

## IMPORTANT ASPECTS OF GST ANNUAL RETURN AND RECONCILIATION STATEMENT



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### Preliminary

Applicability:

GSTR 9 - Every registered person having aggregate turnover exceeding Rs. 2 crore. [NN 10/2022 CT]

GSTR 9C - Every registered person having aggregate turnover exceeding Rs. 5 crore. [Rule 80(3)]

Persons having aggregate turnover upto Rs. 2 crore are exempted from filing GSTR 9. The "exemption" has been applicable from FY 2020-21. However, GST portal still allows to file the annual return, irrespective of the turnover. Section 74 of CGST Act deals with determination of tax liability by reason of fraud or suppression of facts. Explanation 2 of Section 74 defines suppression: "*suppression shall mean non-declaration of facts or information which a taxable person is required to declare in the return,.....*"

Considering all this, if the values provided in regular returns differ from the books of accounts, then irrespective of the aggregate turnover, a view may be taken to file the annual return.

### **Aggregate Turnover:**

*Aggregate turnover means the aggregate value of all taxable supplies....., exempt supplies, ....., to be computed on all India basis.....*

*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....., and includes non-taxable supply*

*non-taxable supply means a supply of goods or services or both which is not leviable to tax.....*

Two observations:

1. Aggregate Turnover: India total of Taxable + Exempt + Nil Rated (& Zero Rated) + Non-taxable Supply.
2. For any transaction to form part of turnover, it should qualify to be a supply first.

### **Supply:**

Supply as a term has not been defined in the GST law, but "Scope of Supply" has been provided in Section 7 of CGST Act. *Inter alia*, it mentions certain transactions which shall be treated neither as supply of goods nor services.

## **Format and Structure**

Broadly, Forms GSTR 9 & GSTR 9C can be broken down into three components:

1. Tables relating to Outward Supplies and tax thereon
2. Tables relating to Input Tax Credit
3. Tax payable and paid

As a general rule, it is better to provide details in individual tables and sub-tables rather than providing consolidated figures.

## **Outward Supplies and Tax There on**

GSTR 9 – Tables 4, 5, 10, 11, 14 and 17

GSTR 9C – Tables 5, 6, 7, 8, 9, 10 and 11

An explanation has been inserted in Section 75(12) relating to Recovery Proceedings, w.e.f 1<sup>st</sup> January 2022.

*Explanation.-For the purposes of this sub-section, the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.*

The insertion was made in cognisance of Hon'ble MP High Court's judgement in case of M/s Kaber Reality Pvt. Ltd., wherein it was held that tax declared in GSTR 1 is a self-assessed tax. This paves way for the government to directly recover taxes u/s 79 without issuance of SCN u/s 73 or 74, in case of tax values in GSTR 1 be higher than in GSTR 3B. Also, as held by Hon'able Gujarat HC in case of M/s Rajkamal Builder Infrastructure Pvt. Ltd., interest on tax can also be recovered u/s 79. Care needs to be taken accordingly.

For Table 4G (RCM liability), the words in the Instructions used are: “Aggregate value of inward supplies .....on which tax is to be paid by the recipient.....” Hence Table 4G to include all RCM liabilities as per books and no effect be made in Tables 10 or 11.

Similarly, in case of Table 5 of GSTR 9, for Exempt, Nil rated or Exports, values may be provided as per books, irrespective of GSTR 1 or GSTR 3B and no effect of this be made in Tables 10 and 11.

Further, many taxpayers mention figures in Table 5F “Non-GST Supply” (commonly called as “balancing figure”) such that the Total of Tables 4, 5 10 & 11 is equal to revenue from operations. Examples of such figures are accounting provisions, exchange rate differences, etc.

This approach, should be avoided as it may raise questions relating to ITC eligibility and reversals (Remember, exempt supply includes non-taxable supply). Any unreconciled difference in Turnover as per books with GST better be provided in Table 6 of GSTR 9C.

For FY 21-22, it is mandatory to report under Table 17 (HSN-wise summary of outward supplies). Other reporting relaxations relating to outward supplies in GSTR 9 and Table 5 of GSTR 9C are extended to FY 2021-22.

## Input Tax Credit

GSTR 9 – Tables 6, 7, 8, 12, 13, 16 and 18

GSTR 9C – Tables 12, 13, 14, 15 and 16

Unlike the Outward supplies' tables wherein details for the year are to be provided as per books of accounts, in ITC tables, ITC claimed of, and during the year as per GSTR 3B, is to be provided. There is simply no concept availment and/or utilisation of ITC via GSTR 9 or GSTR 9C.

