

PAPER – 3 : ADVANCED AUDITING AND PROFESSIONAL ETHICS

PART – I : ACADEMIC UPDATE

(Legislative Amendments / Notifications / Circulars / Rules / Guidelines issued by Regulating Authority)

Chapter 1 : Auditing Standards, Statements and Guidance Notes-An Overview

1 SA 299: Joint Audit of Financial Statements - This SA deals with the special considerations in carrying out audit by joint auditors. Accordingly, in addition to the requirements enunciated in this Standard, the joint auditors also need to comply with all the relevant requirements of other applicable Standards on Auditing. This Standard deals with the special considerations in carrying out audit by joint auditors. The objectives of this Standard are to lay down broad principles for the joint auditors in conducting the joint audit, to provide a uniform approach to the process of joint audit, to identify the distinct areas of work and coverage thereof by each joint auditor and to identify individual responsibility and joint responsibility of the joint auditors in relation to audit.

The SA became effective for all audits relating to accounting periods commencing on or after April 1, 2018.

2 SA 720: The Auditor's Responsibility in Relation to Other Information - This Standard on Auditing (SA) deals with the auditor's responsibilities relating to other information, whether financial or non-financial information (other than financial statements and the auditor's report thereon), included in an entity's annual report. An entity's annual report may be a single document or a combination of documents that serve the same purpose. This SA requires the auditor to read and consider the other information because other information that is materially inconsistent with the financial statements or the auditor's knowledge obtained in the audit may indicate that there is a material misstatement of the financial statements or that a material misstatement of the other information exists, either of which may undermine the credibility of the financial statements and the auditor's report thereon. Such material misstatements may also inappropriately influence the economic decisions of the users for whom the auditor's report is prepared.

This SA is effective for audits of financial statements for periods beginning on or after April 1, 2018.

(Note: Text of revised SA 299 and revised SA 720 is reproduced in Auditing Pronouncements.)

Chapter 6 : The Company Audit

- (i) Additional requirement for claiming exemption under section 141(3)(g) for counting ceiling limit is available only if such private company has not committed default in filing its financial statements under section 137 and annual returns under section 92 of the Act to the registrar as per notification dated 13 June 2017.

- (ii) Notification No. G.S.R. 583(E) stated that requirements of reporting under section 143(3)(i) read with Rule 10 A of the Companies (Audit and Auditors) Rules, 2014 of the Companies Act 2013 shall not apply to certain private companies. Clarification regarding applicability of exemption given to certain private companies under section 143(3)(i) (vide circular no. 08/2017) clarified that the exemption shall be applicable for those audit reports in respect of financial statements pertaining to financial year, commencing on or after 1st April, 2016, which are made on or after the date of the said notification.
- (iii) As per provisions of Section 143(3)(i) of Companies Act, the Auditor's Report shall state whether the Company has adequate internal financial controls system in place and the operating effectiveness of such controls. MCA vide its notification dated 13th June 2017 (G.S.R. 583(E)) amended the notification of the Government of India, in the ministry of corporate of affair, vide no G.S.R. 464(E) dated 05th June 2015 providing exemption from reporting on Internal Financial Controls to following private companies which is one person Company (OPC) or a Small Company; or which has turnover less than ₹ 50 Crores as per latest audited financial statement and which has aggregate borrowings from banks or financial institutions or any body corporate at any point of time during the financial year less than ₹ 25 Crore. In addition, in section 143 of the principal Act, (i) in sub-section (1), in the proviso, for the words "its subsidiaries", at both the places, the words "its subsidiaries and associate companies" shall be substituted; (ii) in sub-section (3), in clause (i), for the words "internal financial controls system", the words "internal financial controls with reference to financial statements" shall be substituted; (iii) in sub-section (14), in clause (a), for the words "cost accountant in practice", the words "cost accountant" shall be substituted.
- (iv) Ratification for appointment of auditors is not required at every AGM when auditors have been appointed for five years - Proviso to section 139(1) omitted as per Companies (Amendment) Act, 2017.
- (v) Submission of Cost Audit Report to the Central Government- The company shall within 30 days from the date of receipt of a copy of the cost audit report prepared (in pursuance of a direction issued by Central Government) furnish the Central Government with such report along with full information and explanation on every reservation or qualification contained therein in Form CRA-4 in Extensible Business Reporting Language (XBRL) format in the manner as specified in the Companies (Filing of Documents and Forms in Extensible Business Reporting language) Rules, 2015 along with fees specified in the Companies (Registration Offices and Fees) Rules, 2014. ***Provided that the companies which have got extension of time of holding Annual General Meeting under section 96 (1) of the Companies Act, 2013, may file form CRA-4 within resultant extended period of filing financial statements under section 137 of the Companies Act, 2013 as per MCA notification dated 3 December 2018 vide Companies (cost records and audit) Amendment Rules, 2018.***
- (vi) **Duty to report on any other matter specified by Central Government:** The Central Government may, in consultation with the National Financial Reporting Authority (NFRA),

