GST Audit: Key Provisions and Aspects

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Section 35(5), 44(2) r/w Rule 80(3)

- 35(5) - Every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant and shall submit a copy of the audited annual accounts, the reconciliation statement under section 44 (2) and such other documents in such form and manner as may be prescribed

- 44(2) - Every registered person who is required to get his accounts audited in accordance with the provisions of section 35 (5) shall furnish, electronically, the annual return under sub-section (1) along with a copy of the audited annual accounts and a reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year with the audited annual financial statement, and such other particulars as may be prescribed.

- 80(3) - Every registered person whose aggregate turnover during a financial year exceeds two crore rupees shall get his accounts audited as specified under section 35 (5) and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in FORM GSTR-9C, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner

Turnover

Aggregate Turnover [Sec. 2(6)]

- Aggregate value of
  - taxable supplies
  - exempt supplies
  - exports and
  - Inter-State supplies
- Persons having same PAN
- To be computed on all India basis
- Excludes
  - Inward supplies on which tax is payable under RCM
  - Taxes

Turnover in State/UT [Sec. 2(112)]

- Aggregate value of
  - taxable supplies
  - exempt supplies
  - exports and
  - Inter-State supplies
- Made from the State/UT
- By the said taxable person
- Excludes
  - Inward supplies on which tax is payable under RCM
  - Taxes

Illustration

Aggregate Turnover – INR 15 Crore

KA	Unit 1 – INR 1.5 Crore SEZ Unit – INR 10 Crore
MH	Unit 3 – INR 1.5 Crore
TN	Unit 4 – INR 2 Crore

Accounts – Section 35 r/w Rule 56

- Production or manufacture of goods [monthly production account showing quantitative details]
- Inward & outward supply [quantitative details of goods used in provision of service]
- Stock of goods [Op.bal, receipt, supply, lost/stolen/destroyed/written off/disposed as gift/free sample, balance stock incl RW, FG, scrap & wastage thereof]
- Separate account for supplies in the nature of works contract
- ITC availed with relevant documents
- Output tax collected, payable and paid
- Goods or services imported or exported
- Supplies attracting RCM and relevant documents
- Invoices, bill of supply, delivery challans, credit notes/debit notes, receipt vouchers, payment vouchers and refund vouchers
- Separate account of advances received, paid and adjustments thereto
- Supplier register, customer register and details of premised where goods are stored

Audit – Section 2(13)

- "audit" means the examination of records, returns and other documents maintained or furnished by the registered person under this Act or the rules made thereunder or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act or the rules made thereunder

Non-Compliance – Section 47 & 125

- Late of Rs.100/day during which such failure continues subject to a maximum of 0.25% of turnover in the State/UT.
- Equal late is prescribed under SGST Act/s.
- No specific penalty for non-compliance, hence general penalty may be invoked:
  - Upto Rs.25,000/- under each Act.

Reconciliation Statement Form GSTR 9C

Form GSTR-9C – Part II

5	Reconciliation of Gross Turnover	
A	Turnover (including exports) as per audited financial statements for the State / UT (For multi-GSTIN units under same PAN the turnover shall be derived from the audited Annual Financial Statement)	Amount (Rs.)
	There may be cases where multiple GSTINs (State-wise) registrations exist on the same PAN. Such persons / entities, will have to internally derive their GSTIN wise turnover and declare the same here. It may be noted that reference to audited Annual Financial Statement includes reference to books of accounts in case of persons / entities having presence over multiple States.	

