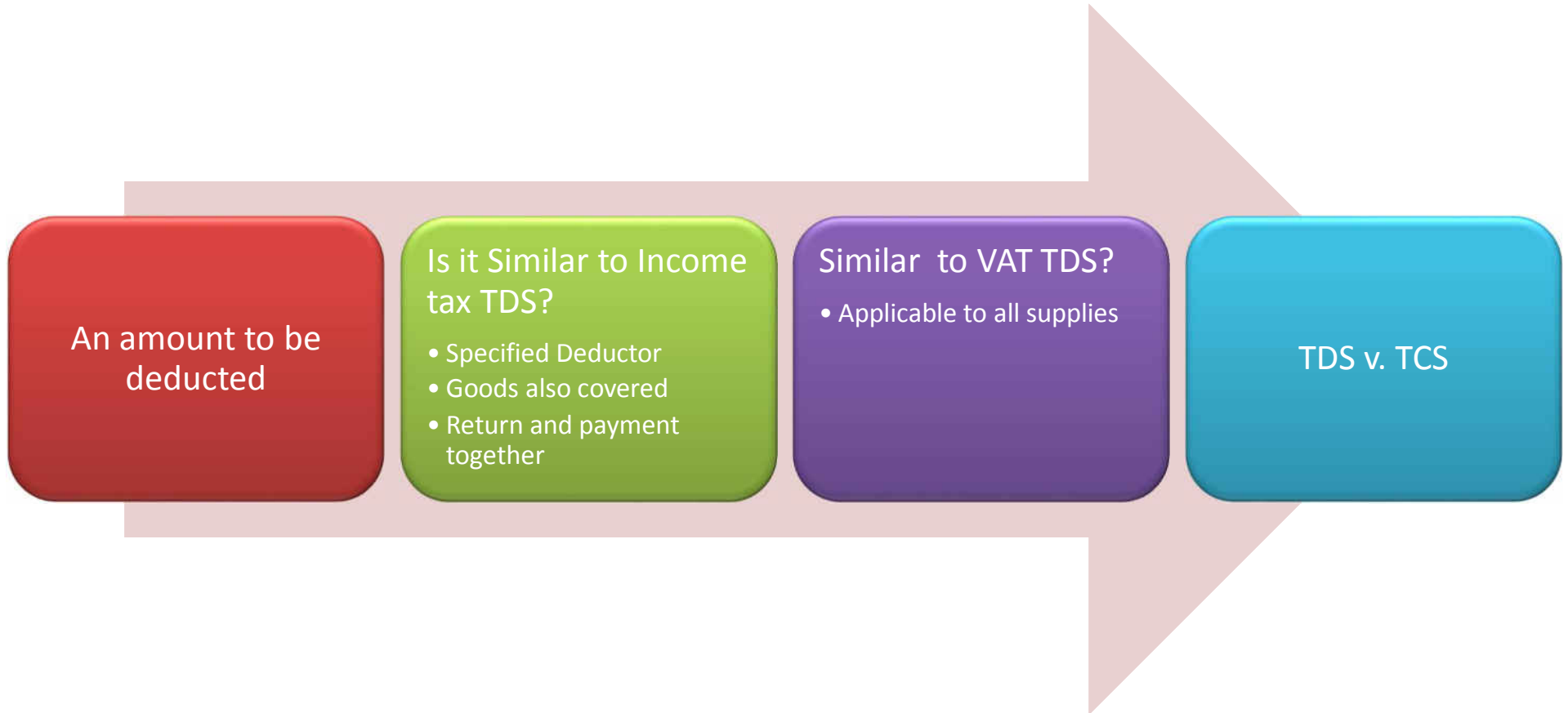


On:
17th January, 2019

TDS



TDS- what?



WHO?...

Section 51 -
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*

...who?...Notification no. 50/2018 CT

(a) 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 fifty-one per cent. or more participation by way of equity or control, to carry out any function;

(b) Society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860 (21 of 1860);

(c) public sector undertakings.

ISSUE?

Whether the criteria “with fifty-one per cent. or more participation by way of equity or control” applies to both the sub-clause?


One possible interpretation may be that the sub-clauses (i) and (ii) are independent clauses which is separated by ‘semi-colon’ and ‘or’ and hence the words ‘with fifty-one per cent. or more participation by way of equity or control’ are applicable only to second sub-clause

Other possible interpretation may be that semi-colon is stronger than a comma but does not imply complete break like a full-stop. Therefore the said criteria is applicable to both the clauses

ISSUE???