by general or special order, direct, in respect of such class or description of companies, as may be specified in the order, that the auditor's report shall also include a statement on such matters as may be specified therein.

(vii) **Constitution of National Financial Reporting Authority:** According to Section 132 of the Act, the Central Government may, by notification, constitute a National Financial Reporting Authority (NFRA) to provide for matters relating to accounting and auditing standards for adoption by companies or class of companies under the Act.

The National Financial Reporting Authority shall perform its functions through such divisions as may be prescribed.

As per Section 132 (2) of the Companies Act 2013, notwithstanding anything contained in any other law for the time being in force, the NFRA shall—

- (a) make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be;
- (b) monitor and enforce the compliance with accounting standards and auditing standards in such manner as may be prescribed;
- (c) oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of service and such other related matters as may be prescribed; and
- (d) perform such other functions relating to clauses (a), (b) and (c) as may be prescribed.

In exercise of the powers conferred under sub-sections (2) and (4) of section 132, the Central Government made the National Financial Reporting Authority Rules, 2018 (NFRA Rules) (MCA Notification dated 13 November 2018).

As per NFRA rules, NFRA shall have power to monitor and enforce compliance with accounting standards and auditing standards, oversee the quality of service under sub-section (2) of section 132 or undertake investigation under sub-section (4) of such section of the auditors of the following class of companies and bodies corporate:

- (a) companies whose securities are listed on any stock exchange in India or outside India;
- (b) unlisted public companies having paid-up capital of not less than rupees five hundred crores or having annual turnover of not less than rupees one thousand crores or having, in aggregate, outstanding loans, debentures and deposits of not less than rupees five hundred crores as on the 31st March of immediately preceding financial year;

- (c) insurance companies, banking companies, companies engaged in the generation or supply of electricity, companies governed by any special Act for the time being in force or bodies corporate incorporated by an Act in accordance with clauses (b), (c), (d), (e) and (f) of section 1 (4) of the Companies Act, 2013;

“Explanation.- For the purpose of this clause, “banking company” includes ‘corresponding new bank’ as defined in clause (d) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) and clause (b) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980) and ‘subsidiary bank’ as defined in clause (k) of section 2 of the State Bank of India (Subsidiary Bank) Act, 1959 (38 of 1959).”

- (d) any body corporate or company or person, or any class of bodies corporate or companies or persons, on a reference made to the NFRA by the Central Government in public interest; and
- (e) a body corporate incorporated or registered outside India, which is a subsidiary or associate company of any company or body corporate incorporated or registered in India as referred to in clauses (a) to (d) above, if the income or net-worth of such subsidiary or associate company exceeds 20% of the consolidated income or consolidated net-worth of such company or the body corporate, as the case may be, referred to in clauses (a) to (d) above.

