

# **Practical Aspects of GST Audit**

**CA (Dr.) Shailendra Saxena  
B.COM, ACS, FCMA, FCA, DISA(ICAI), PhD**

## Section 35 (5) read with Rule 80 (3)



Every Registered Person

# Who is having



Aggregate turnover above Five Crores shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in FORM GSTR-9C for the financial year 2018- 19, (Notification 16/2020-CT dated 23.03.2020)

## The aggregate value of

- All taxable supplies
- Exempt supplies,
- Exports of goods or services or both
- Inter-State supplies

of persons having the same Permanent Account Number, to be computed on all India basis

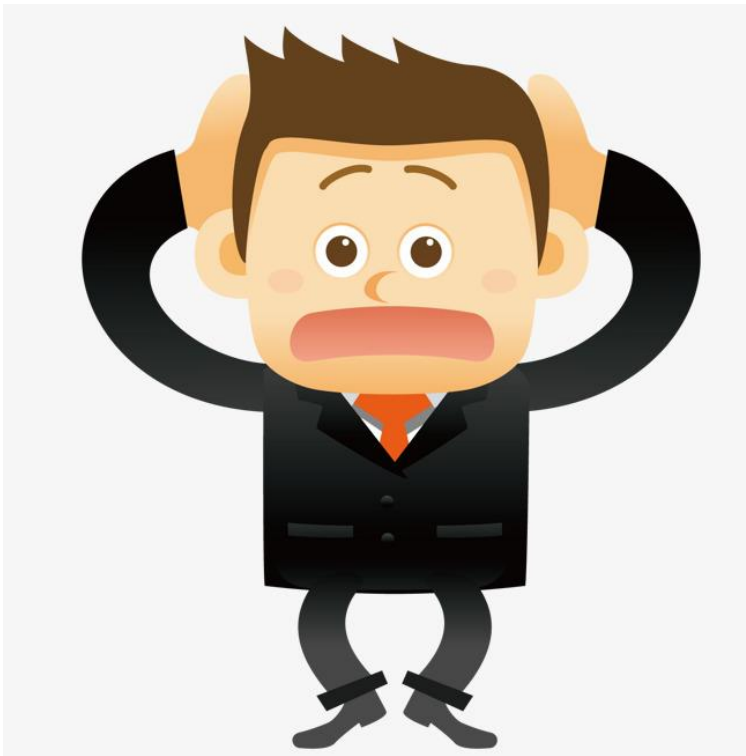
## but excludes

- The value of inward supplies on which tax is payable by a person on reverse charge basis),
- Central tax, State tax, Union territory tax, integrated tax and cess;

# Last Date for Filing the GSTR 9 & GSTR 9C

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Section 44



Last Date of Filing

30/06/2020 for F.Y.2018-19

31/12/2020 for F.Y.2019-20

## Last date of issue of notice u/s 73 and 74.

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<b>F.Y.</b>	<b>Last date of filing of Annual Return</b>	<b>Section 73 (3 years)</b>	<b>Section 74 (5 years)</b>
<b>2017-18</b>	<b>31-12-2019</b>	<b>31-12-2022</b>	<b>31-12-2024</b>
<b>2018-19</b>	<b>30-06-2020</b>	<b>30-06-2023</b>	<b>30-06-2025</b>
<b>2019-20</b>	<b>31-12-2021</b>	<b>31-12-2024</b>	<b>31-12-2026</b>

# Consequence of Filing Return after Due Date.

## Section 47(2)

GSTR	CGST	SGST	MAXIMUM
GSTR 9	100	100	0.25% + 0.25% of the Turnover of the State/UT
GSTR 9C	100	100	0.25% + 0.25% of the Turnover of the State/UT

Minimum Rs 400 Late Fees / Day in case of Audit.