*The issue is put to rest vide circular no. 76/50/2018-GST dated 31st December, 2018 wherein it is clarified **that the long line written in clause (a) in notification No. 50/2018 is applicable to both the items (i) and (ii) of clause (a) of the said notification.** Thus, an authority or a board or any other body whether set up by an Act of Parliament or a State Legislature or established by any Government with fifty-one per cent. or more participation by way of equity or control, to carry out any function would only be liable to deduct tax at source*

WHO???

 Section 51 requires deduction of TDS by specified person and notified person from the payment made or credited to the supplier.

ISSUE

⌚ Whether the term 'supplier' includes:

Unregistered Person?

Dealer whose supply is taxable under RCM?

Dealer opting composition scheme?

⌚ As per section 2(105) 'supplier' in relation to any goods or services or both shall mean

- the person supplying the said goods or services or both and
- shall include an agent acting as such on behalf of such supplier
- in relation to such goods or services or both supplied

ISSUE – UNREGISTERED PERSON

- ⌚ Therefore, it may be inferred that the word “supplier” encompasses all persons who are supplying any goods or services whether registered or not.
- ⌚ Additional cost?
- ⌚ Section 76 – Tax collected but not paid to the Government

ISSUE – RCM SUPPLIES

Whether TDS is still required to be deducted under RCM also?

Even those persons whose supplies are chargeable to tax under RCM gets covered under the definition of supplier

ISSUE – COMPOSITION SCHEME

- ⌚ Again the law is unclear about applicability of TDS provisions in case of vendors registered under the composition scheme
- ⌚ Under composition levy, a supplier would not be charging any GST from the recipient of suppliers
- ⌚ Further, a manufacturer or a trader under composition scheme would be required to pay GST @ 1% on the supply whereas imposing TDS levy on the said supply would outrightly deduct 2% of tax out of consideration. This appear to be anomaly in law!!!

How much? On what value?

Per cent

- Section 51
- to deduct tax at the rate of one per cent.
- 1% or 2%?

Base amount?

- Example
 - Rs. 100 base value of supply of services
 - Rs. 18 GST @18%
 - -----
 - Rs. 118 total value
- Gross of tax? 118
- Net of tax? 100
- Rs. 2.36 or Rs. 2?

On what?

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

On what?

51(1) 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.

When to deduct?

*to deduct tax
at the rate of
one per cent.
from the
payment made
or credited to
the supplier*

- Date of contract prior to 1.10.2018
- Date of supply prior to 1.10.2018
- Date of supply 30.09.2018 Date of Payment 1.10.2018
- Date of payment 31.10.2018 Date of supply 1.11.2018

Slide 17

U2 User, 16-01-2019

U3 Even if contract prior to 01.10.2018 but payment is after 01.10.2018 then TDS to be deducted

User, 16-01-2019

When?

Income tax Act 194C. (1) Any person responsible for paying any sum to any resident (hereafter in this section referred to as the contractor) for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and a specified person shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to...

194J. at the time of credit of such sum to the account of the payee or at the time of payment thereof

ISSUE?

to deduct tax at the rate of one per cent. from the payment made or credited to the supplier

- Whichever is earlier or on any of them?

WHEN TO DEPOSIT

- ⌚ *51 (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.*

ANY INTEREST ON FAILURE TO DEPOSIT?

- ⌚ *As per section 50:*
- ⌚ *“(1)Every person 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 per cent., as may be notified by the Government on the recommendations of the Council.”*

FAILURE TO DEDUCT

- ⌚ M/s Non performer Ltd. a PSU failed to deduct TDS but paid the tax forthwith on being pointed out
- ⌚ Will there be any levy of penalties?

PENALTY

⌚ Section 122 (1) (v)

- *fails to deduct the tax in accordance with the provisions of sub-section (1) of section 51,*
 - *or deducts an amount which is less than the amount required to be deducted under the said sub-section,*
 - *or where he fails to pay to the Government under sub-section (2) thereof, the amount deducted as tax;*
- ⌚ *he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government whichever is higher*

Taxes already paid by the supplier fully...

- ⌚ Income Tax Appellate Tribunal, Agra Bench (Agra) in the case of Rajeev Kumar Agarwal vs. Additional Commissioner of Income Tax (ITA No. 337/Agra/2013) - **No** disallowance for non-deduction of **TDS** if the receiver has **paid** income **tax** on the same
- ⌚ ONGC case – Gujarat High Court- No TDS on fringe benefits if tax already paid by employer
- ⌚ Under GST?

DISCHARGE?

- ⌚ Can it be paid out of ITC?
- ⌚ 49 (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.*
- ⌚ 2(82) *“output tax” in relation to a taxable person, means the tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis;*

Exceptions?