However, like Tables 4 & 5, in Tables 6 & 7 of GSTR 9, figures pertaining to that financial year (in current scenario FY 21-22) only are expected. Hence the difference in ITC actually availed during the year vis-à-vis the total of Tables 6 & 7 should ideally be reconciled with previous year's Table 13. (and current year's Table 12 & 13 if applicable)

Specific emphasis is to be laid on Table 7H, wherein no new reversal is to be made, other than that made while filing GSTR 3Bs/ ITC 03 for the year. Any additional liability determined because of incorrect availment/ utilisation of ITC while preparing the Annual return should be reported and paid in DRC 03.

Rule 36(4) has been amended w.e.f. 1<sup>st</sup> January 2022. Prior to amendment, the rule read:

*(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in FORM GSTR-1 or using the invoice furnishing facility shall not exceed 5 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using the invoice furnishing facility.*

There is a difference between the supplier filing GSTR 1 vis-à-vis the invoice being visible to the recipient in GSTR 2A. If the supplier has filed his returns, a view may be taken to avail the ITC irrespective of GSTR 2A, for returns filed upto 31<sup>st</sup> December 2021.

It may be noted that CBIC through Press release, on 18.10.2018 clarified that furnishing of outward details in Form GSTR-1 by the corresponding supplier(s) & facility to view the same in Form GSTR-2A by the recipient is in nature of registered person facilitation & does not impact the ability of a registered person to avail ITC on self-assessment basis in consonance with the provisions of section 16 of the Act.

Upto FY 2020-21 ITC in respect of invoices or debit notes pertaining to a financial year needs to be claimed within the due date of filing the returns for September of the subsequent financial year or the date of filing the annual return, whichever is earlier.

Section 16(4) has been amended by the Finance Act, 2022 and the same has been notified w.e.f. 1st October 2022 vide N.No. 18/2022-Central Tax dated 28.09.2022. The outcome of the amendment is that from FY 2021-22 ITC in respect of invoices or debit notes pertaining to a financial year can be claimed in the relevant return or the statement filed/ furnished up to 30<sup>th</sup> November of the next financial year, or the date of furnishing the annual return for the said financial year, whichever is earlier. This is also clarified by the CBIC vide press release dated 04.10.2022.

Table 8 of GSTR 9, although clarified by CBIC to be an informational table, holds increased relevance after the amendment in Rule 36(4) (Basically to claim ITC as per GSTR 2B). This statement can be furthered strengthened by Section 61, which states that the *“The proper officer may scrutinize the return and related particulars furnished by the registered person to verify the correctness of the return.....”* However Table 8 should ideally not be the only reason of initiating a scrutiny proceeding.

Table 8H talks of ITC availed on import of goods. If a taxpayer has paid more tax on import and availed less ITC, the balance ITC although claimed by Table 8K to be lapsed, but as per Section 16(4) it cannot be lapsed as Section 16(4) talks of time limits to avail ITC in case of Invoices and Debit notes, not Bill of Entry.

Figures in 8C should match with Table 13 except for ITC of RCM which can be mentioned in Table 13 but not in 8C. This should reconcile with Table 12C of GSTR 9C.

Ensure that ITC of RCM under Tables 6C + 6D + 6F be less than or equal to figures in 4G. Also note that, Table 12 of GSTR 9C talks of Net Total ITC and Table 14 has its test of eligibility.

For Tables 6, 7, 12, 13, 15, 16 and 18 of GSTR 9 and Table 14 of GSTR 9C, the reporting relaxations of earlier years continue in FY 2021-22 as well.

### **Tax Payable and Paid**

GSTR 9 – Tables 9, 15 and 19

GSTR 9C – Table- Part V

Table 9 of GSTR 9 only allows to edit the “Tax payable” figure, hence should include tax payable on any additional liability and be paid via DRC 03. Any difference in tax on outward supplies between GSTR 3B and GSTR 1 be effected here.

Instructions to GSTR 9 clearly state that any tax payable determined to be paid in cash via DRC 03. This may be because of Section 41, which states *“Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger.”* The widely accepted view is that liability determined while filing of GSTR 3B (and GSTR 1) is considered to be self-assessed.