Every existing body corporate other than a company governed by these rules, shall inform the NFRA within 30 days of the commencement of NFRA rules, in Form NFRA-1, the particulars of the auditor as on the date of commencement of these rules.

Every body corporate, other than a company as defined in clause (20) of section 2 of the Act, formed in India and governed under NFRA Rules shall, within 15 days of appointment of an auditor under sub-section (1) of section 139, inform the NFRA in Form NFRA-1, the particulars of the auditor appointed by such body corporate. Provided that a body corporate governed under clause (e) of sub-rule (1) of NFRA Rules shall provide details of appointment of its auditor in Form NFRA-1.

A company or a body corporate other than a company governed under NFRA Rules shall continue to be governed by the NFRA for a period of 3 years after it ceases to be listed or its paid-up capital or turnover or aggregate of loans, debentures and deposits falls below the limit stated therein (i.e. mentioned in points (a) to (e) above).

Every auditor referred to in Rule 3 shall file a return with the NFRA on or before 30th November every year in Form NFRA-2”

Recommending accounting standards (AS) and auditing standards (SA) - For the purpose of recommending AS or SA for approval by the Central Government, the NFRA -

- (a) shall receive recommendations from the ICAI on proposals for new AS or SA or for amendments to existing AS or SA;
- (b) may seek additional information from the ICAI on the recommendations received under clause (a), if required.

The NFRA shall consider the recommendations and additional information in such manner as it deems fit before making recommendations to the Central Government.

Monitoring and Enforcing Compliance with Auditing Standards -

- (1) For the purpose of monitoring and enforcing compliance with auditing standards under the Act by a company or a body corporate governed under rule 3, the NFRA may:
 - (a) review working papers (including audit plan and other audit documents) and communications related to the audit;
 - (b) evaluate the sufficiency of the quality control system of the auditor and the manner of documentation of the system by the auditor; and
 - (c) perform such other testing of the audit, supervisory, and quality control procedures of the auditor as may be considered necessary or appropriate.
- (2) The NFRA may require an auditor to report on its governance practices and internal processes designed to promote audit quality, protect its reputation and reduce risks including risk of failure of the auditor and may take such action on the report as may be necessary.
- (3) The NFRA may seek additional information or may require the personal presence of the auditor for seeking additional information or explanation in connection with the conduct of an audit.
- (4) The NFRA shall perform its monitoring and enforcement activities through its officers or experts with sufficient experience in audit of the relevant industry.
- (5) The NFRA shall publish its findings relating to non-compliances on its website and in such other manner as it considers fit, unless it has reasons not to do so in the public interest and it records the reasons in writing.
- (6) The NFRA shall not publish proprietary or confidential information, unless it has reasons to do so in the public interest and it records the reasons in writing.
- (7) The NFRA may send a separate report containing proprietary or confidential information to the Central Government for its information.

- (8) Where the NFRA finds or has reason to believe that any law or professional or other standard has or may have been violated by an auditor, it may decide on the further course of investigation or enforcement action through its concerned Division.

Overseeing the quality of service and suggesting measures for improvement

- (1) On the basis of its review, the NFRA may direct an auditor to take measures for improvement of audit quality including changes in their audit processes, quality control, and audit reports and specify a detailed plan with time-limits.
- (2) It shall be the duty of the auditor to make the required improvements and send a report to the NFRA explaining how it has complied with the directions made by the NFRA.
- (3) The NFRA shall monitor the improvements made by the auditor and take such action as it deems fit depending on the progress made by the auditor.
- (4) The NFRA may refer cases with regard to overseeing the quality of service of auditors of companies or bodies corporate referred to in rule 3 to the Quality Review Board constituted under the Chartered Accountants Act, 1949 (38 of 1949) or call for any report or information in respect of such auditors or companies or bodies corporate from such Board as it may deem appropriate.
- (5) The NFRA may take the assistance of experts for its oversight and monitoring activities.