⌚ Proviso to Sec.51(1)

- 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.

⌚ Non taxable supplies

Examples

Location of Supplier	Place of Supply	Registration of Recipient	GST	TDS Applicable?	Reason
Maharashtra	Maharashtra	Maharashtra	CGST+SGST	Yes	It would be possible for supplier to take TDS credit
Maharashtra	Maharashtra	Rajasthan	CGST+SGST	No	It would be difficult to transfer TDS of deductor State to another State
Maharashtra	Gujarat	Maharashtra	IGST	Yes	It would be possible for supplier to take TDS credit
Maharashtra	Gujarat	Gujarat	IGST	Yes	It would be possible for supplier to take TDS credit
Maharashtra	Gujarat	Rajasthan	IGST	Yes	It would be possible for supplier to take TDS credit

EXCEPTIONS?

The authorities under Ministry of defence except certain specified authorities (Inserted vide notification no. 57/2018 dated 23-10-2018)

The supply of goods or services or both from a public sector undertaking to another public sector undertaking, whether or not a distinct person (Inserted vide notification no. 61/2018 dated 05-11-2018)

EXCEPTIONS

The supply of goods or services or both which takes place between one person to another person specified under clauses (a), (b), (c) and (d) of sub-section (1) of section 51 of the said Act (Inserted vide notification no. 73/2018 dated 31-12-2018)

HOW WILL SUPPLIER KNOW?

🕒 51(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.*



WHAT IF TDS CERTIFICATE NOT ISSUED?

- ⌚ 51 (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 days period until the failure is rectified,*
- ⌚ *subject to a maximum amount of five thousand rupees.*

RECENT UPDATES & IMPLICATIONS

**Due date of Filing GSTR-7
extended to 31st January,
2019 vide notification no.
66/2018 – CT dated 29-
11-2018**

Whether date of deposit of TDS
also automatically extended?

PRACTICAL ISSUES

The responsibility to furnish the return and deposit the tax so deducted is governed by separate provisions. However, it may be pertinent to note that extension of due date of furnishing the FORM GSTR-7 would also delay the date of depositing the TDS since both return as well as payment are practically interlinked with each other.



Whether the amendment automatically extends the due date of depositing tax as well? If not whether such delay in depositing tax attracts interest under section 50(1)?



Whether this implies that the Deductee is required to file monthly returns without availing the benefits of TDS?

Error - Is refund possible?