Form GSTR-9C – Part II

5	Reconciliation of Gross Turnover	
B	Unbilled revenue at the beginning of Financial Year	(+)
C	Unadjusted advances at the end of the Financial Year	(+)
H	Unbilled revenue at the end of Financial Year	(-)
I	Unadjusted Advances at the beginning of the Financial Year	(-)

5	Reconciliation of Gross Turnover	
E	Credit Notes issued after the end of the financial year but reflected in the annual return	(+)
J	Credit notes accounted for in the audited Annual Financial Statement but are not permissible under GST	(-)

Form GSTR-9C – Part II

5	Reconciliation of Gross Turnover	
D	Deemed Supply under Schedule I	(+)
F	Trade Discounts accounted for in the audited Annual Financial Statement but are not permissible under GST	(+)
G	Turnover from April 2017 to June 2017	(-)
K	Adjustments on account of supply of goods by SEZ units to DTA Units	(-)
L	Turnover for the period under composition scheme	(-)
M	Adjustments in turnover under section 15 and rules thereunder	(+/-)
N	Adjustments in turnover due to foreign exchange fluctuations	(+/-)
O	Adjustments in turnover due to reasons not listed above	(+/-)

Form GSTR-9C – Part II

5	Reconciliation of Gross Turnover	
A	Turnover (including exports) as per audited financial statements for the State/UT (For multi-GSTIN units under same PAN the turnover shall be derived from the audited Annual Financial Statement)	
P	Annual turnover after adjustments as above	
Q	Turnover as declared in Annual Return (GSTR9)	5N, 10 & 11
R	Un-Reconciled turnover (Q - P)	
6	Reasons for Un - Reconciled difference in Annual Gross Turnover	
7	Reconciliation of Taxable Turnover	
8	Reasons for Un - Reconciled difference in taxable turnover	

Form GSTR-9C – Part III

Pt III	Reconciliation of tax paid		
9	Reconciliation of rate wise liability and amount payable thereon		
A	5%		
B	5% (RC)		
C	12%		
P	Total amount to be paid as per tables above		
Q	Total amount paid as declared in Annual Return (GSTR 9)	9, 10 & 11	
R	Un-reconciled payment of amount		
10	Reasons for unreconciled Payment of amount		

Form GSTR-9C – Part III

11	Additional amount payable but not paid (due to reasons specified under Tables 6, 8 and 10 above)					
			To be paid through Cash			
	Description	Taxable Value	Central tax	State tax / UT tax	Integrated tax	Cess, if applicable
	5%					
	12%					
	18%					
	Others (please specify)					

Form GSTR-9C – Part IV

Pt.IV	**Reconciliation of Input Tax Credit (ITC)**		
12	Reconciliation of Net Input Tax Credit (ITC)		
A	ITC availed as per audited Annual Financial Statement for the State/ UT (For multi-GSTIN units under same PAN this should be derived from books of accounts)		
B	ITC booked in earlier Financial Years claimed in current Financial Year	(+)	
C	ITC booked in current Financial Year to be claimed in subsequent Financial Years	(-)	
D	ITC availed as per audited financial statements or books of account		
E	ITC claimed in Annual Return (GSTR9)		7J
F	Un-reconciled ITC		
13	Reasons for un-reconciled difference in ITC		

Form GSTR-9C – Part IV

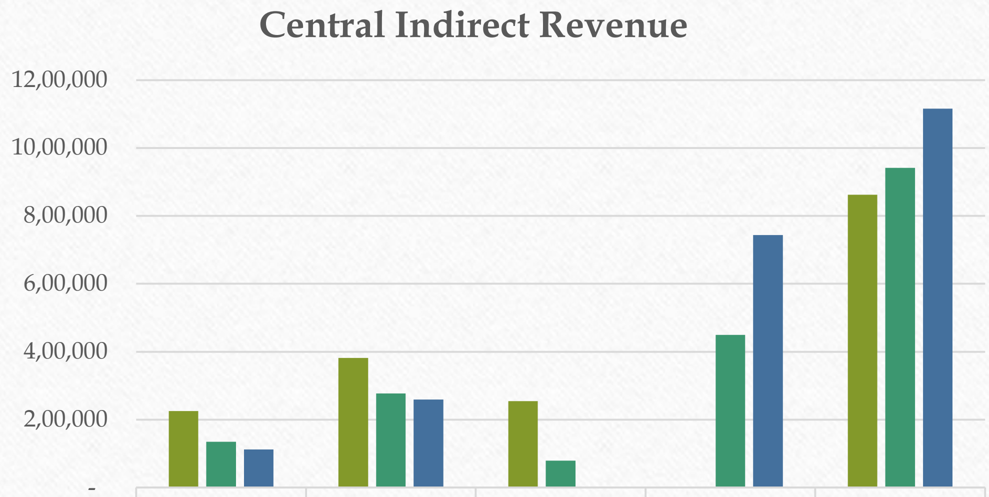
14	Reconciliation of ITC declared in Annual Return (GSTR9) with ITC availed on expenses as per audited Annual Financial Statement or books of account			
	Description	Value	Amount of Total ITC	Amount of eligible ITC availed
A	Purchases			
B	Freight / Carriage			
C	Power and Fuel			
Q	Any other expense 2			
R	Total amount of eligible ITC availed			<Auto>
S	ITC claimed in Annual Return (GSTR9)			7J
T	Un-reconciled ITC			
15	Reasons for un - reconciled difference in ITC			
16	Tax payable on un-reconciled difference in ITC (due to reasons specified in 13 and 15 above)			