Punishment in case of non-compliance - If a company or any officer of a company or an auditor or any other person contravenes any of the provisions of NFRA Rules, the company and every officer of the company who is in default or the auditor or such other person shall be punishable as per the provisions of section 450 of the Act.

Further, as per Section 132(4) of the Companies Act, 2013 as amended by the Companies Amendment Act, 2019, National Financial Reporting Authority, where professional or other misconduct is proved, have the power to make order for:

(A) imposing penalty of—

- I. not less than one lakh rupees, but which may extend to five times of the fees received, in case of individuals; and*
- II. not less than five lakh rupees, but which may extend to ten times of the fees received, in case of firms;*

(B) debarring the member or the firm from:

- I. being appointed as an auditor or internal auditor or undertaking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate; or*
- II. performing any valuation as provided under section 247, for a minimum period of six months or such higher period not exceeding ten years as may be determined by the National Financial Reporting Authority.*

Financial reporting advocacy and education - The NFRA shall take suitable measures for the promotion of awareness and significance of AS, SA, auditors' responsibilities, audit quality and such other matters through education, training, seminars, workshops, conferences and publicity.

- (viii) As per section 140(2), the auditor who has resigned from the company shall file within a period of 30 days from the date of resignation, a statement in the prescribed Form ADT-3 (as per Rule 8 of CAAR) with the company and the Registrar, and in case of the companies referred to in section 139(5) i.e. Government company, the auditor shall also file such statement with the Comptroller and Auditor-General of India, indicating the reasons and other facts as may be relevant with regard to his resignation. In case of failure, the auditor shall be liable to a penalty which shall not be less than fifty thousand rupees *or the remuneration of the auditor, whichever is less*, and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees as per section 140(3) [Companies (Amendment) Second Ordinance, 2019 dated 21 February, 2019].
- (ix) Under sub-section (3) of section 141 along with Rule 10 of the Companies (Audit and Auditors) Rules, 2014 a person who, directly or indirectly, renders any service referred to in section 144 to the company or its holding company or its subsidiary company shall not be eligible for appointment as an auditor of a company.
- (x) By virtue of notification dated February 23, 2018, the Central Government has exempted the companies engaged in defence production from section 129 of the Companies Act, 2013 to the extent of application of relevant Accounting Standard on segment reporting.
- (xi) As per MCA notification dated February 5, 2018, the provision of deferred tax asset/liability as per Ind AS 12 or Accounting Standard 22 shall not apply, for 7 years with effect from 1st April, 2017, to Government Company which is a public financial institution under sub-clause (iv) of clause (72) of section 2 of the Companies Act, 2013; is a Non-Banking Financial Company registered with the Reserve Bank of India under section 45-IA of the Reserve bank of India Act, 1934; and is engaged in the business of infrastructure finance leasing with not less than seventy five per cent. of its total revenue being generated from such business with Government companies or other entities owned or controlled by Government.

- (xii) The Ministry of Corporate Affairs (MCA) vide notification dated October 11, 2018 introduced Division III under Schedule III of the Companies Act, 2013, wherein a format for preparation of financial statements by NBFCs complying with Ind AS has been prescribed.
- (xiii) The Order for reopening of accounts not to be made beyond eight financial years immediately preceding the current financial year unless and until Government has, under Section 128(5), issued a direction for keeping books of account longer than **8 years**, reopening of accounts can be made for such longer period.
- (xiv) Enabling provisions regarding serving notice along with getting opportunity of being heard in Section 130 for auditor/ Chartered Accountant of the Company. As of now, there is no provision in the section for serving notice to the auditor/ chartered accountant in case of reopening of accounts. As per the recent amendment in the section, it has been brought enabling the Court/ Tribunal to give notice to any other party/ person concerned and consider the representations, if any.
- (xv) In exercise of the powers conferred by section 139 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government amended Rule 5 of the Companies (Audit and Auditors) Rules, 2014 i.e. in rule 5, in clause (b), for the word "twenty", the word "**fifty**" shall be substituted, thereby enhancing the limit for applicability of rotational provisions on private limited company.
- (xvi) Section 147 of the Companies Act, 2013 prescribes following punishments for contravention:
- (1) If any of the provisions of sections 139 to 146 (both inclusive) is contravened, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees, or with both.
 - (2) If an auditor of a company contravenes any of the provisions of section 139 section 143, section 144 or section 145, the auditor shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees **or four times the remuneration of the auditor, whichever is less.**