- ⌚ 51 (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.*

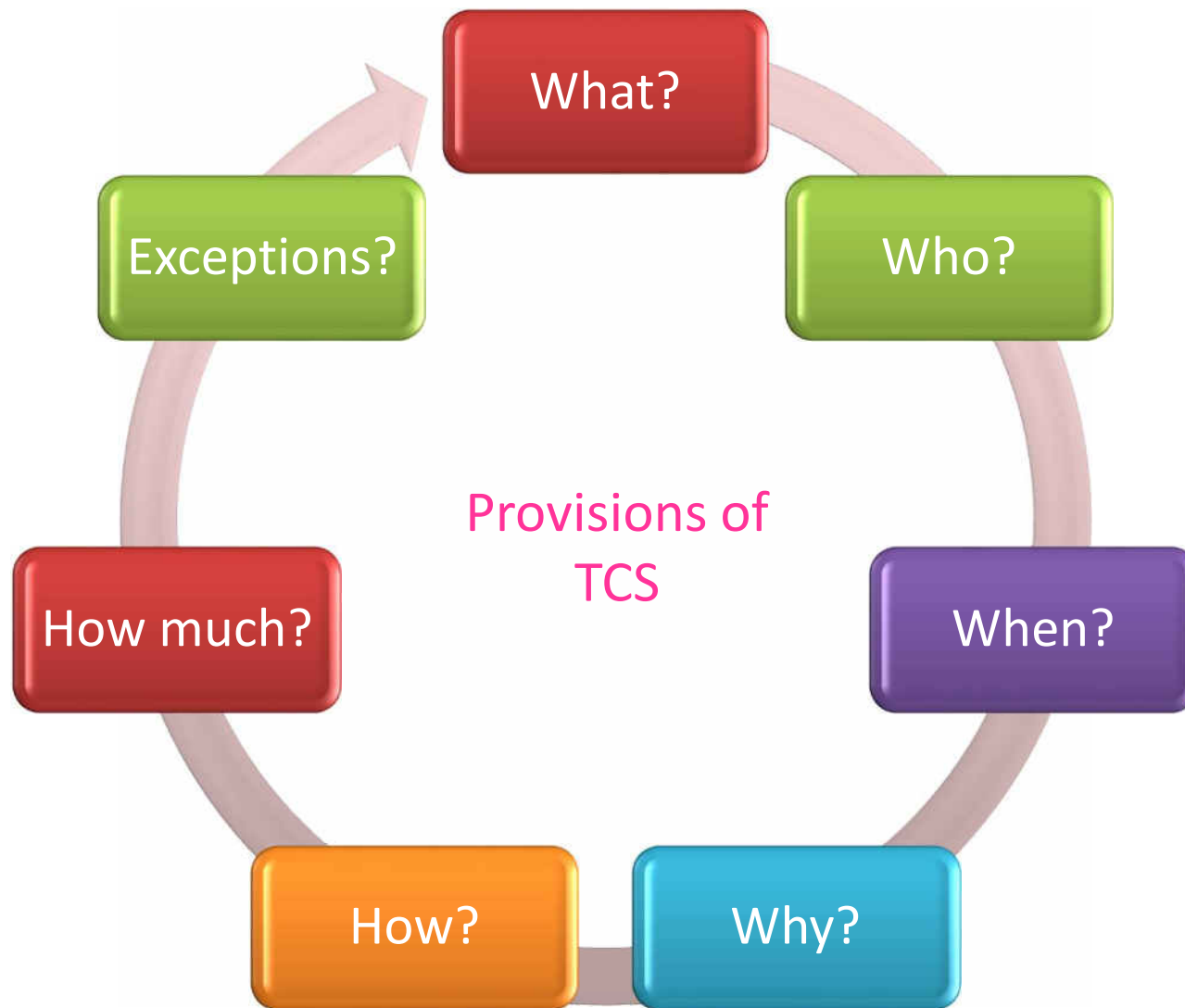
ADVANCE RULING

2018 (10) TMI 446 - AUTHORITY FOR ADVANCE RULING, GUJARAT IN RE: KANDLA PORT TRUST (DEENDAYAL PORT TRUST) dated 30/07/2018

Query: *Whether Deendayal Port Trust is liable to deduct TDS under section 51 of CGST Act, 2017 from the date of effective of the section 51?*

- *As the issue 'whether the applicant is liable to deduct TDS under Section 51 of the CGST Act, 2017 and the GGST Act, 2017' **is not covered by Section 97(2)** of the Acts, this authority is helpless to answer the question raised in the application, as it is lacking jurisdiction to decide the issue.*
- ***The jurisdiction of this authority does not extend to the questions on determination of this issue***
- *The application for Advance Ruling of M/s. Kandla Port Trust (Deendayal Port Trust) **is rejected,** under sub-section (2) of section 98 of the CGST Act, 2017 and the GGST Act, 2017.*

TCS



Concept- what is TCS?

- ⌚ Something similar to Income tax Act?
 - Base value
- ⌚ Reverse charge?

WHO WILL COLLECT? 52(1)

- 🕒 Every electronic commerce operator
 - Not being an agent
- 🕒 Collect an amount at such rate not exceeding one percent or as notified
- 🕒 Of the Net value of taxable supply
- 🕒 Made through it by other suppliers
- 🕒 Where the consideration with respect to such supplies is to be collected by the operator

What is Electronic Commerce Operator?

“Electronic commerce operator”

