

# Tally.Server 9

*Dt. 9<sup>th</sup> Apr, 2015*

## Tax applicability for Tally.Server 9

### 1. Why Value Added Tax (VAT) is applicable?

**Ans)** In most of the States, IT Software/ IT Products/Computer Software/ Software/ Software License by whatever name called (Software is identified with different terminologies in different states) **is treated as goods irrespective of physical form or electronic form.** The entry, i.e., IT Software/ Computer Software/ Software/ **Software License finds place in VAT schedules.** This can be cross checked with the respective States VAT Schedule. **Therefore VAT is applicable on sale of Tally. Server 9.**

### 2. Why Service Tax (ST) is applicable?

**Ans)** After introducing Negative list of Services in July 2012, **the Information technology software is brought under 'Declared Services' liable to Service Tax by the Central Government.**

However the Service Tax paid on the 'purchase' of IT Software is available as "input services" either by a manufacturer or by a service provider and the CENVAT credit can be availed since it is in the inclusive part of the definition.

Please find a note on eligibility of input credit under service tax for Tally Software:

**When the software is sold as after charging Service Tax:**

Under this circumstance, it has to be examined whether the Service Tax paid can be availed as CENVAT credit under “input services” by the buyers.

Under Rule 2(l) of the CENVAT Credit Rules, 2004, “input service” means any service used by a provider of output service for providing an output service or used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products up to the place of removal.

Further, under the inclusive clause, the input services includes services used in relation to modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal

**From the above definition, it is seen that sale of software can be treated as “input services” either by a manufacturer or by a service provider and the CENVAT credit can be availed since it is in the inclusive part of the definition.**

For clarification, ‘Declared Services.pdf’ is attached for your references

**3. Why TDS is applicable on Tally Server 9?**

**Ans)** As per provisions of **Section 194J of the Income Tax Act, 1961, TDS @ 10% is required to be deducted on the payments / credit made for Royalty.** For meaning of Royalty, this section refers section 9(1)(vi).

As per section 9(1)(ii), **Royalty means consideration for a transfer or imparting of all or any rights (including the granting of a license)** in respect of a patent, invention, model, design, secret formula or process or trade mark or similar property.

As per explanation 4, afore mentioned **Royalty includes transfer of all or any right for use or right to use a computer software.**

**In view of afore said provisions, Software license is considered as royalty. For detailed explanation please refer the below points.**

**4. In the entire Commerce/ Trade/ Supply Chain/ Sales cycle (from manufacturer to end-customer) how many times TDS needs to be deducted and who should deduct TDS?**

**Ans)** In the entire Commerce/ Trade/ Supply Chain/ Sales cycle (from manufacturer to end-customer) **TDS needs to be deducted only once at first instance of transaction.**

In our Supply Chain: the product is transferred in the following manner

**TSPL → Distributor → Partner → End-Customer**

**TDS is deducted by Distributor when they purchase from TSPL. Hence in the entire supply chain no other entity (including customer) should deduct TDS. *“However a declaration on the Invoice mentioning the PAN detail of the corresponding supplier and that TDS is already deducted has to be mandatorily printed”.***

Please refer the following points for clarity (attached Notification 21 of 2012.PDF):

Central Board of Direct Taxes notification No 21/2012/F No 142/10/2012-SO (TPL) dated 13.6.2012 has been issued under Section 197A (1F) of the Act to notify that with effect from 1.7.2012, **no deduction of tax at source under Section 194J shall**

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be made from payments for acquisition of software from residents subject to the conditions stated in the notification:

- a. The software is acquired in a subsequent transfer and the transferor has transferred the software without any modification.
- b. Tax has been deducted under Section 194J on payment for any previous transfer of such software.
- c. The transferee obtains a declaration from the transferor that tax has been deducted under Section 194 J along with the PAN of the transferor.

**5. Should end customer deduct TDS during purchase?**

**Ans)** No. Please refer Q4 above for clarity.