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Removal of mandatory GST Audit and certification of reconciliation statements (GSTR9C)

Background

One of the key amendments introduced in the Union Budget 2021[1] was removal of mandatory requirement for certification of reconciliation statements in Form GSTR9C by an independent Chartered Accountant or Cost Accountant (herein after referred to as GST Audit). Despite numerous representations been made to the government to withdraw this proposal, with the passing of the Finance Act, 2021[2], the proposal has finally been approved.

While we discuss the implications of aforesaid amendment, it is relevant to quickly look back at the erstwhile framework and changes introduced by the above amendment.

Erstwhile framework – as applicable up to FY 19-20, till March 31, 2021	Legislative framework effective from 1 April 2021 for FY 20-21 onwards[3]
Section 35(5) of the CGST Act 2017, required specified taxpayers[4] to get their **accounts audited and reconciliation statements** (viz. Financials and GST Returns) **certified** by a Chartered Accountant or Cost Accountant. Registered persons exceeding prescribed turnover. Excludes ISD, casual and non-resident taxable person	Omitted[5]
Filing of annual return by specified taxpayers in Form GSTR 9 under section 44(1) of CGST Act	Amended[6] to include a self-certified reconciliation statement reconciling the value of supplies declared in GST returns with the audited annual financial statement. Vide clause 111 of the Finance Act 2021. Revised forms and processes yet to be prescribed
Filing of certified reconciliation statement in Form GSTR 9C under section 44(2) of CGST Act, at the time of filing Annual return	Amended as above

As is evident from above, mandatory requirement for certification is replaced and merged with filing of annual return in form GSTR 9 along with reconciliation statement on a self-certification basis by taxpayers.

1. The Finance Bill 2021 was presented by the Finance Minister on 1st February 2021.
2. The Finance Act, 2021 has been notified in the official gazette of India on 28th March 2021.
3. Revised forms and processes yet to be prescribed, post approval from GST council.
4. Registered persons exceeding prescribed turnover. Excludes ISD, casual and non-resident taxable person.
5. Vide clause 110 of the Finance Act 2021.
6. Vide clause 111 of the Finance Act 2021. Revised forms and processes yet to be prescribed.

Impact on taxpayers

Onus shifted from professionals to taxpayers for demonstrating correctness of GST filings vis-à-vis financials

Introduction of self-certification-based submission shifts complete onus on management of an organisation to ensure strict compliance with GST provisions including tax positions, tax credits, tax payments and reconciliation with financials. This would now require taxpayers to ensure robust internal controls along with review and compliance mechanism to avoid penal implications or litigation at a later stage.

Higher possibility of departmental scrutiny/audits

While removal of GST Audit is aimed to reduce overall compliance, it would in fact, entail larger accountability and burden on taxpayers. It is envisaged that frequency of audits and scrutiny by GST authorities will increase significantly since the middle layer of checks through independent audit by professionals has been removed.

Stringent penal provisions for non-compliance with respect to incorrect tax filings, payments and credits

Stringent penal provisions along with prosecution against taxpayers, authorised signatories and in certain cases, directors of the organisation, have been laid down for various non-compliances/ defaults such as incorrect tax filings, non-payment, short-payment of tax, incorrect availment of input tax credit, mismatch in reported data etc. Some of the key penal actions have been listed below:

Penal provisions	Nature of default
Immediate cancellation/suspension of registration	Incorrect claims of input tax credit, significant anomalies between GSTR-1 and GSTR-3B, violation of invoice related provisions etc.
Penalty invoking up to 100% of tax amount and Imprisonment up to 5 years	Tax evasion, erroneous refund, fake invoices
Director may also be held liable apart from authorized signatory	Unpaid tax dues, interest and penalty
Penalties up to amount of tax involved	Incorrect tax invoice, suppression of turnover, short tax payment, etc.

Way forward – steps for taxpayers

Periodic review of compliances

Continuing with regular review of GST compliances will help in timely identification of gaps which will allow management to take corrective actions on real time basis and address inconsistencies identified in processes related to payment of taxes, input tax credits and other GST compliances including filing of returns.

Preparation of reconciliations with audited accounts and self-certification

The entire process (and effort) involved in preparation of reconciliation statements in Form GSTR-9C (under erstwhile framework) would be replicated in new formats (yet to be notified) for filing annual return on self–certified basis. This would cast an additional responsibility on organisation's management to ensure completeness and correctness of reconciliation statements.

Establishing a proper audit trail during department scrutiny and Investigations

As highlighted above, removal of GST audit will invoke significant increase in frequency of scrutiny, investigations and audit by GST authorities. These departmental audits would be cumbersome, and involve enormous documentations including scrutiny of records and information furnished in GST returns along with walkthrough of systems and processes.

Periodical reviews and audit of reconciliation statements would help in recording proper trails of observations and actions taken against the observation. This helps an organisation to establish existence of proper review process and exhibit a healthy internal control system to the departmental authorities during scrutiny and investigations.

Key benefits of regular reviews

- Early detection of non-compliances saves interest and penal charges
- Lapses in internal controls resulting in non-compliances can be addressed to prevent non-occurrence of same, thereby helping in business continuity
- Comfort to management on effectiveness of internal controls and compliance framework
- Readiness for any scrutiny, investigations from GST department

It was highlighted in the Budget speech that GSTN system has been enhanced, coupled with deep analytics and artificial intelligence that would lead to higher vigilance by the government, thereby requiring more diligence on taxpayer's behalf to avoid imposition of penalties and future litigations.

In order to mitigate risks of non-compliance and litigation, there is a need for organisations to regularly ensure correctness of reporting and reconciliation in all monthly and annual filings.

It will thus be pertinent for organisations to maintain continuity with respect to reviews and periodic reconciliation to ensure effectiveness of internal controls to detect any defaults in compliances under GST and thus avoid penal consequences.

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