

Unlocking Answers To Questions In Metal Scrap Sector

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The provisions for Tax Deducted at Source (TDS) under GST, as outlined in **Section 51 of the CGST Act**, were initially limited to government entities and public sector units (PSUs). However, following the recommendation of the GST Council during its 54th meeting, the **CBIC** issued **Notification No. 25/2024-CT dated 9th October 2024**, extending the scope of GST TDS to include the metal scrap sector under its umbrella.

Since the release of this notification, it has sparked significant discussion among industry professionals and traders, leading to a demand for clarifications on various issues arising from this latest amendment.

In order to facilitate the metal scrap industry in navigating these changes, we have compiled **15 key questions** that address crucial aspects businesses must consider. This article provides both general clarifications and detailed insights into specific scenarios relevant to the sector.

1. What is Tax deducted at source (TDS) under GST law?

Under GST law, TDS is a method of tax collection applicable in specific cases wherein certain percentage of amount is deducted by the recipient at the time of making payment to the supplier. Further, it is to be noted that the provisions of TDS under Income Tax are governed by the Income Tax Act, 1962 and the provisions of GST TDS are governed by CGST Act, 2017. Thus, the TDS under Income tax and GST TDS have to be complied separately.

2. What is the rate of TDS under GST?

TDS is required to be deducted @ 1% each under the head of CGST and SGST in case of intra - state supplies or 2% under the head of IGST in case of inter - state supplies.

3. Whether TDS is required to be deducted on taxable value or gross value?

For the purpose of deducting TDS under GST, the value of supply shall be taken as the amount **excluding** the CGST, SGST, UTGST, IGST and CESS indicated in the invoice i.e., the taxable value.

4. Is there any threshold limit for deducting TDS?

Yes, TDS is required to be deducted only in such cases where the total value of supply under **a contract exceeds Rs. 2.5 lacs**. Thus, even if the individual supplies are less than 2.5 lacs but if the total value of supplies under a contract is more than 2.5 lacs, TDS has to be deducted.

For example, Mr. A has entered into a contract with Mr. B to supply metal scrap worth Rs. 10 lacs in 10 equal lots over the year. In this case, even though each individual supply is less than Rs. 2.5 lacs, Mr. B is still required to deduct TDS as the contract value exceeds Rs. 2.5 lacs.

5. Whether the GST TDS provisions are applicable for all supplies in case of metal scrap sector?

No, the provisions of GST TDS are applicable only in case of **business-to-business supplies** meaning thereby that the supplies should take place between registered persons.

In case, an unregistered person is supplying metal scrap to a registered person then GST under RCM would be applicable and the registered person being a recipient would be liable to pay tax under RCM in terms of Notification No. 06/2024 - CT (R) dated 8th October, 2024.

6. What is the effective date of Notification No. 25/2024 - CT?

The aforesaid notification has been made effective from 10th October, 2024. This means that the provisions of this notification must be complied with for all the eligible transactions occurring on or after 10th October, 2024.

7. Whether GST TDS is required to be deducted on Metal Scrap purchased from registered third parties prior to 10th October, 2024 but payment for which will be made after 10th October, 2024?

The liability to deduct GST TDS arises when the payment is made or credited to the supplier and is not based on the date of purchase or invoice. Therefore, if payment is made on or after 10th October, 2024, it would be appropriate to deduct GST TDS.

8. Whether GST TDS is required to be deducted in case of procurement of metal scrap from "distinct persons"?

In terms of Section 51 of the CGST Act, 2017, TDS is required to be deducted from the **payment made or credited 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.

Further, as per the Indian Contract Act, 1872, two parties are required for a valid contract. Under GST law, "distinct persons" refer to establishments of the same entity (different branches or locations of the same legal entity in different states). These establishments or units are different entity in GST perspective but would be considered as a **same legal entity** for all other matters.

Thus, TDS is required to be deducted at the time of making payment to the supplier and the same should be under a contract. However, in case of distinct persons, the transactions are shown separately only for GST purpose and no payment is involved.

Therefore, in our considered view, in case of procurement of metal scrap from a distinct person, the provisions of GST TDS would not be attracted as they are considered as the same legal entity.