## GST AUDIT :Challenges

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- **Computation of turnover limit** for eligibility for audit.
- **Frequent changes in the law**, issuance of more than 675 notifications,140 Circulars,18 Removal of difficulty orders,40 times GST Rules has been amended,75 Press Release,900 order of Advance Ruling Authority(AAR) order,130 Appellate Advance Ruling Authority Order (AAAR),FAQ and CBIC Flyers.
- **Failure of the matching concept.**
  - **Absence of GSTR-2 and GSTR-3**, the recipient cannot come to know that the supplier has paid the tax and filed the return.
  - **Without tax being paid by the supplier**, ITC would not be available to the recipient as per Sec 16(2). How can an auditor give his opinion on correctness of ITC claim?
- **Procedural lapses and non-compliances by the assesseees and incorrect documents.**

## GST AUDIT :Challenges

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- Unreconciled difference between the books and Returns
- Errors in applying rate of tax-differential tax collected.
- Deduction not admissible-Value enhanced-differential tax collected?
- Ineligible credit, credits reversal not done –rectified by reducing the credit balance.
- Correct place of supply in both domestic and international transactions of import as well as export especially of services.
- Confirm that all accounting standard/Auditing standards are complied.
- Avoids the cost of interest and penalties in future.



# GST Audit: Safeguard

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- Take Management Representation Letter;
- Experts view/ precedents/Court Order are to be referred while reporting the Audit Points;
- Documentation all verification aspects during the audit.
- If any difference in view, to be reported in Audit Report.

## Sequence of Activity

**Transactions**

**Documents**

**Books of  
Account**

**Periodical  
Returns**

**GSTR 9  
Annual Return**

**GSTR 9C  
Annual Return  
& Audit Report**

# GST Audit Means..

Section 2(13)

## **Examination of:**

- Records
- Return
- Other Documents

## **Verification of Correctness of:**

- Turnover Declared
- Taxes Paid
- Refund Claimed
- ITC Availed

## **Assess the Compliance of:**

- Provision of the Act.
- Rules



# Why documentation Necessary?

Part B.I of GST Audit Report	Part B.II of GST Audit Report
Based on our audit I/we report that the	I/we report that the said registered
said registered person—	person—
<ul style="list-style-type: none"> <li>Has maintained the books of accounts, records and documents as required by the IGST/CGST/⟨⟨⟩⟩GST Act, 2017 and the rules/notifications made/issued there under</li> </ul>	<ul style="list-style-type: none"> <li>*has maintained the books of accounts, records and documents as required by the IGST/CGST/⟨⟨⟩⟩GST Act, 2017 and the rules/notifications made/issued</li> </ul>
OR	OR
*has not maintained the following accounts/records/documents as required by the IGST/CGST/⟨⟨⟩⟩GST Act, 2017 and the rules/notifications made/issued there under:	*has not maintained the following accounts/records/documents as required by the IGST/CGST/⟨⟨⟩⟩GST Act, 2017 and the rules/notifications made/issued there under:
1.	1.
2.	2.
3.	3.

# Why documentation Necessary?

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- **SA 230 – Audit Documentation**
- **Evidence that the audit was planned and performed in accordance with SAs and applicable legal and regulatory requirement**
- **Section 35(1) of CGST Act prescribed that every registered person to keep and maintain the true and correct accounts and records?**

Every registered person is required to keep and maintain all records.

- Production or manufacture of goods.
- Inward and outward supply of goods or services or both
- Stock of goods
- Input tax credit availed
- Output tax payable and paid and
- Other particulars as may be prescribed(Rule 56)

Accounts and records can be kept in electronic form in such manner as may be prescribed.

- Electronic Records.
- Accessible at every related place of business
- Proper Electronic backup
- Production on demand
- Passwords and Explanation for Codes used

### **Period of Retention of Accounts & Records:**

72 months from the due date of furnishing of annual return.

## Master File (Permanent Audit File)

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- Appointment / Engagement Letter - backed by Board Resolution in case of corporate clients (SA-210)
- Acceptance letter by Auditor.(SA-210)
- Communication with previous GST auditor (NOC)(SA-210)
- Copy of Signed Financials and Annual Report with all Schedules & Notes of Accounts
- Tax Audit Report ,Income Tax Return /Computation of Income and Form 26 AS
- Copy on Internal Audit report/Cost Audit Report, if any.
- State wise Trial Balance in case of multi GSTIN clients with consolidated Trial balance, (Software or Excel)



## Master File (Permanent Audit File)

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- Copy of GST Registration certificate (REG-06) with List of Core/Non-Core amendments to GSTIN undertaken and the documents in relation thereto.
- Copy of PAN/Copy of Incorporation Certificate in case of corporate clients
- Note on Basic of Nature of business activity.(Understanding of the entity and its environment ) SA-315
- List of Goods/Services supplied by the client along with HSN/SAC and GST Rates Charged by it.
- Software used by auditee for accounting data i.e. Tally/SAP (Auditor Login)
- Note on Accounting policy/Change in Accounting Policy
- List of related parties / transaction with employees and others

