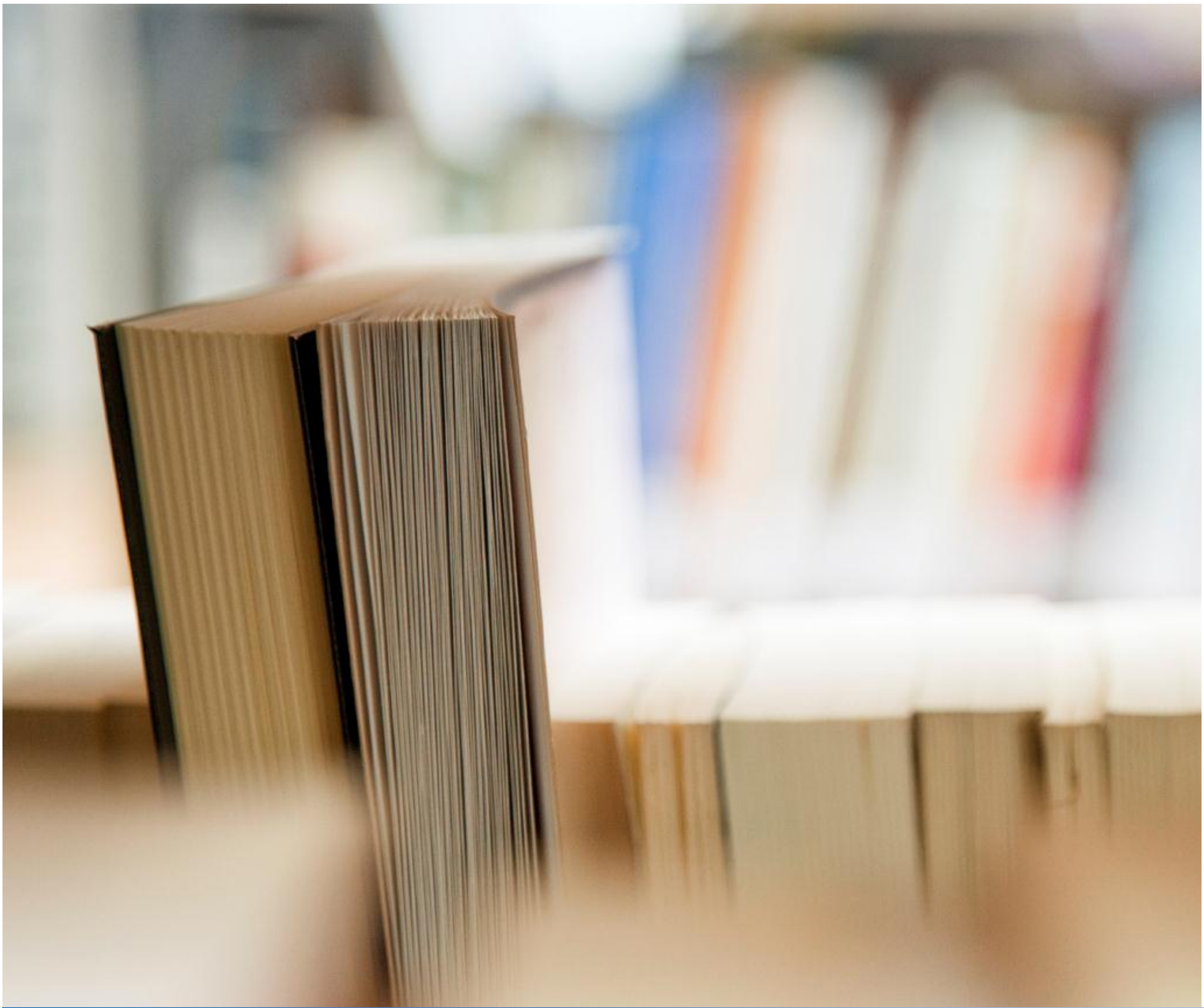

Auditor's recommendations in GST Audit

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It is pertinent that one should understand the role of the auditor for conducting GST Audit under Form GSTR 9C. For a complete understanding of the powers, roles and responsibilities of the auditor one should analyse Part V of Form GSTR 9C. Form GSTR 9C mentions the following heading:

"Auditor's recommendations on additional liability due to non-reconciliation"

Powers of the auditor

First of all, it can be inferred from the heading that he auditor only has a recommendatory power while furnishing his report. Any recommendations given by the auditor will not be binding on the taxpayer. The auditor does not act as a watchdog for leakage of taxes and cannot mandate payment of taxes which is otherwise not paid by the taxpayer. The auditor needs to exercise his professional diligence, skill, knowledge and care in determination of any additional tax which may be payable by the taxpayer in his opinion. The taxpayer has an option to accept, reject or partially accept the recommended additional tax liability. In line with such recommendations, the taxpayer can choose to make the payment of the additional tax liability in full or in part. They can even choose to reject the complete recommendations of the auditor and not make the payment at all. Obviously, how the government treats such rejection of recommendations and whether this acts as a red flag to them for issuance of showcause notice in future can only be visualised.

