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AUDIT UNDER INDIAN GST LAW

REQUIREMENTS UNDER INDIAN GST LAW:

Every registered person under goods and service tax ('GST') law¹, whose turnover during a financial year exceeds two crore rupees is required to get his accounts audited by a chartered accountant or a cost accountant². Such registered person is required³ to furnish, electronically, the annual return [in FORM GSTR-9], along with -

- » a copy of the audited annual accounts
- » a reconciliation statement [duly certified, in FORM GSTR-9C], 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.

Content and format of 'annual return'⁴ and the 'reconciliation statement'⁵ are now pronounced.



Due date of furnishing 'annual return' is December 31st, following the end of concerned financial year⁶.

¹ Central Goods and Service Tax Act, 2017 ('CGST Act') and the respective State Goods and Services Tax laws ('SGST laws')

² Section 35(5) of the CGST Act / respective SGST laws

³ Section 44(2) of the CGST Act / respective SGST laws

⁴ Notification No. 39/2018 - Central Tax dated September 4, 2018

⁵ Notification No. 49/2018 - Central Tax dated September 13, 2018

⁶ Section 44(1) of the CGST Act / respective SGST laws

Audit is defined⁷ as follows –

“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.

TURNOVER:

The provisions in the GST law specify that every registered person whose **turnover** during a financial year exceeds the prescribed limit shall get his accounts audited. The GST Rules⁸ specify⁹ that every registered person whose **aggregate turnover** during a financial year exceeds two crore rupees shall get his accounts audited. The question that arises is that would the limit of two crore rupees apply for each State / Union territory or on all India basis.

The term ‘turnover’ is not defined in GST law. The term ‘aggregate turnover’ is defined in GST law. The term ‘aggregate turnover’ is to be computed on all India basis. Additionally, the term, ‘turnover in State’ or ‘turnover in Union territory’ is defined separately.

The GST law only allows the limit to be prescribed, which the GST Rules prescribe as two crore rupees. The GST Rules, however, replaces the word ‘turnover’ with the words ‘aggregate turnover’. For registration, the limit stated in the GST law is the aggregate turnover in a financial year exceeding twenty lakh rupees. As the GST law uses the term ‘turnover’ and not ‘turnover in State’ or ‘turnover in Union territory’, it may be safer to proceed on the basis that prescribed limit of two crore rupees is to be computed on all India basis.

AUDIT:

The registered person is required to get his accounts audited by a chartered accountant or a cost accountant. Separately, there are provisions in GST law, with respect to ‘Audit by tax authorities’, wherein it is provided that *the Commissioner or any officer authorised by him, by way of a general or a specific order, may undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.*

The term ‘audit’ is defined in GST law. The question that arises is - should the term ‘audit’, as defined, be restricted to audit by tax authorities or should be extended to where the accounts are to be audited by a chartered accountant or a cost accountant.

It appears that the term ‘audit’ as defined should be also applied to the audit to be conducted by a chartered accountant or a cost accountant. In which event, the auditor,

would be required to examine the records, returns and other documents maintained or furnished under GST law / GST Rules. The auditor is required to verify the correctness of -

- » turnover declared,
- » taxes paid,
- » refund claimed, and
- » input tax credit availed.



The audit is also required to assess the registered person’s compliance with all the provisions of GST law / GST Rules. This would involve checking whether all the activities / transactions required to be considered as ‘supply’ under GST law have been considered so or not, including barter transactions, as well as checking whether the name plate outside the place of business is in compliance of GST law / GST Rules or not.

The registered person can have different auditors for different States / Union territories.

REQUIREMENT OF AUDIT REPORT:

The GST law / GST Rules do not specify for issuance of any report by the auditor. The GST Rules only specify that the reconciliation statement shall be duly certified in FORM GSTR-9C.

Wherever the law intended a report to be issued by the auditor, it has specified so in the law itself.

- » Provision¹⁰ under the Income Tax law -
Every person ... get his accounts of such previous year audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant
- » Provision¹¹ under the Company law -
The auditor shall make a report to the members of the company on the accounts examined by him and on every financial statements which are required by or under this Act to be laid before the company in general meeting and the report shall

⁷ Section 2(13) of the CGST Act / respective SGST laws

⁸ Central Goods and Service Tax Rules, 2017 ('CGST Rules') and the respective State Goods and Services Tax Rules ('SGST Rules')⁷

⁹ Rule 80(3) of CGST Rules/ respective SGST Rules

¹⁰ Section 44AB of the Income Tax Act, 1961

¹¹ Section 143(2) of the Companies Act, 2013

- » Provision¹² under the erstwhile Maharashtra VAT law - *Every dealer liable to pay tax get his accounts in respect of such year audited by an Accountant and furnish within that period the complete report of such audit in the prescribed form duly signed and verified by such accountant*

No such provision is specified in GST law. The Institute of Chartered Accountants of India had suggested a draft of an audit report and a statement of particulars (in a new FORM GSTR-3D), whereas the provision in GST law / GST Rules do not specify for either.