Form GSTR-9C – Part V

Pt. V	Auditor's recommendation on additional Liability due to non-reconciliation					
			To be paid through Cash			
	Description	Value	Central tax	State tax / UT tax	Integrated tax	Cess, if applicable
	5%					
	12%					
	Input Tax Credit					
	Interest					
	Any other amount paid for supplies not included in Annual Return (GSTR 9)					
	Erroneous refund to be paid back					
	Outstanding demands to be settled					
	Other (Pl. specify)					

Key Issues & Aspects: GST Audit

IndiaGST: some statistics



	Customs	Excise	Service Tax	GST	Total
2016-17	2,25,370	3,82,094	2,54,499		8,61,963
2017-18	1,35,242	2,76,995	79,507	4,50,000	9,41,744
2018-19	1,12,500	2,59,600	-	7,43,900	11,16,000

2016-17 2017-18 2018-19

- Average monthly GST revenue: ~ 92000 Crores
- Growth in central tax revenue
  - from 2016-17 to 2017-18: modest 9.25%
  - 2017-18 to 2018-19: about 19%
- GST revenue for FY 2018-19 expected to be 13,25,000 Crores, without appropriation to State

FY 2017-18	CGST	SGST	IGST	Cess	Total
Total Revenue	1,19,000	1,72,000	3,88,000	62,000	7,41,000
Central Share	1,19,000	-	2,69,000	62,000	4,50,000
State Share	-	1,72,000	1,02,500	16,500	2,91,000

Note: GST Revenue of INR 741,000 is for about 8 months, therefore the annualized revenue would be about INR 11,10,000 Crores

IndiaGST: some statistics

Return Period	Total Revenue	No of regular assessee's	Return Filed on due date %	Return Filed as on Apr'18 %
July '17	23,362	66,47,581	57.69%	96.10%
Aug '17	93,590	73,70,102	36.98%	92.97%
Sep '17	93,029	78,23,806	50.29%	90.87%
Oct '17	95,132	77,21,075	56.58%	87.78%
Nov '17	85,931	79,57,204	61.74%	85.02%
Dec '17	83,716	81,22,425	66.81%	83.08%
Jan '18	88,929	83,22,611	64.81%	80.44%
Feb '18	88,047	85,27,127	63.93%	76.96%
Mar '18	89,264	87,15,163	62.63%	64.61%
Total	**7,41,000**			

- 20% of assessee's file their return after two months
- 1/3rd of assessee's do not file their return on time (may also be consequent to systems/ technical issues)
- Revenues for Aug'17 to Oct'17 were higher by about 10K crore, consequent to delay in transitional credit and Input tax credits
- About 17 Lakh assessees are registered under composition (20%)
- About 64 Lakhs migrated from Pre-GST regime into GST and about 36 Lakhs (50% of existing) obtained new registration under GST – show casing better compliance under GST
- Increase in number of digital transactions, number of Income Tax Returns filers and the growth of India's GDP, confirms India is moving towards being a more transparent economy