It may be noted that if an auditor has contravened such provisions knowingly or willfully with the intention to deceive the company or its shareholders or creditors or tax authorities, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall **not be less than fifty thousand rupees** but which may extend to twenty-five lakh rupees **or eight times the remuneration of the auditor, whichever is less.**
 - (3) Where an auditor has been convicted under sub-section (2), he shall be liable to:-
 - (i) refund the remuneration received by him to the company;

- (ii) and pay for damages to the company statutory bodies or authorities or to **members or the creditors of the Company** for loss arising out of incorrect or misleading statements of particulars made in his audit report.
- (4) The Central Government shall, by notification, specify any statutory body or authority of an officer for ensuring prompt payment of damages to the company or the persons under clause (ii) of sub-section (3) and such body, authority or officer shall after payment of damages the such company or persons file a report with the Central Government in respect of making such damages in such manner as may be specified in the said notification.
- (5) Where, in case of audit of a company being conducted by an audit firm, it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in an fraud by, or in relation to or by, the company or its directors or officers, the liability, whether civil criminal as provided in this Act or in any other law for the time being in force, for such act shall be the partner or partners concerned of the audit firm and of the firm jointly and severally. However, in case of criminal liability of an audit firm, in respect of liability other **than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable.**
- (xvii) The auditor of the company shall, in his report under section 143, make a statement as to whether the remuneration paid by the company to its directors is in accordance with the provisions of this section, whether remuneration paid to any director is in excess of the limit laid down under this section and give such other details as may be prescribed”.

As per Advisory issued by ICAI, the aforesaid reporting requirement for auditors of public companies needs to be covered in auditor's report under the Section "Report on Other Legal and Regulatory Requirements". Accordingly, auditors of public companies are advised to comply with the aforesaid reporting requirements in their auditor's reports. (in) (insertion in Duty to Audit Report under heading Duties of Auditors.)

Chapter 7 : Liabilities of Auditors

1. **A civil action against the auditor may either take in the form of claim for damages on account of negligence or that of misfeasance proceeding for breach of trust or duty:**
 - (I) **Damages for negligence:** Civil liability for mis-statement in prospectus under section 35 of the Companies Act, 2013, are:
 - (1) Where a person has subscribed for securities of a company acting on any statement included, or the inclusion or omission of any matter, in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person who—

(a)	is a director of the company at the time of the issue of the prospectus;
(b)	has authorized himself to be named and is named in the prospectus as a director of the company or has agreed to become such director either immediately or after an interval of time;
(c)	is a promoter of the company;
(d)	has authorised the issue of the prospectus; and
(e)	is an expert referred to in sub-section (5) of section 26,

shall, without prejudice to any punishment to which any person may be liable under section 36, be liable to pay compensation to every person who has sustained such loss or damage.

- (2) No person shall be liable under sub-section (1), if he proves—
- that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
 - that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.
 - that, as regards every misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by sub-section (5) of section 26 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder.***
- (3) Notwithstanding anything contained in this section, where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person referred to in subsection (1) shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

It may be noted that the term “expert” as defined in Section 2(38) of the Companies Act, 2013 includes an engineer, a valuer, a chartered accountant, a company secretary, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force. Also that under

Section 26 of the Act a statement may be considered to be untrue, not only because it is so but also if it is misleading in the form and context in which it is included.

The liability would arise if the written consent of the auditor to the issue of the prospectus, including the report purporting to have been made by him as an “expert” has been obtained.

