

AUDIT UNDER GST REGIME



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Introduction

The introduction of the Goods and Services Tax in our country with effect from 01.07.2017 is a milestone transformation which will have major impact on almost all the sectors of the economy. In order to ensure effective compliance with the various GST provisions and to ensure performance of audits in a systematic, transparent and fair manner, audit provisions have been incorporated under the GST Acts(s)/Rules.

Definition of the term “Audit” –Section 2(13) of the CGST Act/SGST Act

“**Audit**” means the examination of records, returns and other documents maintained or furnished by the registered person under the GST Acts or the rules made there under 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 the GST Acts or the rules made thereunder.

Types of Audit under GST Acts

(A) Audit by a Chartered Accountant or a Cost Accountant- Section 35(5) of the CGST Act/SGST Act read with Rule 80(3) of the CGST/SGST Rules, 2017

Note: Since Chartered Accountants or Cost Accountants are concerned with and interested in this type of Audit, it has been **discussed in the following pages in detail.**

Every registered person whose **turnover** during a financial year exceeds the prescribed limit of **Rs. Two Crore** shall get his accounts audited by a Chartered Accountant or a Cost Accountant. It is to be noted very carefully

here that though in **Section 35(5)** the term “turnover” has been used, yet it shall mean “**aggregate turnover**”. The term “aggregate turnover” has been defined as under vide **Section 2(6)** of the CGST Act/SGST Act:

*“Aggregate Turnover” means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but **excludes** central tax, State tax, Union territory tax, integrated tax and cess*

A careful perusal of above-definition reveals that first of all it is an exhaustive definition because the expression “**means**” [and not include] has been used. Further, while computing the value of “Aggregate Turnover”, following **inclusions** shall be made:

(A) Value of all Taxable Supplies. The term “Taxable Supply” means a supply of goods or services or both which is leviable to tax under the GST Acts.

(B) Value of all Exempt Supplies. The term “Exempt Supply” means supply of any goods or services or both which attracts **nil rate of tax** or which may be **wholly exempt** from tax under Section 11 of the CGST Act/SGST Act or under section 6 of the Integrated Goods and Services Tax Act, **Examples** of “Exempt Supply” are - Live bovine animals, Live swine, Live Fish, Melons, Services by a Foreign diplomatic Mission located in India, Services by way of admission to a Museum, National Park, Wildlife Sanctuary, Tiger Reserve or Zoo.

It is also worth highlighting here that the term “exempt supply” includes **non-taxable supply** also. The term “**Non-taxable Supply**” means a supply of goods or services or both which is not leviable to tax under the CGST Act/SGST Act or under the IGST Act. **Examples** of non-taxable supply are Alcoholic Liquor for Human Consumption and five specified Petroleum Products i.e. Petroleum Crude, Motor Spirit (Petrol), High Speed Diesel [HSD], Natural Gas and Aviation Turbine Fuel [ATF]

(C) Value of Export of Goods or Services or both; **and**

(D) Supplies to branches in other States having same Permanent Account Number [PAN]

However, following **Exclusions** shall be made while computing the Value of Aggregate Turnover:

(i) Value of Inward supplies on which tax is payable by a person on Reverse Charge basis. **Examples** of supplies subject to Reverse Charge are- Services provided by way of Sponsorship to any Body Corporate or Partnership Firm,

Services supplied by a Director of a Company or Body Corporate to the said company or Body Corporate.

(ii) Central Tax, State Tax, Union territory Tax, Integrated Tax and Cess

Some Issues which need Departmental Clarifications

(A) Applicability of Turnover Limit for the period 01.07.2017 to 31.03.2018

GST has been implemented with effect from 01.07.2017. As a consequence, during the financial year 2017-18, GST remained in force only for a period of nine months from 01.07.2017 to 31.03.2018. Now, the question which arises here, is whether the above-mentioned annual turnover limit of **Rs. 2 crore** for audit purposes shall apply proportionately in the given case for a period of nine months or whether the foregoing limit shall apply as it is for a period of nine months ?. A suitable and immediate **clarification** from the Government(s) is required in this regard.