Key Issues & Aspects: GST Audit

- Price is the sole consideration for supply
- Meaning of composite supply vs. mixed supply
- Buy 2 get 1 free
- Transactions with branches
- Invoices issued prior to Mar'18
- POS: Bill to & Ship to
- Credit of capital goods
    - Inputs Vs. Capital Goods
    - Refund of ITC on capital goods
    - Reversal of credit on FOC exports
    - Export with payment of tax
- Credit of tax paid on medical insurance and airline credits
- Taxability of employee reimbursements & valuation of gifts
- Select Sectorial Issues

Price being the sole consideration for supply

Rental

ABC – Owner
Maharashtra

PQR Ltd – Tenant
Delhi

Property at
Bangalore

- Monthly rent: INR 30,000/-
- Deposit: INR 300,000/-
- GST Rate: 20%
- Lets Calculate GST with Place of Supply?

Lease

ABC – Owner
Maharashtra

PQR Ltd – Tenant
Delhi

Property at
Bangalore

- In case the lease amount is INR 2.4 Million, fully refundable after 5 years, would GST be payable?
  - Risk-Free Interest Rate (interest rates vary)
  - Re-investment value of deposit (what in case of loss)
  - Rent of similar property (can we have similar property)

Bundled supplies

One principal supply
2 or more supplies of goods/ services
Naturally bundled

Composite Supply

Travel by air with free on-board food

Supply of mobile with charger

Tool Kit

Installation of solar power plant (single price)

Education service with boarding, lodging, transportation & extras

Single Price
2 or more supplies of goods/ services
Not a composite supply

Mixed Supply

Buy 1 Get 1 Free

- Supply of 1 free is an exempt supply: supply made without consideration
- Input tax on purchase of goods for making exempt supply would be restricted for credit
- Section 17(5)(h) also restricts credit on value of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples;
- Alternatively, supplier may change his marketing strategy as ‘Buy 2 at the Price of 1” instead of “Buy 2 Get 1 Free”

Supply to distinct persons

- Branch transfers

  In terms of Section 3 read with Schedule 1, supplies of goods or supplies of services when made to distinct persons, are subject to GST, even when made without consideration. The term distinct persons include branches of the Company registered separately under GST, whether within or outside the State

- Discharge of tax: external costs
  - Distribute the tax charged by the supplier of service by obtaining input service distributor registration.
  - Alternatively, raise invoice as supply of service – Valuation?