9. Whether GST TDS is required to be deducted on all the items falling under CH 72 to 81 of the Customs Tariff Act, 1975?

No, GST TDS is required to be deducted only on metal scrap falling under CH 72 to 81 of the Customs Tariff Act, 1975.

10. What are the compliance requirements for deducting GST TDS?

The recipient is compulsorily required to obtain a separate registration for TDS deduction through common portal via **Form GST REG -07**. As per the advisory issued by the GSTN on 13th October, 2024, the GST portal will soon be updated to enable compliance of registration through Form GST REG - 07 for registered persons dealing in metal scrap.

Further, the TDS deductor is required to furnish **GSTR - 7** electronically on or before 10th of the month following the month in which TDS was deducted.

11. In case of multiple GSTIN's, whether registration is separately required for all the GSTIN's of the assessee?

Yes. TDS registration is required for all the GSTIN's of the assessee where the purchases of metal scrap would be done. In case no scrap dealing is done from a particular GSTIN, that GSTIN would not require any TDS registration.

12. Whether the provisions of GST TDS are applicable in case of supply of metal scrap by a PSU/Central govt./State govt./local authority to another PSU/Central govt./State govt./local authority, not being a distinct person?

Yes, as per the amended proviso, the provisions of GST TDS are applicable in case of supply of metal scrap by a PSU/Central govt./State govt./local authority to another PSU/Central govt./State govt./local authority, not being a distinct person.

13. Whether GST TDS is required to be deducted where the supplier as well as place of supply are in State A (say Chhattisgarh) and the recipient is located in State B (say Maharashtra)?

No, the proviso to Section 51 (1) of the CGST Act, 2017, lays down that when the location of the supplier and the place of supply is in a state/UT which is different from the state/UT of registration of recipient, there will be no TDS.

14. What is the time period within which the GST TDS has to be deposited to the Government?

In terms of Section 51 (2) of the CGST Act, 2017, the amount deducted as tax shall be paid to the government **within 10 days** after the end of the month in which such deduction is made.

15. What are the consequences of non - compliance of the provisions of TDS under GST?

Following is the list of non - compliances of the provisions of TDS under GST along with its consequences -

Sr. No.	Event	Consequence
1.	TDS deducted but not paid to the Government or paid later than 10th of the succeeding month.	As per Section 50(1) of the CGST Act, 2017, Interest to be paid along with the TDS amount;
2.	Late filing of TDS returns	As per N No. 23/2024-CT, Late fee of Rs. 25/- for every day during which such failure continues, subject to a maximum amount of Rs. 1000/- would be levied from June 2021 onwards.
3.	Late filing of Nil TDS returns	If no TDS was deducted for a given month (i.e., Nil returns), the late fee is completely waived as per N No. 23/2024-CT.

Concluding Remarks

The CBIC has introduced provisions for GST under the Reverse Charge Mechanism (RCM) in the metal scrap sector following representations from various trades and industries who requested the introduction of GST under RCM in 100% of cases, considering the issue of fake invoicing under this sector.

However, applying GST under RCM for B2B transactions could lead to a loss of input tax credit for registered persons, as outward RCM is considered exempt turnover for the purpose of reversal under Rule 42. To prevent the loss of credit to registered persons amendment in Section 17 (2) would be required. This would become a cumbersome exercise for the government if similar representations from other industries are also received. Thus, the CBIC has decided to introduce the provisions of RCM only in case of unregistered to registered person, shifting the responsibility of paying tax to registered recipient.

Though the above amendment, have increased the compliance burden for the genuine taxpayer's, however, this move could be considered as a major move towards bursting the fake invoicing racket throughout the country. The Council believes that the fake bills pertaining to the metal scrap typically passes through 4-5 stages, and that too without any value addition, and the introduction of TDS enables the Government to collect 2% revenue at each stage. Meaning thereby, since no value addition would be involved at any stage, the Government would collect 8-10% revenue in total and if at any stage refund of TDS deducted is applied, the same could be easily traced.

Hope the above resolves majority of your issues, if any addition clarifications are required, please feel free to reach us.