(B) Conduct of GST Audit State-Wise

It is worth emphasizing here that for audit purposes the turnover limit of **Rs. 2 Crore** shall be computed by including turnover in all the States or Union territories, as the case may be, i.e. on all India basis under same PAN. Furthermore, the foregoing threshold turnover limit of Rs. Two Crore is **same for assesseees in all the States and Union Territories**. Thus, it can be safely inferred that **no separate threshold limit** has been specified for **Special Category States**. Since each of the State GST Acts also has the provisions relating to GST Audit, it appears that the GST audit shall be conducted state-wise. It also appears that only for the purpose of determining the eligibility of the assessee who is required to get its accounts audited by a Chartered Accountant or a Cost Accountant, the all India based turnover shall be considered. However, it shall be better if a suitable clarification from the Government(s) is issued in this regard at the earliest.

Statements and Documents to be Submitted to the Proper Officer

It shall be necessary for the registered person to submit to the proper officer the following Statements and Documents:

- (a) A copy of the Audited Annual Accounts;
- (b) A Reconciliation Statement under **Section 44(2)** of the CGST Act/SGST Act i.e. a Statement reconciling the value of supplies declared in the Return furnished for the financial year with the audited Annual Financial Statements. Further, the aforesaid Reconciliation Statement shall be duly certified in **FORM GSTR-9C**, electronically through the common portal

either directly or through a Facilitation Centre notified by the Commissioner.

(c) Other prescribed documents in the prescribed form and prescribed manner.

It is also to be borne in mind that the Government is yet to prescribe the format of the Audit Report and Annexures thereto. Further, it is also not yet clear, whether auditor is required to identify and report the discrepancies month-wise or annually.

GST Audit by a Chartered Accountant or a Cost Accountant- A New Concept

GST Audit by a Chartered Accountant or a Cost Accountant in the area of Indirect Taxes is a new concept in our country. Only a handful of Chartered Accountants may be familiar with the erstwhile VAT Audit which was applicable in some selected States during the pre-GST Regime. However, GST is the summation of a number of Indirect Taxes/Duties/Surcharges for instance Central Excise Duty, Service Tax, Additional Customs Duty, commonly known as Countervailing Duty (CVD) VAT/CST, Purchase Tax, Luxury Tax, Entry Tax etc. and is a new law. Consequently, all professionals, whether experienced or recently qualified, shall be more or less, on the same pedestal.

Besides, it is an open secret that level of education as well as record of tax compliances in our country is not very satisfactory. Therefore, it becomes essential that accounts of the assessee be audited by qualified and independent professional(s) under applicable tax laws. Further, with a view to ensure the better voluntary compliance of the various provisions of the GST Acts/Rules, the CGST Act/SGST Act provides for Audit by professionals in specified situation.

Preparation for First GST Audit

GST had been implemented on 01.07.2017 and the first financial year in the GST Regime ended on 31.03.2018. Thus, it goes without saying that GST Audit shall be conducted for the first time. As a result, plenty of preparation is required both on the part of GST Auditor and GST Assessee. Besides, it is worth adding here that in case of Statutory Audit and Tax Audit (u/s 44AB of the Income Tax Act), the main thrust of the auditor is on the financial records. On the other hand, the scope of GST Audit is wider than scope of audit under Income Tax Act, 1961. Resultantly, it shall become obligatory on the part of the GST Auditor to have clear and precise understanding of various provisions of GST Acts/Rules made thereunder [including various mandatory records to be maintained] requirements of reporting and source of information, understanding the nature of business of the concerned assessee.

Following are the various steps which a GST Auditor may take in connection with the forthcoming first GST Audit in the year 2018:

- A. GST Audit shall be new to everyone. Resultantly, a number of auditees who are required to be get their accounts audited may not have sufficient knowledge about the various applicable provisions of the GST Act(s)/Rules. Therefore, it becomes essential on the part of a Chartered Accountant or a Cost Accountant to inform the concerned auditees not only about the requirement of GST audit but also about the mandatory documents and other preparations to be done by the them.
- B. Confirm his eligibility to be the GST Auditor in accordance with provisions of Section 2(23) [which has defined the term **“Chartered Accountant”**] or Section 2(35) [which has defined the term **“Cost Accountant”**]. Both the foregoing definitions are given in the following succinct Table:

<p>Definition of the term “Chartered Accountant” “Chartered Accountant” means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 -Section 2(23)</p>
<p>“Chartered Accountant” means a person who is a member of the Institute –Section 2(1)(b) of the Chartered Accountants Act, 1949</p> <p>Note: In terms of Section 6(1) of the Chartered Accountants Act, 1949 no member of the Institute shall be entitled to practise [whether in India or elsewhere] unless he has obtained from the Council a certificate of practice. As a consequence, only a member of ICAI having COP or firm of CAs can take up the GST Audit.</p>
<p>Definition of the term “Cost Accountant” “Cost Accountant” means a cost accountant as defined in clause (c) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 (23 of 1959)- Section 2(35)</p>
<p>“Cost Accountant” means a person who is a member of the Institute - Section 2(1)(b) of the Cost and Works Accountants Act, 1949</p> <p>Note: In terms of Section 6(1) of the Cost and Works Accountants Act, 1959 no member of the Institute shall be entitled to practise [whether in India or elsewhere] unless he has obtained from the Council a certificate of practice. As a consequence, only a member of ICWAI having COP or firm of Cost Accountants can take up the GST Audit.</p>

- C. Understand the requirements of records to be maintained and advise the client to maintain the accounts and records so required.

- D. Prepare the detailed Audit Programme as well as List of Records to be verified.
- E. Prepare a detailed questionnaire to understand the operations/activities of the auditee.
- F. Special attention must be paid to transactions not appearing in the Financial Accounts, but having GST implications.
- G. Prepare various Reconciliation Statements

Appointing Authority of GST Auditor and Communication with Previous Auditor

In case of a **company** the appointment of the GST auditor shall be made by a resolution of the Board of Directors or by an officer of the company, if so authorized by the Board in this behalf. In case of a **partnership firm or proprietary concern**, the appointment can be made by a partner or the proprietor or a person authorized by the assessee. The acceptance of appointment by the proposed GST Auditor shall also be communicated in writing to the assessee.

Since the GST Audit is applicable for the first time for the financial year 2017-18, requirement of communication with the previous GST Auditor shall not arise. However, it is quite possible that in the pre-GST Regime, some assessees may be subject to VAT Audit, which was undertaken by an eligible auditor. However, GST Audit of the same assessee for the year 2017-18 may be allotted to a different Auditor. Now, the question arises is whether **the new GST Auditor is required to communicate with the VAT Auditor**. It is opined that since GST Acts are separate and independent Acts and the Audit specified therein is different VAT audit, there is no need for the GST Auditor to communicate with earlier VAT Auditor, before taking up the GST audit. However, in the subsequent years, in case of change in the GST Auditor, the new auditor shall communicate with the previous auditor as per the **provisions of the Chartered Accountants Act, 1949 or Cost and Works Accountants Act, 1959**. While making the communication with the retiring auditor, the new auditor should find out whether there are any professional or other reasons why he should not accept the appointment. The professional reasons for not accepting the appointment may include the following:

- (A)** Non-payment of undisputed audit fees.
- (B)** Issuance of a qualified report.

The communication to the retiring auditor is not necessary if the retiring auditor is not a chartered accountant

General Checklist for a Chartered Accountant before Accepting the Appointment as an Auditor

1. Any **member in part-time practice** is not entitled to perform attest function. Only partners can perform attestation function.
2. In case of **Joint Audits**, all the auditors will have to sign the audit report. If the auditors have different opinion, then they should issue separate audit reports.
3. A chartered accountant having **substantial interest** in the assessee's business cannot take up the audit.
4. A chartered accountant who is **responsible for writing or the maintenance of books of account** of an assessee is not eligible for being appointed an auditor of the same assessee.
5. **Internal auditor** of an assessee cannot be appointed as his tax auditor.
6. A chartered accountant is not eligible to accept the GST Audit of a person to whom he is indebted for more than Rs. 10,000/-.
7. The restrictions applicable for appointment of statutory auditor where fee for other services are more than the statutory audit fee, in case of specified entities, is not applicable to GST auditors.
8. A chartered accountant cannot charge professional fees based on a percentage of profit or which are contingent upon the finding or the result of the professional employment.
9. In many cases, an assessee may be having his GST registrations in many States. The assessee may appoint single auditor for all his registered establishments. Accounts and records might have been kept in the local language of the State. It is suggested that in the normal course, the auditor should not accept the audit of accounts written in a language which he/his staff does not understand.