## Current Audit File

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- Sample /Formats of all Documents (Tax Invoice, Bill of supply, Debit Note, Credit Note, Delivery Challan, Receipt Voucher, Payment Voucher and Refund voucher)
- Sample Purchase invoice of Major Input, Input Services, Capital Goods
- Input Tax Credit Register/Outward supply Register
- Copy of GSTR-3B, GSTR-1 and others GST Returns, Reconciliation of GSTR-1 Vs e-way bill data pertaining to movement of goods.
- Copy of Electronic Credit Ledger / Electronic Cash ledger
- Copy of Invoice for Major Purchase and Sale of Capital Goods – Fixed Assets Schedule/Extracts of Fixed Assets Register.
- In case of multiple GSTIN under same company, bifurcation of Receipts and expenses on GSTIN wise including miscellaneous income.

## Current Audit File

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- Working of Rule 42 and 43 Reversal of ITC
- Bifurcation of blocked credits and Ageing of Payables for reversal of ITC if invoice payment not made within 180 days from date of invoice.
- GSTR-3B Vs GSTR-2A /ITC as per books, reconciliation required to the extent possible
- List of ITC of FY 2018-19 claimed in GSTR-3B of FY 2019-20.
- Important Sales and Purchase contracts / agreement
- Description of Exempted outward supply and sample Bill of Supply
- Management Representation Letter on how transaction with related parties / distinct person satisfies test of valuation rules for all Schedule-I transactions.(SA-580)

# Special Documentation

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## GENERAL

- Is there any Composite Supply / Mixed supply / Independent supply?
- Treatment of ITC involved in Capital Goods purchased
- Classification & Applicable Rate notification for outward supply
- Post supply discount?
  - Invoice or through Credit note?
- Sales Return
- Payment made under Reverse Charge Mechanism
- Job Work

# Special Documentation

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## EXPORT

- Copy of LUT
- Proof of Export within a period of 3 months from date of invoice
- Copy of Export Invoice with IGST / without IGST / Necessary declaration
- Copy of IEC / RCMC certificate
- Copy of FIRC (Service Provider) / Receipt within a period of 1 year / Condonation
- Copy of sample shipping bill (Goods)
- Copy of RFD-01A filed for FY 2018-19
- Copy of Refund order received, if any , reason for non receipt of receipt
- Few sample extract from ICEGATE website (Export of Goods)

# Special Documentation

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## SEZ

- Outward supply of Goods to SEZ  
Proof of said **goods have been admitted in full** in the Special Economic Zone for authorized operations, as endorsed by the specified officer of the Zone
- Outward supply of services to SEZ  
Evidence regarding receipt of services for **authorized operations** as endorsed by the specified officer of the Zone
- Inward Goods from SEZ :
  - File BOE, pay IGST
  - IGST paid challans
  - Reconciliation of Import with ICEGATE data.
  - Copy of sample Bill of Entries

# Special Documentation

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## Deemed Exports

- **Whether tax is collected from buyer or paid on our own?**
- **Who has claimed refund?**
- **Proof of Deemed Export**
- **In case of EOU: Form –A**

## LITIGATION

- **Any litigation in GST regime issuing any Notice and any Inspection/ Visit carried out by GST officer?**

**Notification No : 74/2018 –Central Tax**

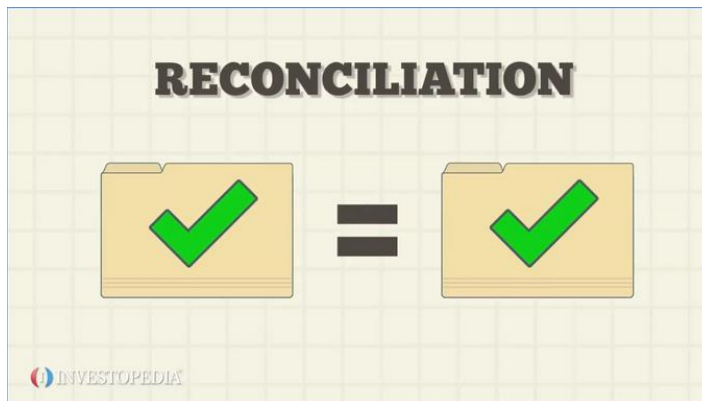
**New Delhi, the 31th December, 2018**

**“FORM GSTR-9C”**

**See rule 80(3)**

**Part-A**

**Reconciliation Statement**



**Part-B**

**Certification**





# GSTR-9C - Design

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A look at GSTR-9C makes it clear that it is essentially a reconciliation statement for reconciling turnover, input tax credits and tax payments reported in GST returns (annual return) vis-a-vis annual books of accounts.