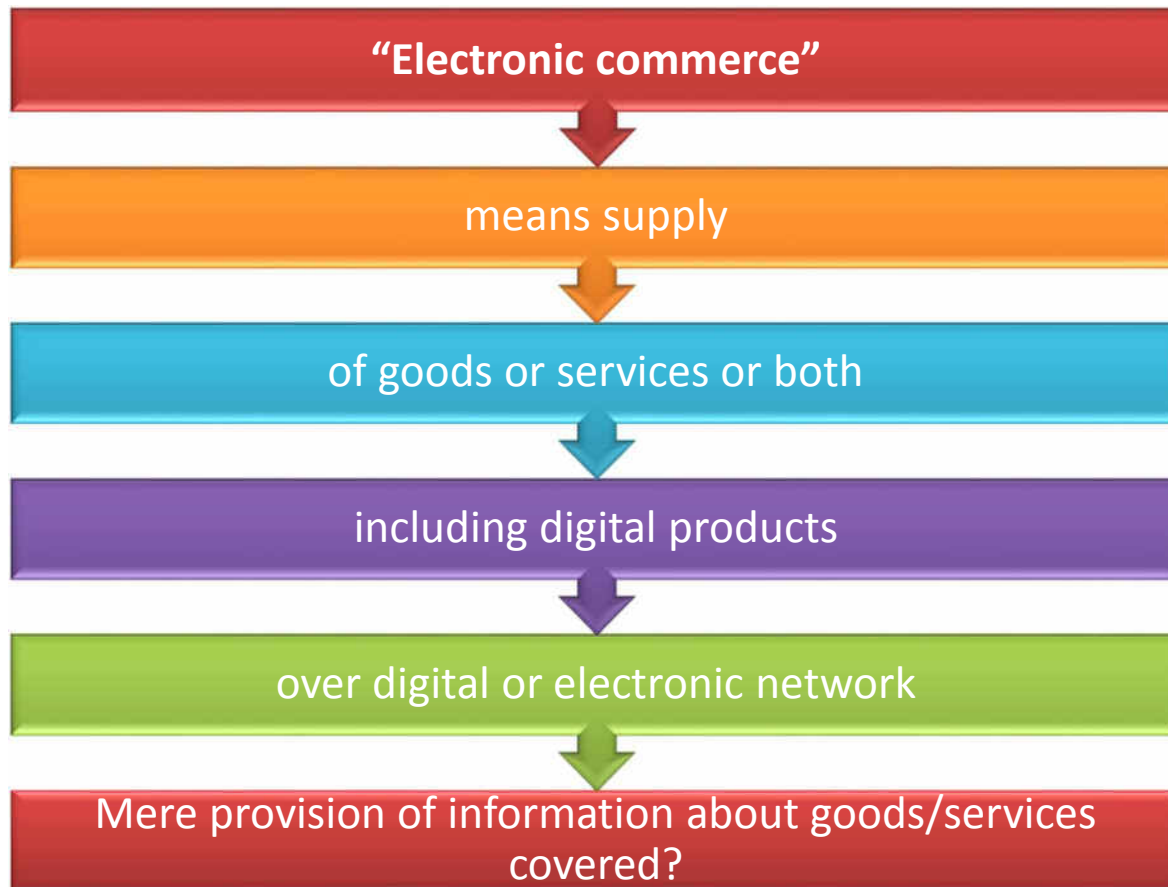
means any person

who owns, operates or manages

digital or electronic facility or platform

for electronic commerce

What is electronic commerce?



ECO – Aggregator Model

- ⌚ Aggregator owns and manages one Mobile Application and website
- ⌚ End User to book cabs
- ⌚ Aggregator does not own any cars
- ⌚ Platform connects willing passengers to taxi cab drivers
- ⌚ Payment methods by end user through cash or cashless method
- ⌚ Cash: First the whole revenue is given to taxi driver and then 20% (assumed) shared with aggregator
- ⌚ Cashless modes (Eg.: Paytm): First the revenue given to aggregator and aggregator pays taxi driver his share
- ⌚ Settlement cycle
- ⌚ Sometimes displaying logo of aggregator on the car

SERVICES NOTIFIED U/S. 9(5)

Sr. No.	Description of supply of service	Supplier of service	Person liable to pay GST	Notification No.
1	Transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle	Any person	E-Commerce Operator	17/2017-CT dated 28.06.2017
2	Providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes	Any person except who is liable for registration under sub-section (1) of section 22 of the said CGST Act	E-Commerce Operator	17/2017-CT dated 28.06.2017
3	Services by way of house-keeping, such as plumbing, carpentering etc	-do-	E-Commerce Operator	23/2017-CT dated 22.08.2017

By whom? 52(1)

Operator not being an agent to collect

- Even in cases of 9(5)?
- Should one become agent to avoid TCS?

of the net value of taxable supplies made through it

- net value of taxable supplies” shall mean the aggregate value of taxable supplies made reduced by the aggregate value of taxable supplies returned in a month
- What if net is negative?

where the consideration with respect to such supplies is to be collected by the operator.

How much?