However, one may also refer Section 49, which states *“The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act .....in such manner and subject to such conditions and restrictions within such time as may be prescribed.”*

Further *“output tax in relation to a taxable person, means the tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis;”*

So, can a view be taken to discharge Annual return/ reconciliation liability via ITC? Let the readers decide. (If this view is taken, one may also save on interest liability as per Section 50)

Further, if the judgement of Hon'ble Supreme Court in case of VKC Footsteps is followed on Inverted Duty Structure, then in case of any refund received, the same may be suo moto paid back along with interest. This may also be reported in Part V of GSTR 9C.

## Other aspects

### E Invoicing

Applicable to taxpayers with annual aggregate turnover in ANY year from FY 17-18 exceeding Rs.100 crores (w.e.f. 01-04-2021). The reduced limit of Rs. 20 crore is w.e.f. 01-04-2022 and Rs. 10 crore w.e.f. 01.10.2022.

Improper compliance by supplier and recipient may lead to penalty u/s 122 of Rs. 10,000 or tax evaded, whichever higher and a general penalty of Rs. 25,000. There can also be ITC disallowance to the recipient and a threat of vehicle interception to supplier.

### **Audited Financials**

#### Section 44: Annual Return

*Every registered person, .....shall furnish an annual return which may include a self-certified reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year, with the audited annual financial statement for every financial year electronically, within such time and in such form and in such manner as may be prescribed:*

#### Sub rule 3 of Rule 80

*Every registered person, .....whose aggregate turnover during a financial year exceeds five crore rupees, shall also furnish a self-certified reconciliation statement as specified under section 44 in FORM GSTR-9C along with the annual return referred to in sub-rule (1), on or before the thirty-first day of December following the end of such financial year, .....*

Thus, there is no mandatory requirement to furnish audited annual accounts. However, the portal asks to upload Balance Sheet and Profit and Loss account of the period of return. Obviously the law will hold supremacy over the GST portal. Hence a view may be taken, especially in cases of persons who aren't required to get their accounts audited under any other law, to not upload complete financials, rather an abridged version or simply upload figures relevant to GSTR 9 and GSTR 9C.

### Constituents

Clause (aa) to Subsection 1 of Section 7 of CGST Act states that supply includes, “*the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.*”

*Explanation: For the purposes of this clause, .....the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another”*

Although this amendment was introduced to basically tax clubs and associations, the undefined term “constituent” can have a very wide implication. For example, can a partner be termed as a “constituent” and the services for which he gets remuneration be called a supply under this clause?

Certain other questions remain which we'll find answers in course of time, like:

1. ITC eligibility on expenses disallowed u/s 37 of the Income Tax Act.
2. Applicability of Section 16(4) in case of delayed filing of regular returns.
3. Implications of onus on the taxpayer to provide "true and correct" details.
4. No support of "auditor's comments/disclaimers" in GSTR 9C.

Section 126(5) states "When a person voluntarily discloses to an officer under this Act the circumstances of a breach of the tax law, regulation or procedural requirement prior to the discovery of the breach by the officer under this Act, the proper officer may consider this fact as a mitigating factor when quantifying a penalty for that person." So, prepare and provide appropriate details, reconciliations and disclosures in GSTR 9C / DRC 03 itself for mitigating the risk of high penalties.

To provide legal strength to certain well accepted views, below are some case laws

1. Mysore Electricals [SC]

A clarification/circular beneficial to the assessee will have a retrospective implication and an oppressive one will have a prospective implication.  
(<https://indiankanoon.org/doc/971863/>)

2. Bengal Iron [SC]

Any circular or clarification issued by the Central Government or the State Government is merely an opinion of the officers it is not binding on the court meaning thereby it's not the law.  
(<https://main.sci.gov.in/jonew/judis/12043.pdf>)

3. Start India Pvt Ltd [SC]

The liability to pay interest and/or penalty would only arise on default and is really in the nature of a quasi-punishment. Such liability although created retrospectively (via a retrospective amendment) could not entail the punishment of payment of interest with retrospective effect.  
(<https://indiankanoon.org/doc/852405/>)

4. Whirlpool Corporation [SC]

Writ can be filed in high courts even if alternate remedies are available, provided principles of natural justice aren't followed.  
(<https://indiankanoon.org/doc/1885496/>)

5. Parle International [Bombay HC]

When a matter is brought before the Court or the Court is examining the matter, department cannot initiate or proceed with a parallel proceeding on its own.  
(<https://indiankanoon.org/doc/80971808/>)

(For more details, one can refer ICAI's handbook on Annual Return under GST published a few days back. One may also refer the Technical guide on GST Audit published in January 2021. Both are available for free download on [idt.icai.org](http://idt.icai.org).)