Furthermore, every auditor [including a GST Auditor] should keep in mind the following observations of **Lord Justice Lopes** in respect of an auditor's duty of care, in the landmark case of **Kingston Cotton Mills Co. (1896)**:

*"It is the duty of an auditor to bring to bear on the work he has to perform that skill, care and caution which a reasonably careful, cautious auditor would use. What is reasonable skill, care and caution must depend on the particular circumstances of each case. An auditor is not bound to be a detective, or, as was said to approach his work with suspicion, or with a forgone conclusion that there is something wrong. **He is a watchdog, not a bloodhound.** He is justified in believing tried servants of the company in whom confidence is placed by the company. He is entitled to assume that they are honest and rely upon their representations, provided he takes reasonable care."*

Removal of GST Auditor

Any resolution to remove a statutory auditor shall not be effective unless there are **good and substantial grounds** for the removal related to the conduct of the auditor with regard to the performance of his or her duties as auditor. However, the auditor cannot be removed on the ground that he has given an adverse or qualified Audit Report. In the event an auditor has been removed without any valid grounds, the Ethical Standards Board of ICAI or ICWAI, as the case may be, can intervene and it may direct the incoming auditor not to accept the audit assignment.

(B) Audit by Department- Section 65 of the CGST/SGST Act

Note: This type of audit has been briefly described below:

Tax liability on supply of goods or services or both is computed by a registered person under **self-assessment scheme** of the Act. In order to ensure whether the tax liability has been correctly computed and discharged by the registered person, it becomes essential for the Department to conduct an audit of Records maintained by the person.

The Commissioner or an officer authorised by him, may undertake audit of any registered person by issuing a general order or a special order. It is worth emphasizing here that the authorized officer, **during the course of audit**, may require the registered person to:

- (i) Afford him necessary facility to verify the books of account or other documents required by him;
- (ii) Furnish such information as may be required by him for the conduct of audit, and to provide assistance for timely completion of audit.

(C) Special Audit -Section 66 of the CGST/SGST Act

Note: This type of audit has been briefly described below:

Any officer not below the rank of Assistant Commissioner, may form the **opinion that the value of supply of goods or services or both declared by the registered person is not correct or input tax credit availed by him is not within the normal limits.** The foregoing opinion may be formed at any stage of scrutiny, inquiry, investigation or any other proceedings before him, having regard to the nature and complexity of the case and interest of revenue. Therefore, aforesaid officer may, direct the registered person, in writing, to get his records [including books of account] examined and audited by a Chartered Accountant or a Cost Accountant **nominated by the Commissioner.**

The Chartered Accountant or Cost Accountant nominated by the Commissioner shall, within a **period of 90 days** from the date of his nomination, **furnish the Audit Report** to the Assistant Commissioner on whose direction audit is conducted. However, the aforesaid period of 90 days may be **extended** by the Assistant Commissioner on his own motion, or on an application made by the registered person or the Chartered Accountant or Cost Accountant nominated by the Commissioner, for material and sufficient reason.

It is also worth adding here that “General Checklist for a Chartered Accountant before Accepting the Appointment as an Auditor” given hereinabove shall apply, with necessary changes, in case of Special Audit also.

Conclusion

A Chartered Accountant or a Cost Accountant is eligible to undertake any of the following two audits:

(A) Audit by a Chartered Accountant or a Cost Accountant

(B) Special Audit

Further, in terms of **Section 125** of the CGST Act/SGST Act, a contravention of the above provisions shall attract a **penalty upto Rs. 25,000/-**. Besides, in terms of **Section 20 of the IGST Act**, the provisions of the CGST Act **relating to Audit shall** apply, with necessary changes, in relation to Integrated Tax as they apply to Central Tax.