**As per Notification No. 52/2018 –
Central Tax**

0.5%
=1%

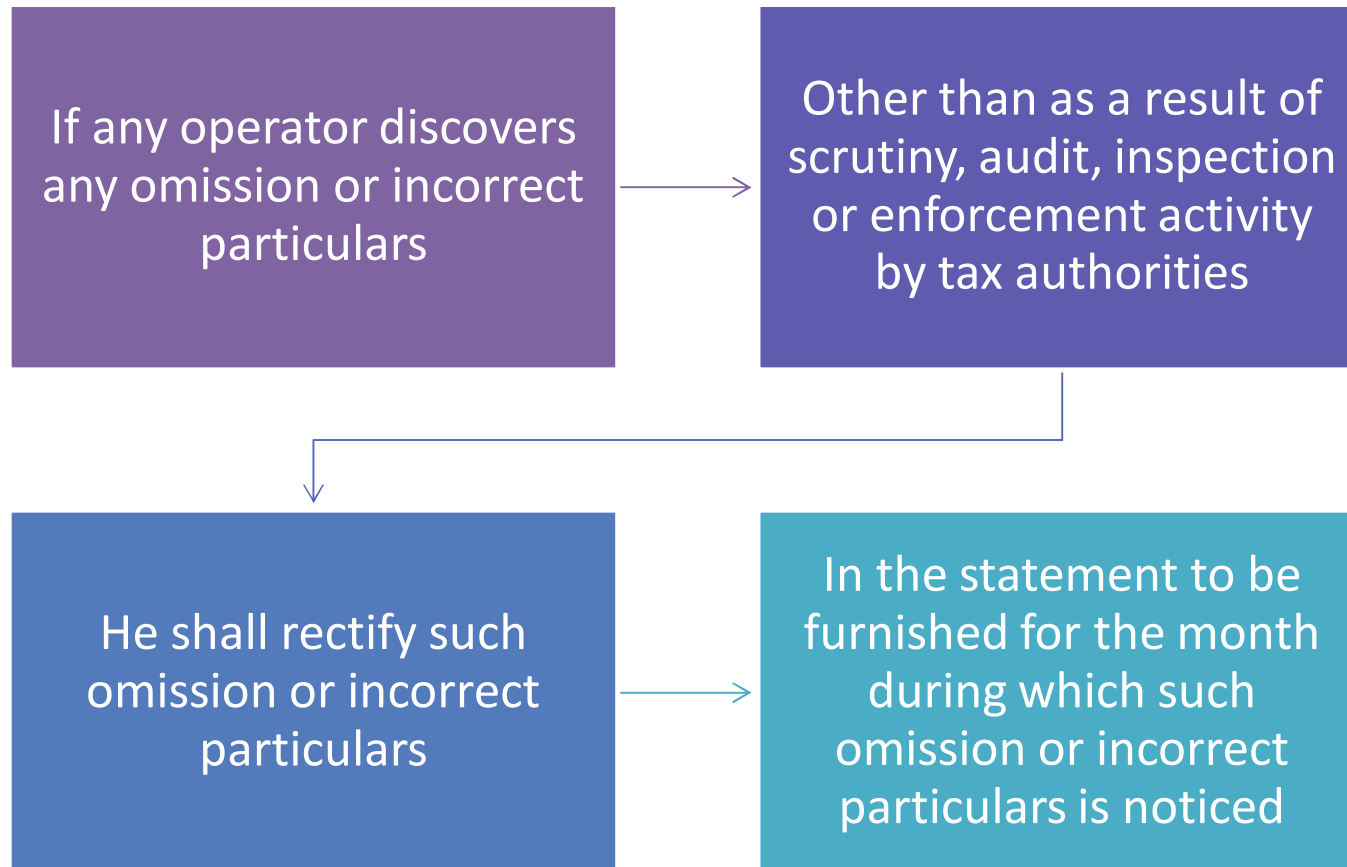
ISSUES?

- ⌚ RCM?
- ⌚ Supplies of Sept'18 returned during Oct'18?
- ⌚ Net value of taxable supplies-Negative value?
- ⌚ Gross of tax?

ISSUES – PROMO CODE/DISCOUNT

- ⌚ Say, Zomato introduces Promo Codes wherein the customer gets discount of 50% on subsequent order.
- ⌚ The cost of such discount is borne by Zomato as well as restaurant owner in equal ratio
- ⌚ What will be the net taxable value for the purpose of TCS in such case?

OMISSION/INCORRECT PARTICULARS – Section 52(6)



CLAIMING AND MATCHING – Section 52(7),(8) & (9)

Supplier can claim the credit of tax collected in his electronic cash ledger as reflected in the statement furnished by the operator

Details of supplies furnished by every operator shall be matched with the corresponding details furnished by the concerned supplier

In case of mismatch, the discrepancy shall be communicated to both persons

AMENDMENT ACT

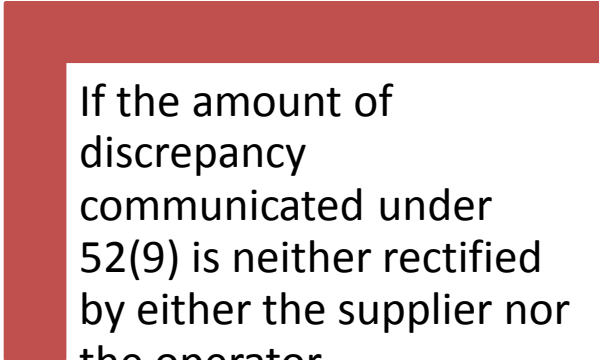
🕒 Current Provisions:

“(9) Where the details of outward supplies furnished by the operator under subsection (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”

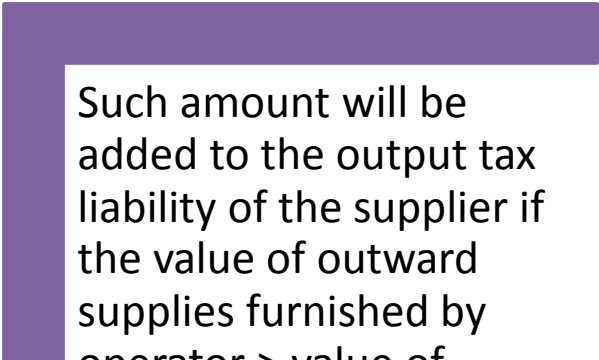
🕒 After amendment:

“(9) Where the details of outward supplies furnished by the operator under subsection (4) do not match with the corresponding details furnished by the supplier under section 37 or section 39, the discrepancy shall be communicated to both persons in such manner and within such time as may be prescribed”

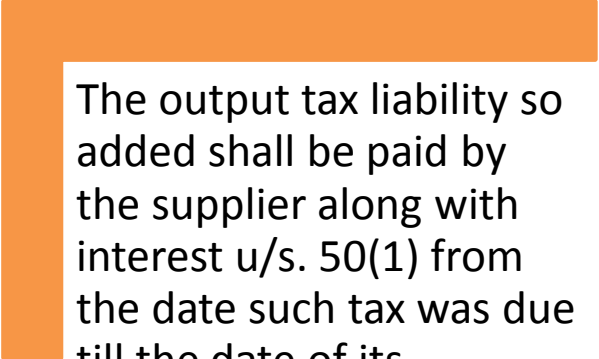
RECTIFICATION OF MISMATCH – Section 52(10) & (11)



If the amount of discrepancy communicated under 52(9) is neither rectified by either the supplier nor the operator



Such amount will be added to the output tax liability of the supplier if the value of outward supplies furnished by operator > value of outward supplies furnished by the supplier



The output tax liability so added shall be paid by the supplier along with interest u/s. 50(1) from the date such tax was due till the date of its payment.

Penalties

- ⌚ 52 (14) Any person who fails to furnish the information required by the notice served under subsection(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.
- ⌚ 122 (1) (iii) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;
- ⌚ 122 (1)(vi) fails to collect tax in accordance with the provisions of subsection (1) of section 52, or collects an amount which is less than the amount required to be collected under the said subsection or where he fails to pay to the Government the amount collected as Tax Under sub-section(3)Of section 52;

Summary of compliance



To be paid by 10th of the next month

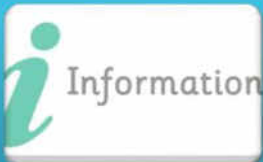


Monthly statement GSTR 8 by 10th of the next month Annual statement GSTR 9B by 31st December



Mismatch (GSTR 2A Part C) to be added to the liability of the supplier

- Any option with supplier to rectify the information?



Information within 15 days: (a) supplies of goods or services or both effected through such operator (b) stock of goods in the godowns or warehouses