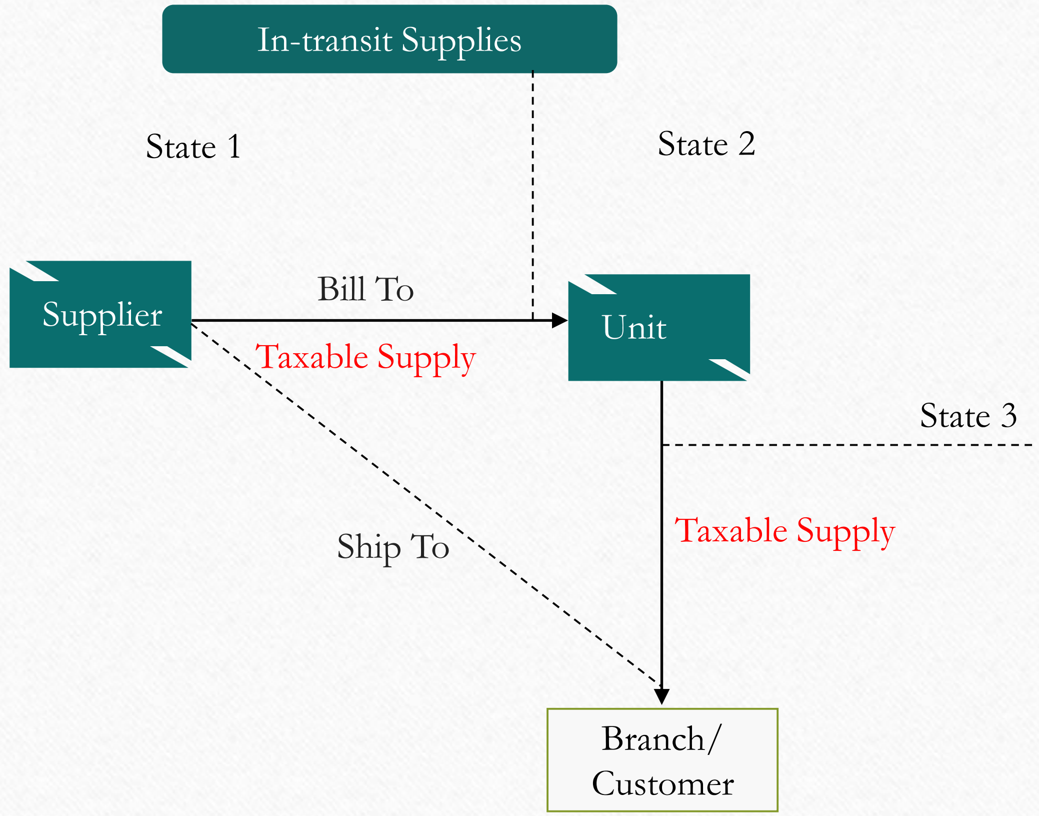
- Discharge of tax: internal costs
  - No tax ought to be chargeable when the internal costs are accounted based on cost centre at respective location. Alternatively, department may impute value based on cost plus reasonable mark-up. The Company may be required to charge appropriate GST, as in the manner of taxable supply by location incurring the cost and billable to the location to which the costs pertain.
  - AAR No. KAR ADRG 15/2018, dated 27-Jul-18 [Columbia Asia Hospitals Pvt. Ltd] to be distinguished

Invoices prior to Mar’18

- In terms of Section 16(4) “Registered person shall not be entitled to input tax credit
  - in respect of any invoice or debit note for supply of goods or services or both
  - after the due date of furnishing of the return under section 39 for the month of September following the end of financial year
  - to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier”
- In terms of Rule 37(4), the restriction under 16(4) will not apply to cases where the credit is taken and reversed for non-payment of consideration to supplier within 180 days
- Accordingly, credit will lapse if the invoice dated prior to Mar’18 is booked for payment and credit is taken after the due date of furnishing the return u/s. 39

POS: Bill to Ship to

- Input tax credit can be taken at the place of supply
  - The place of supply in case of bill to ship to u/s 10(1)(b) is based on 'Bill To'
  - If credit is taken at Ship To, it is incorrect
  - Subsequent supply is a taxable supply between unit and its branch/ customer. Issue would arise if subsequent invoice from is not raised from Unit on its branch/ customer



Inputs vs. Capital Goods

- Capital in nature or capitalized in Books of Accounts?
  - (*19*) "capital goods" means goods, the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business;
  - (*59*) "input" means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business;
- Capital in nature but not capitalized? Will it be considered as Inputs?
- Export of goods on FOC basis: requirement of reversal of credit?
- Refund of ITC on capital goods
- Export on payment of duty?