Purpose of audit by the auditor

The main objective of filling up Form GSTR 9C is to reconcile the audited financials with the annual return and collect any taxes that may arise due to non-reconciliation between the two. Any amount that the taxpayer is liable to pay in the opinion of the auditor is required to be disclosed in this part. The Government has made audit mandatory for select group of taxpayers because they wish to check the leakage in revenue. There are multiple instances of taxpayers committing omission or error intentionally or unintentionally which may result in non payment or lower payment of tax liability. The auditor having the desired skill, knowledge and expertise are expected to exercise their professional diligence and care in bringing to notice such leakage in revenue.

The audited financial statements inspire confidence in the Government because they are certified to be true and correct by a practising Chartered Accountant whose is considered to be an expert in the given field. However, it cannot be known for certain that the taxpayer had filed his GST returns correctly even though the figures were audited and correctly disclosed in the financial statements. The auditor can establish the bridge of gap in confidence between the reliable financial statements which are audited and the GST returns which are self-assessed by the taxpayer. So, this reconciliation can serve as a policing mechanism which is exercised by the government through the means of an expert like Chartered Accountant or Cost Accountant. Any additional tax liability that arises through this mechanism of reconciliation can be paid by the taxpayer on the recommendations of the auditor. So, the government without having to put its limited resources into use can recover the tax liability that may arise due to the figures reported in the audited financial statements.

<u>Scope of the auditor</u>

From the heading it seems that the responsibility of the auditor is restricted to report only the additional liability which may arise due to non-reconciliation. He is not required to step into the shoes of an investigator to mine undisclosed supplies which are neither reported in the annual return nor in the financial statements. Any items which are not part of any one i.e. the annual return and the financial statements, will not disturb the semblance of equilibrium. So, these items are not required to be dug upon and reported by the auditor. Performing this reconciliation accurately and analysing the reasons for the differences falls within the domain of his responsibility.

Making disclosures in respect of the differences which are exhaustive and understandable forms an intrinsic part of his duty.

However, this is not to say that any non-disclosure of supplies on which tax is payable by the entity is not to be reported by the auditor. Any such items which are available on a prima facie basis after performing the audit procedures should be reported as part of auditor's recommendations. So, any errors or omissions which comes to the notice of the auditor by performing normal audit procedures as per the standards of auditing should be reported by him.

Mechanism of payment

There are no provisions under the law which prescribe the mechanism of payment of the additional tax liability that may arise out of reconciliation. However, upon the analysis of the form it can be seen that it requires payment of the differential tax liability in cash. It can be a loss of working capital for an entity which has available ITC balance for payment of such tax liability in case the Government does not allow utilization of ITC in such cases. It should be emphasized here that there is no provision in the GST laws which requires payment of such tax liability in cash. Whether payment in cash is said to include payment through ITC still awaits clarification from the government.

Reasons for additional tax liability

Non-reconciliation between the books of accounts and the annual return can either occur in the turnover, tax paid or the input tax credit. Any additional tax liability that may arise due to non-reconciliation between the turnover or the tax payable on it will be reported in Table 11 of Form GSTR 9C. Further, any additional tax liability arising due to non-reconciliation of the input tax credit are to be depicted in Table 16 of Form GSTR 9C. The amount reported in these two tables will be summarized and reported in this Part V of the Form GSTR 9C.

Further, the additional liability that may arise in this Part V of this form can consist of any other amount paid for supplies not included in annual return, erroneous refund to be paid back, outstanding demands to be settled (if any).

Summarizing the items which are to be reported as part of auditor's recommendations on additional liability due to non-reconciliation, following will be the constituents:

a) Additional tax liability due to non-reconciliation of turnover or tax liability (including reverse charge) between the audited financial statements and annual returns (as per Table 11 of Form GSTR 9C)

b) Additional tax liability because of non-reconciliation of input tax credit between the audited financial statements and annual returns (as per Table 16 of Form GSTR 9C)

c) Any other amount paid for supplies not included in annual return

d) Erroneous refund to be paid back

e) Outstanding demands to be settled

f) Others (to be specified)

a) Additional tax liability due to non-reconciliation of turnover or tax liability (including reverse charge) between the audited financial statements and annual returns (as per Table 11 of Form GSTR 9C)

This additional tax amount to be paid due to non-reconciliation is reported in Table 11 of Form GSTR 9C. This may occur due to the following reasons:

i. Non Reconciliation of the turnover and taxable turnover between the audited financial statements and the annual return (as per Table 6 and 8 of Form GSTR 9C)
ii. Non Reconciliation of the tax paid (both under forward and reverse charge) between the audited financial statements and the annual return (as per Table 10 of Form GSTR 9C)

<u>Separate calculation for tax under both forward and reverse charge</u>

It must be noted that within this point, the reconciliation will be made with regard to the following:

a) Total turnover and Taxable turnover
b) Output tax liability

c) Liability under reverse charge

The amount paid as output tax liability computed for both point (a) and (b) above and tax under reverse charge as per point (c) is required to be disclosed and reconciled separately between Form GSTR 3B and the audited financial statements in Table 9. Any additional amount that is liable to be paid due to these will be disclosed together in Table 11 and auditor's recommendations in Part V of the Form GSTR 9C.