2. Punishment for Fraud- As per Section 447 of the Companies Act, 2013, without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, involving an amount of at least ten lakh rupees or one per cent. of the turnover of the company, whichever is lower shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud.

It may be noted that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

It may also be noted that where the fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to fifty lakh rupees or with both.

3. Liabilities under Income Tax Act 1961: In connection with proceedings under the Income Tax Act 1961, a Chartered Accountant often acts as the authorised representative of his clients and attends before an Income Tax Authority or the appellate tribunal. His liabilities under the Income Tax Act of 1961 are as below:

- (i) **Under Section 288:** A person who has been convicted of any offence connected with any Income Tax proceeding or on whom a penalty has been imposed under the said Act (except under clause (ii) of sub section (1) of Section 271) is disqualified from representing an assessee. The Chief Commissioner/Commissioner of Income Tax has been given powers to determine the period of such disqualification of a person.

<u>Section 288 (4) & (5) of the Income Tax Act, 1961</u>	
Sub section 4 of Section 288 of the Income Tax Act:	
No person-	
(a)	who has been dismissed or removed from Government service after the 1 st day of April, 1938; or
(b)	Who has been convicted of an offence connected with any income tax proceeding or on whom a penalty has been imposed under this Act, other than a penalty imposed on him under [clause(ii) of sub section (1) of section 271 [or clause(d) of sub-section (1) of section 272A]; or

- (c) who has become an insolvent; or
- (d) who has been convicted by a court for an offence involving fraud, shall be qualified to represent an assessee under sub-section (1), for all times in the case of a person referred to in clause (a), for such time as the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may, by order determine in the case of a person referred to in clause (b), for the period during which the insolvency continues in the case of a person referred to in clause (c), and for a period of ten years from the date of conviction in the case of a person referred to in clause (d).

Sub section 5 of Section 288 of the Income Tax Act:

If any person-

- (a) who is a legal practitioner or an accountant is found guilty of misconduct in his professional capacity by any authority entitled to institute disciplinary proceedings against him, an order passed by that authority shall have effect in relation to his right to attend before an income-tax authority as it has in relation to his right to practice as a legal practitioner or accountant, as the case may be;
- (b) Who is not a legal practitioner or an accountant, is found guilty of misconduct in connection with any income-tax proceedings by the prescribed authority, the prescribed authority (Chief Commissioner or Commissioner having requisite jurisdiction) may direct that he shall thenceforth be disqualified to represent an assessee under sub section (1).

A Chartered Accountant found guilty of professional misconduct in his professional capacity by the Council of the Institute of Chartered Accountants of India, can not act as an authorised representative (for any matter within the definition of a member in practice) for such time that the order of the Council disqualifies him from practising.

- (ii) **Under Section 278:** "If a person abets or induces in any manner another person to make and deliver an account or a statement or declaration relating to any income [or any fringe benefits] chargeable to tax which is false and which he either knows to be false or does not believe to be true or to commit an offence under sub-section (1) of section 276C, he shall be punishable,-

Section 278 of the Income Tax Act, 1961:

- (i) in a case where the amount of tax, penalty or interest which would have been evaded, if the declaration, account or statement had been accepted as true, or which is willfully attempted to be evaded, exceeds [twenty five] hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;
- (ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to [two] years and with fine

- (iii) **Under Rule 12A of the Income Tax Rules:** Under this rule a Chartered Accountant who as an authorised representative has prepared the return filed by the assessee, has to furnish to the Assessing Officer, the particulars of accounts, statements and other documents supplied to him by the assessee for the preparation of the return.

Where the Chartered Accountant has conducted an examination of such records, he has also to submit a report on the scope and results of such examination. The report to be submitted will be a statement within the meaning of Section 277 of the Income Tax Act. Thus, if this report contains any information which is false and which the Chartered Accountant either knows or believes to be false or untrue, he would be liable to rigorous imprisonment which may extend to seven years and to a fine.