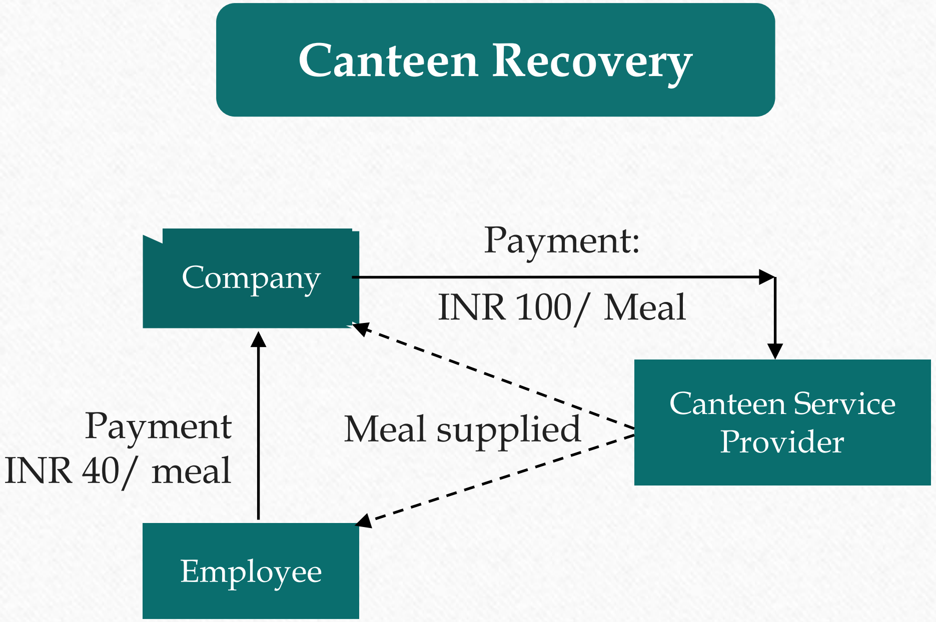
ITC: Medical insurance

- Section 17(5) of The Central Goods and Services Tax Act, 2017, which provides that input tax credit with respect to "rent-a-cab, life insurance and health insurance" would not be eligible, except where the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force
- Difference between obligatory vs. mandatory
- When credit was held as eligible in the service tax regime, no reason why it should not be eligible under GST?
- Entitlement to credit of GST charged by Airlines(K3)

Illustrative Judicial Decisions

- M/s Hindustan Coca Cola Beverages [2014-TIOL-2460-CESTAT-MUM]
- M/s Reliance Industries Ltd [2016-TIOL-a2392-CESTAT-MUM]
- Hydus Technologies India Pvt Ltd [2017-TIOL-1189-CESTAT-HYD]
- M/s Knoah Solutions Pvt Ltd [2016-TIOL-1592-CESTAT-HYD]
- Stanzen Toyotetsu India (P) Ltd [2011-TIOL-866-HC-KAR-ST]

Employee Reimbursements



Presenter supports alternate view

One view:

- Recovery by the Company will be regarded as supply and subject to tax on the understanding that each transaction is a separate supply
- On recovery, the taxable value shall be the total price per meal charged by the canteen service provider (irrespective of the value borne by the employee)
- Given the limited restriction on credit for canteen supplies, the same supply may become taxable twice

Alternate view:

- Supply is one but the recipients of the supply are two (Company and the employee, in their individual capacity), in the portion they bear the burden
- Similar to Uber, where the ride can be shared by different recipients
- Since the main supply has suffered tax, subsequent recovery, ought not to be considered as supply and ought not to be taxed again.
- It is important to build documentation to defend taxability

Value of Gifts to Employee

- Free transportation / food / tea coffee water etc.
- Bouquet and vouchers (incl. travel) on birthday, marriage anniversary, work anniversary, child etc.
- Interest free loan to employees
- Personal usage of Mobile / laptop by employee
- Cash Gifts / Gift cards
- ESOP free of cost

Select Sectorial issues

	IT & ITES	Pharma	Construction	Manufacturing
Key Sectorial Issues	• Taxability of testing activity • Intermediary • Refund of tax on capital goods	• Physician Samples given free • Expired Stock • Apportionment of R&D credits	• Barter: JDA Agreements • Unsold flats • Interest for delayed payment • Time of supply	• Warranty supplies • Supplies below cost • Ocean freight • Cross of common costs • FOC supplies

Other select issues

- Transactions with branches outside India - Liability to pay or ITC reversal
- Sales & marketing and testing activity.
- Supplies to SEZ – Authorized operations
- ITC on de-bonding of goods and taxability of in-bond sales
- Employee car lease scheme
- Post sale discount Vs. After sale discounts
- Import of software from parent company without consideration
- Tran-01 / 02 issues [Cess, inputs more than 1 year, payment not made within 90 days]
- Adequate documentation for anti-profiteering

THANK YOU

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