**GSTR-9C is broadly segregated into the following:**

- a) Gross turnover (including taxable and non-taxable turnovers)
- b) Taxable turnover
- c) Tax liability and payments (rate-wise)
- d) Input tax credit availment

**Total 5 Parts consisting of 16 heads**

Parts	Tables	Types of parts in Annual Return
Part – I	1-4	Basic details of registered taxpayer
Part – II	5-8	Reconciliation of turnover declared in Audited Financial statements and Annual Return (GSTR–9)
Part – III	9-11	Reconciliation of Tax paid
Part – IV	12-16	Reconciliation of Input Tax Credit
Part – V	-	Auditor's recommendation on additional liability due to Non-reconciliation

## Key Issues for GST Audit

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1. **Input tax credit availed but not utilized and Reversed subsequently after some time, Whether Interest is liable to be paid for such reversal ?**

Mere reflection of credit in the electronic credit ledger cannot be termed as equivalent to availment of credit or utilisation of credit, unless it is actually utilised for payment of tax liability at the time of filing returns.

**M/s Commercial Steel Engineering Vs State of Bihar (Patna High Court) (Civil Writ Jurisdiction Case No. 2125 of 2019)**

## Key Issues for GST Audit

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**2.If interstate supply has been declared as intra state supply and CGST & SGST paid accordingly.**

- Person is required to pay correct tax and file refund of the tax paid wrongly.
- No interest liable to be paid when correct IGST paid (Section 77(2) of CGST Act)
- In '**S. Saji v. The Commissioner, SGST and others**' - **2018 (11) TMI 954 – Kerala High Court** allow the petitioner's request and held that amount transferred from the head 'SGST' to 'IGST'.

## Key Issues for GST Audit

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### 3. Whether Interest on Delayed Payment of Tax .

- Whether interest for delayed payment of tax declared in belated return should be computed on total tax (i.e. before adjustment of input tax credit) or net cash liability (i.e. amount payable through electronic cash ledger)
- In case of **Megha Engineering and Infrastructures Ltd. v. Commissioner of Central Tax and others [2019-VIL-175-TEL]** it was held that interest has to be paid on account of delay in filing of GSTR 3B Returns on the cash & the ITC Component of the tax paid after due date i.e. that the interest has to be paid on Gross Liability.

## Key Issues for GST Audit

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### **3. Whether Interest on Delayed Payment of Tax .**

- **Whether interest for delayed payment of tax declared in belated return should be computed on total tax (i.e. before adjustment of input tax credit) or net cash liability (i.e. amount payable through electronic cash ledger)**
- **Refex Industries Ltd. v. Assistant Commissioner of CGST & Central Excise, Chennai and Others, Writ Petition Nos. 23360 and 23361 of 2019, decided on 6-1-2020, Madras High Court**

## Key Issues for GST Audit

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### 3. Whether Interest on Delayed Payment of Tax .

- It was thus held that interest under Section 50 is applicable only in case where the output tax is paid in cash and not by way of ITC since there is no deprivation to the department in case of payment of output tax by way of ITC.
- GST council in its 39th meeting held on 14.03.2020 recommended interest for delay in payment of tax should be on the net cash liability with retrospective effect from July 01, 2017. Amendment is awaited

## Key Issues for GST Audit

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### **4. Whether notice period recovery by employer from employee is liable to GST?**

Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act has been specifically stated to be treated a service in this schedule-II 5 (e) :GST payable

**Alternate View:** No supply of any service to employees

- **It is very interesting to note that UK VAT law which is very close to our GST law does not levy tax on termination of contract subject to condition that the contract originally contains a clause allowing the parties to terminate early in lieu of compensation for losses arising from termination.**



## Key Issues for GST Audit

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**4. Whether notice period recovery by employer from employee is liable to GST?**