- (iv) **Under Section 271J of the Income Tax Act:** As per new section inserted by the Finance Act, 2017 if an accountant or a merchant banker or a registered valuer, furnishes incorrect information in a report or certificate under any provisions of the Act or the rules made thereunder, the Assessing Officer or the Commissioner (Appeals) may direct him to pay a sum of ten thousand rupees for each such report or certificate by way of penalty. [section 271J]

Chapter 9: Audit Committee and Corporate Governance

Certain amendments to the LODR Regulations have been made vide SEBI (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2018. The LODR Regulations and the amendments made thereto are collectively referred to as LODR Regulations.

- (1) **Applicability of LODR Regulations [Regulation 3]:** Unless otherwise provided, these regulations shall apply to the listed entity who has listed any of the following designated securities on recognised stock exchange(s):

Applicability	(a) specified securities listed on main board or SME Exchange or institutional trading platform; (b) non-convertible debt securities, non-convertible redeemable preference shares, perpetual debt instrument, perpetual non-cumulative preference shares; (c) Indian depository receipts; (d) securitised debt instruments; (e) security receipts (added w.e.f. September 06, 2018); (f) units issued by mutual funds; (g) any other securities as may be specified by the Board.
-----------------------------	--

(2) Role of Audit Committee [Part C (A) of Schedule II]

Inserted point no (21) The role of the Audit Committee shall also include **reviewing the utilization of loans and/ or advances from/investment by the holding company in the**

subsidiary exceeding rupees 100 crore or 10% of the asset size of the subsidiary, whichever is lower including existing loans / advances / investments as on April 01, 2019.

Audit Committee under Section 177 of the Companies Act, 2013: As per section 177 read with Rule 6 of the Companies (Meetings of Board and its Powers) Rules, 2014, **every listed public company** and the following classes of companies shall constitute an Audit Committee –

- (a) all public companies with a paid up capital of ten crore rupees or more;
- (b) all public companies having turnover of one hundred crore rupees or more;
- (c) all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more

(3) Functions of The Audit Committee: The Audit Committee performs various important functions like investigating the matters referred by board, discuss about internal control system etc. These sub-sections of Section 177 are reproduced hereunder which specify the terms of reference as well as functions of the Audit Committee:

Sub Section 4: “Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall inter alia, include,—

- (i) the recommendation for appointment, remuneration and terms of appointment of auditors of the company;
- (ii) review and monitor the auditor’s independence and performance, and effectiveness of audit process;
- (iii) examination of the financial statement and the auditors’ report thereon;
- (iv) approval or any subsequent modification of transactions of the company with related parties;

(However, the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as may be prescribed.

In case of transactions other than transactions referred to in section 188 of the Companies Act 2013, and where Audit Committee does not approve the transaction, it shall make its recommendations to the Board.

Also, in case any transaction involving an amount not exceeding Rupees 1 crore is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and it is not ratified by the Audit Committee within three months from the date of the transaction, such transaction shall be voidable at the option of the Audit Committee and if the transaction is with the related party to any director or is authorized by any other director, the director concerned shall indemnify the company against any loss incurred by it.

These provisions shall not apply to a transaction, other than a transaction referred to in section 188, between a holding company and its wholly owned subsidiary company.

- (v) scrutiny of inter-corporate loans and investments;
- (vi) valuation of undertakings or assets of the company, wherever it is necessary;
- (vii) evaluation of internal financial controls and risk management systems;
- (viii) monitoring the end use of funds raised through public offers and related matters."

Sub Section 7: The auditors of a company and the key managerial personnel shall have a right to be heard in the meetings of the Audit Committee when it considers the auditor's report but shall not have the right to vote.

Sub Section 8: The Board's report under sub-section (3) of section 134 shall disclose the composition of an Audit Committee and where the Board had not accepted any recommendation of the Audit Committee, the same shall be disclosed in such report along with the reasons therefor.