ANY EXTENSION? ISSUE

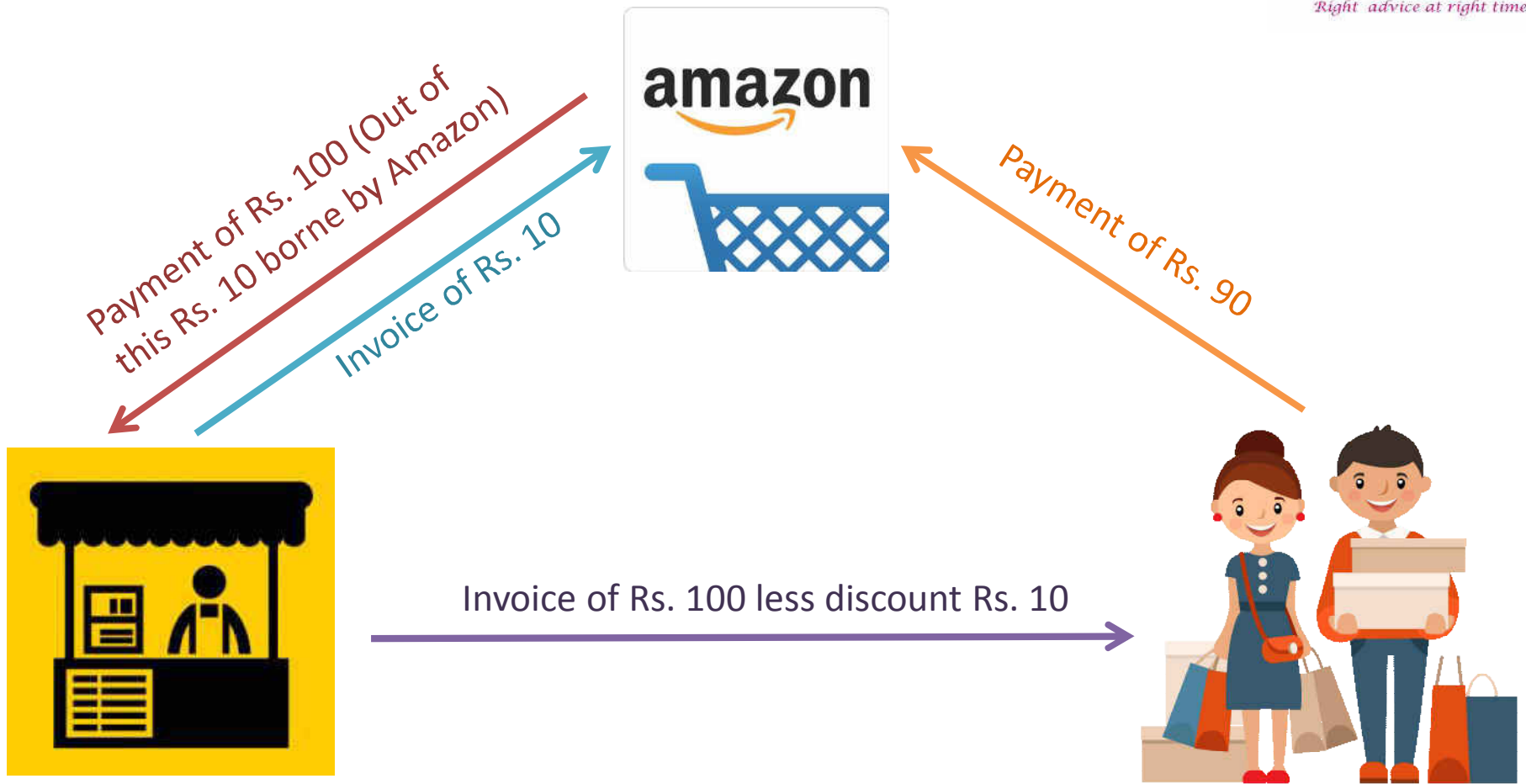
***Due date of furnishing GSTR-8 for
the months October to December
2018 extended to 31st January,
2019 vide CGST (Fourth Removal of
Difficulties) Order, 2018 dated 31-
12-2018***



Certain Issues – Seller Promotion Programmes

Description of Transaction	
<ul style="list-style-type: none">• Seller intends to list the product at Rs. 100. However, E-commerce Operator asks the seller to list the same at Rs 90. Invoice raised by the seller for Rs 100 on which GST is paid.• End customer pays Rs. 90 and remits the same to E-Commerce Operator• E-Commerce Operator remits Rs 100 to the seller (funding Rs 10 on the transactions). Accordingly, E-Commerce Operator bears cost of Rs 10.	<ul style="list-style-type: none">• There exists ambiguity in relation to whether TCS to be collected on Rs 100 by E-Commerce Operator or on Rs 90• However, in substance, since the invoice of Rs 100 is raised by the seller and an equivalent amount is received in this regard by the seller, TCS should be paid on an amount of Rs. 100.• TCS collected to be available as credit to the seller

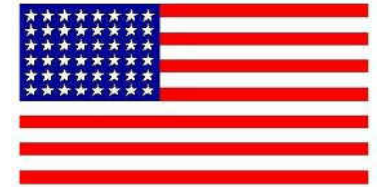
Certain Issues – Seller Promotion Programmes



Case Study – Cross Border Transactions 1



Market place
revenue
booked (since
seller in India)

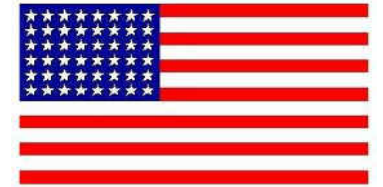


Payment online

Sold goods through Amazon



Case Study – Cross Border Transactions 2



Sold goods through Amazon



Payment online







6th Floor, HDIL Kaledonia-A, Sahar road,
Andheri East, Mumbai 400069, India.



www.gscintime.com



+91 22 4612 5600
+91 98210 12151



jayeshgogri@gscintime.com
info@gscintime.com