Ratewise breakup

Any additional tax liability that occurs either under forward charge or reverse charge needs to be shown on rate wise basis. In fact, the tax payable in Table 9 which is the source of the reconciliation also demands the tax payable to be disclosed on a ratewise basis. This ratewise breakup of additional tax payable will be shown in Table 11 and the auditor's recommendation in Part V.

Interest

Interest is not automatically calculated for the purpose of payment in Form GSTR 3B. Wherever there is a delay in making the tax payment throughout the year, the interest liability is attracted. This can primarily occur due to two reasons:

a) Any tax liability for which the time of supply arose in a particular tax period but the same is not disclosed in Form GSTR 3B for that tax period but in Form GSTR 3B of the subsequent period
b) There is a delay in setting off the liability in Form GSTR 3B beyond the due date of the return

The auditor holds the responsibility of computing such additional interest liability that may arise due to any of the above situations. This will be part of Table 11 and auditor's recommendations as well.

Penalty

Penalty can be imposable on a person if he contravenes the provisions of offences and penalties under Chapter XIX of the CGST Act 2017. For instance as per Section 122, if the taxable person collects any amount but fails to pay the same to the Government beyond a period of three months from the date on which the payment becomes due will be liable to penalty of Rs. 10000 or the amount of tax evaded whichever is higher. Obviously, if the same was done for any reason other than fraud or any wilful misstatement or suppression of facts to evade tax, the penalty will reduce to Rs. 10000 or 10% of the tax whichever is higher. In such a situation, the auditor is under an obligation to disclose such liabilities if payable by the taxpayer in both Table 11 and the auditor's recommendations.

Late fees

This includes the late fees for delayed filing of Form GSTR 3B and Form GSTR 1. GSTR 3B automatically calculates such amount of late fees based on the due date and actual date of filing the return. As regards Form GSTR 1, the due date for the entire financial year 2017-18 has been extended till 31st October 2018. So, no late fees will be calculated if Form GSTR 1 is furnished by this date.

Others

There can be other types of payment as well which may be required to be disclosed. This can include the fine to be paid in order to release the goods or conveyance liable for confiscation under Section 130.

b) Additional tax liability because of non-reconciliation of input tax credit between the audited financial statements and annual returns (as per Table 16 of Form GSTR 9C)

This additional tax amount to be paid due to non-reconciliation is reported in Table 16 of Form GSTR 9C. This non reconciliation difference in this table can occur due to the following reasons:

i. Non reconciliation of the credits which are booked in one financial year and claimed in the other with regard to the audited financial statements and the annual return (as per Table 13 of Form GSTR 9C)
ii. Non reconciliation of the credits between the headwise expenses reported in the audited financial statements and that in the annual return (as per Table 15 of Form GSTR 9C)

It can be noted here that the figures reported in the annual return is only a summation of the figures reported in the Form GSTR 3B.

Difference of input tax credit in Form GSTR 3B and the Audited financial statements

There can be a situation that the Form GSTR 3B is not matching with the audited financial statements with regard to the input tax credit. Such differences can be depicted under Table 13 and 15. The cause of the differences need to be clearly identified. These tables while taking the values after considering the audited financial statements will be compared with the actual tax paid as per Form GSTR 3B. As there is a difference between the audited financial statements and Form GSTR 3B, an unreconciled difference will be shown in both 13 and 15. If the input tax credit claimed is higher in Form GSTR 3B than the audited financial statements, then there may be an additional liability of making the payment of extra credit taken. Then, this should form part of additional amount of tax payable as per Table 16 of Form GSTR 9C and the auditor's recommendations. The auditor will do so only after taking a judgement that the figures reported in Form GSTR 3B were incorrect and that reported in the financial statements was correct. Of course, if the reverse is true, then even though there is a difference between the two, the auditor's recommendation will not contain the said amount as the additional tax liability.

No Ratewise breakup

No rate wise breakup is required in Table 16 with regard to the additional tax payable due to the non reconciliation of the input tax credit as per Table 13 and 15.