GST Rules¹³ now specify FORM GSTR-9C in two parts. Part A is the 'reconciliation statement' and Part B is the 'certification', that is the certificate to be issued by a chartered accountant or a cost accountant.

SUBMISSION OF AUDITED ACCOUNTS:

Every registered person is required to furnish, electronically, the annual return 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.

GST law has used the terms 'audited annual accounts' and 'audited annual financial statement' in the same provision. Are these two different or same?

The registered person is required to furnish audited annual accounts and a reconciliation statement. The registered person is not required to furnish the audited annual financial statement. The audited annual financial statement is to be used for preparing the reconciliation statement.



Incidentally, one observes¹⁴ similar aspects in the Company law too –

- » **Right of member to copies of audited financial statement -**
Without prejudice to the provisions of section 101, a copy of the financial statements, including consolidated financial statements, if any, auditor's report and every other

document required by law to be annexed or attached to the financial statements, which are to be laid before a company in its general meeting, shall be sent to every member of the company,

Provided ...

Provided also that every company having a subsidiary or subsidiaries shall, -

(a) place separate audited accounts in respect of each of its subsidiary on its website, if any;

(b) provide a copy of separate audited financial statements in respect of each of its subsidiary, to any shareholder of the company who asks for it.

- » **Copy of financial statement to be filed with Registrar -**

A copy of the financial statements, including consolidated financial statement, if any, along with all the documents which are required to be or attached to such financial statements under this Act, duly adopted at the annual general meeting of the company, shall be filed with the Registrar

Provided ...

Provided also that a company shall, along with its financial statements to be filed with the Registrar, attach the accounts of its subsidiary or subsidiaries which have been incorporated outside India and which have not established their place of business in India.

- » **Audit of Company Liquidator's accounts -**

When the accounts of the company have been audited, one copy thereof shall be filed by the Company Liquidator with the Tribunal, and the other copy shall be delivered to the Registrar which shall be open to inspection by any creditor, contributory or person interested.

The Company Liquidator shall cause the accounts when audited, or a summary thereof, to be printed, and shall send a printed copy of the accounts or summary thereof by post to every creditor and every contributory.

The term 'financial statement' is defined in Company law; the terms 'accounts' or 'audited accounts' is not defined therein. These three terms are not defined in GST law.

The question that arises is - what is required to be furnished by the registered person as 'audited annual accounts'. It would be apt that the GST authorities / GST Council clarify on this aspect. Clarification is also required whether these audited annual accounts would be the one where the accounts have been audited under any other law or would it be one that is audited under GST law.

The accounts under GST law would include turnover of supplies between distinct persons and the activities that are to be treated as supply even if it is without consideration and would exclude the specified transactions that is not to be treated as supply.

¹² Section 61 of the erstwhile Maharashtra Value Added Tax Act, 2002

¹³ Notification No. 49/2018 - Central Tax dated September 13, 2018

¹⁴ Section 136(1), 137(1) and 294(4) of the Companies Act, 2013

RECONCILIATION STATEMENT:

The audit is required to be conducted separately for each State / Union territory in which the person is registered. Accordingly, the reconciliation statement is required to be furnished for each State / Union territory. Which would mean that the registered person would be required to dissect the available audited annual financial statement for each State / Union territory.

The reconciliation statement would require to exclude the value of supplies for the period from April 2017 to June 2017 – that too separately for each State / Union territory; GST law having been implemented effective from July 1, 2017.

The auditor is required to verify that the reconciliation statement and solemnly affirm and declare that the information given in the reconciliation statement is true and correct to the best of his knowledge and belief and nothing has been concealed therefrom.

CERTIFICATION:

Certification by the GST auditor is specified in Part B of FORM GSTR-9C. Separate format has been prescribed –

- » where the reconciliation statement is drawn up by the person who had conducted the audit

- » where the reconciliation statement is drawn up by a person other than the person who had conducted the audit of the accounts

It appears that the reference to ‘the person who had conducted the audit’ refers to the person who has audited the annual financial statements. If it not so, then the GST authorities / GST Council need to clarify the reference is to which person for the auditor under GST law to provide the correct certificate.

Incidentally, the content of the such certificate reads as – “I / we report that” instead of ‘I / we certify that’. Guess, the required correction would be made soon.

CONCLUDING REMARKS:

The audit under GST law would entail all the aspect that generally an audit entail. Adequacy of internal controls, systems, internal checks would have to be examined so as to ensure the validations, completeness and correctness of details furnished and returns filed under GST law. The auditing standards, as applicable, would require adherence by the GST auditor.

Though, the end result may be a certificate, but what is required to be conducted is audit.

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