**Alternate View: No supply of any service to Employees (Service Tax)**

- **GE T&D India Limited - W.P.Nos.35728 to 35734 of 2016  
Madras High Court pronounced on 07.11.2019**
- **HCL Learning Limited Service Tax Appeal No.70580 of  
2018 Allahabad CESTAT pronounced on 25.11.2019**

## Key Issues for GST Audit

### 5. Reconciliation between GSTR 2A and ITC receivables on account of

a. Mismatch in Invoice no

b. Wrong tax head of GST

c. Wrong GSTN No

d. Invoices not uploaded by supplier

e. ITC as per GSTR-2A is more than ITC availed in books (detected after September of subsequent year)

f. Suppliers paid the GST through their GSTR-3B and GSTR-1 but shown such supplies as B2C

Since, GSTR-1A, GSTR-3 and mismatch report is not incorporated, provisions of Section 39 and 41 is as such ineffective and hence, **ITC may be allowed even on any reasons of mismatch. However, suitable note for safeguarding to interest of auditor to be made in the observation sheet.**

## Key Issues for GST Audit

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**5. Whether ITC Credit shall be reversed in case where entry was not reflected in GSTR-2A  
Section 16(2) of CGST Act**

- 1. He is possession of Tax invoice, Debit Note or any tax paying documents.**
- 2. Receipt of goods or services**
- 3. Payment of Tax charged in respect of such supply to credit of the government through cash or utilization of ITC by Supplier.**
- 4. Recipient Furnished return u/s 39 of CGST Act,2017.**

## Key Issues for GST Audit

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### **5. Whether ITC Credit shall be reversed in case where entry was not reflected in GSTR-2A Section 16(2) of CGST Act**

**Delhi High Court judgment in the case of Arise India Limited and Ors. v. Commissioner of Trade and Taxes (MANU/DE/3361/2017)** in the context of restrictions on availing of VAT credit on the failure of the seller to pay the tax held that the said restrictions violate Article 14 of the Constitution of India which grants equality before the law. Moreover, Departmental Special Leave Petition No. 36750/2017 against the above order was also dismissed by the Hon'ble Supreme court upholding the order of Delhi High Court.

## Key Issues for GST Audit

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**5. Whether ITC Credit shall be reversed in case where entry was not reflected in GSTR-2A**

**Similar view Expressed by Jharkhand High Court in case of Tarapore & Company Vs State of Jharkhand (Jharkhand High Court) W.P.(T) No. 773 of 2018 dated 17/12/2019 ITC Cannot be denied for default by selling dealer.**

## Key Issues for GST Audit

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**6. If a Company follows a suitable provisioning norms for writing down the value of Inventories towards slow moving ,non-moving and surplus inventory. However, this amount is only a provision under compliance for IND AS 102 for write down the value of inventory at NRV. Whether GST will be leviable?**

As per Section 17(5)(h) of CGST Act, ITC shall not be available in respect of the following namely; goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples;

Since there is a partial written off in value of inventories, (Inventories not Written off) therefore no ITC reversal is required.

## Key Issues for GST Audit

### 7. ITC on CSR activities done when it is shown as business expenditure

As per Section 16(1) of CGST Act, Every registered person shall be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business.

**M/s. Polycab Wires Pvt. Ltd. (GST AAR Kerala)** it has been held that applicant cannot take input tax credit for expense incurred in connection with corporate social responsibility expenses. **(In Favor of Revenue)**

**Essel Propack Ltd. Vs Commissioner of CGST, Bhiwandi (CESTAT Mumbai)** dated August 31, 2018, the Mumbai CESTAT held that the input service credit in respect of expenditure on CSR can be availed by the Company which discharges CSR obligations. The Tribunal held that if CSR can be considered as input service and be included within the definition of “activities relating to business” and if in so doing, a company’s image before corporate world is enhanced so as to increase its credit rating as found from the handbook of CSR activities. **(In Favour of Assessee-ST)**

## Key Issues for GST Audit

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### 8. Value of free goods supplied / Amortization when specific clause is absent in Purchase order.

- As per [circular no. 47/21/2018-GST dated 8th June 2018](#) issued by the CBIC, the value of dies / tools / moulds supplied FOC need not be added in the value of the goods supplied by manufacturer.
- Considering the clarification in the circular, every person needs to be clearly specify in P.O. that the consideration of parts / components with the separate clause that dies / moulds / tools will be supplied on “FOC basis’ will not be added in the value of supply.





CA (Dr.) Shailendra Saxena  
saxena20535@yahoo.com