Interest

Interest is not automatically calculated for the purpose of payment in Form GSTR 3B. Wherever there is a delay in making the tax payment throughout the year, the interest liability is attracted. This can occur due to multiple reasons:

a) Any input tax credit which became eligible in a particular tax period but the same is taken in Form GSTR 3B in an earlier period
b) Any ineligible input tax credit has been taken incorrectly and has been subsequently reversed

c) Lower amount of reversal of credit as required under Rule 42 and 43 were made and the balance reversal was made in Form GSTR 3B in a subsequent period

d) No payment is made to the supplier in Form GSTR 3B within the prescribed period and reversal of credit is involved as per Rule 37

Other possibilities with regard to input tax credit can also arise which may require payment of interest. The auditor holds the responsibility of computing such additional interest liability that may arise due to any of the above situations. This will be part of Table 16 and auditor's recommendations as well.

Penalty

Penalty can be imposable on a person if he contravenes the provisions of offences and penalties under Chapter XIX of the CGST Act 2017. For instance as per Section 122, if the taxable person takes or utilizes input tax credit without actual receipt of goods or service or both in contravention of the provisions of the Act or rule will be liable to penalty of Rs. 10000 or the amount of tax evaded whichever is higher. Obviously, if the same was done for any reason other than fraud or any wilful misstatement or suppression of facts to evade tax, the penalty will reduce to Rs. 10000 or 10% of the tax whichever is higher. In such a situation, the auditor is under an obligation to disclose such liabilities if payable by the taxpayer in both Table 11 and the auditor's recommendations.

c) Any other amount paid for supplies not included in annual return

There can arise situations wherein certain other supplies can also result in payment of additional tax liability even though there were not flagged as reconciliation differences as per point (a) and (b) above. These pertain to those supplies which are not disclosed in the annual return and which may not have been the part of turnover as per the audited financial statements.

For instance, if supplies which are part of Schedule I i.e. supplies without consideration are not disclosed in the annual return, then they may not create any reconciliation differences as they are not having any value in the financial statements.

Another example that can be taken here is with regard to receipt of advances. Advances form part of the Balance Sheet of a taxpayer and not as part of his turnover. If a person who is liable to pay taxes on the advances received during the year does not disclose the same in his monthly return and thereby his annual return, then he can fall within this reporting clause. This is because the advances not disclosed would neither be part of the turnover which is the starting point of the reconciliation nor the supplies as disclosed in the annual return. So, they will not cause a reconciliation difference.

The above two cases would not have been reported in point (a) and (b) above. However, paying taxes on these supplies is mandatory even though they have been missed out in the annual return. Thereby, they will be reported as supplies not included in the annual return. Any interest and penalty which may be liable to be paid on them will also be separately disclosed.

So, all such supplies which are not part of the turnover of the taxpayer as per the audited financial statements and are missed out in the annual return can be considered to be falling here. The reporting of these supplies will be made here.

d) Erroneous refund to be paid back

Any refund that has been obtained that should not have been ideally obtained should be reported here. It may arise due to refund of the electronic credit ledger or of the cash ledger. There may be quite a few situations why this erroneous refund may have been obtained:

a) The department had paid the taxpayer provisional refund of 90% based on the prima facie scrutiny of the application for refund in case of zero rated supply or inverted duty structure. But upon complete scrutiny of the application, any defect may be noticed in the given application which may cause the refund to be rejected. In this case, the refund already granted provisionally is liable to be refunded back to the Department.
b) Further, it may happen that the assessee took input tax credit in a particular month which is liable to be reversed at the end of the year in Rule 42 and Rule

43 upon making the complete calculation. It may also be possible that the input credit was blocked on any inward supply on which the input tax credit was taken by the taxpayer. In this situation, if the taxpayer had obtained complete refund of the input tax credit taken earlier, then he is liable to refund the amount to the extent the input tax credit was not admissible to him.

The above are only illustrative situations wherein a taxpayer is required to pay the amount which was erroneously refunded to him. In these cases, if the taxpayer is liable to pay any interest or penalty on the same, then the said amount will also be required to be shown as part of the auditor's recommendations.

e) *Outstanding demands to be settled*

Any amount which is liable to be paid to the government which had been raised as a demand is required to be disclosed. Any adjudication order passed against the assessee which had not been appealed against and which entails payment of tax liability by the taxpayer are to be reported here. Further, any appellate order passed which requires the taxpayer to make payment of tax liability will also be disclosed here. However, any order passed which entails requirement of payment of taxes, but which forms a subject matter of appeal before any higher authority cannot be considered as an outstanding demand. They will not be required to be reported as part of additional tax liability.

f) Other (Please specify)

If there are any other reasons why additional tax liability may be liable to be paid by the taxpayer which have not been covered above and which comes to the notice of the auditor will be disclosed in this field. Rather than merely showing the tax amount, the exact reason why the additional tax liability is liable to be paid will also have to be specified.

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