(4) Verification regarding Composition of Board [Regulation 17]

- (i) The auditor should ascertain whether, throughout the reporting period, the Board of Directors comprises an optimum combination of executive and non-executive directors, with at least one woman director and not less than 50% of the Board of Directors comprising non-executive directors. *It may be noted that the Board of directors of the top 500 listed entities shall have at least one independent woman director by April 1, 2019 and the Board of directors of the top 1000 listed entities shall have at least one independent woman director by April 1, 2020;*

The top 500 and 1000 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year.

The auditor should also ensure that no listed entity shall appoint a person or continue the directorship of any person as a non-executive director who has attained the age of seventy five years unless a special resolution is passed to that effect, in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such a person.

The directors of listed entities shall comply with the following conditions with respect to the maximum number of directorships, including any alternate directorships that can be held by them at any point of time -

(1) A person shall not be a director in more than eight listed entities with effect from April 1, 2019 and in not more than seven listed entities with effect from April 1, 2020:

It may be noted that a person shall not serve as an independent director in more than seven listed entities.

(2) Notwithstanding the above, any person who is serving as a whole time director / managing director in any listed entity shall serve as an independent director in not more than three listed entities.

For the purpose of this abovementioned provision, the count for the number of listed entities on which a person is a director / independent director shall be only those whose equity shares are listed on a stock exchange.”

The minutes of the Board of Directors' meetings should be verified to ascertain whether a director is an executive director or a non-executive director.

- (ii) ***The auditor should ensure that the board of directors of the top 1000 listed entities (with effect from April 1, 2019) and the top 2000 listed entities (with effect from April 1, 2020) shall comprise of not less than six directors.***

Explanation: The top 1000 and 2000 entities shall be determined on the basis of market capitalisation as at the end of the immediate previous financial year.

With effect from 1st April 2019, the statutory auditor of a listed entity shall undertake a limited review of the audit of all the entities/companies whose accounts are to be consolidated with the listed entity as per AS / IndAS in accordance with guidelines issued by SEBI on this matter”. Consequently,

- ***all listed entities whose equity shares and convertible securities are listed on a recognised stock exchange,***
- ***the statutory auditors of such entities,***
- ***all entities whose accounts are to be consolidated with the listed entity and***
- ***the statutory auditors of entities whose accounts are to be consolidated with the listed entity***

shall comply with the prescribed procedure.

(5) Approval of Remuneration of Directors [Regulation 17 (6)]: All fees/compensation, if any paid to non-executive directors, including independent directors, shall be fixed by the Board of Directors and shall require previous approval of shareholders in general meeting. The shareholders' resolution shall specify the limits for the maximum number of stock options that can be granted to non-executive directors, in any financial year and in aggregate. ***However, w.e.f. April 01, 2019, approval of shareholders by special resolution shall be obtained every year, in case the annual remuneration payable to a single non-executive director exceeds fifty percent of the total annual remuneration payable to all non-executive directors.***

The requirement of obtaining prior approval of shareholders in general meeting shall not apply to payment of sitting fees to non-executive directors, if made within the limits prescribed under

the Companies Act, 2013 for payment of sitting fees without approval of the Central Government. Provided further that independent director shall not be entitled to any stock option.

The fees or compensation payable to executive directors who are promoters or members of the promoter group, shall be subject to the approval of the shareholders by special resolution in general meeting, if-

- (i) the annual remuneration payable to such executive director exceeds rupees 5 crore or 2.5 per cent of the net profits of the listed entity, whichever is higher; or***
- (ii) where there is more than one such director, the aggregate annual remuneration to such directors exceeds 5 per cent of the net profits of the listed entity:***

It may be noted that the approval of the shareholders under this provision shall be valid only till the expiry of the term of such director. For the purposes of this clause, net profits shall be calculated as per section 198 of the Companies Act, 2013.

(6) Obligations With respect to employees including Senior management, key managerial persons, directors and promoters [Regulations 17(2) to 17(4), 25(5) to 25(6), 26(1) to 26(2), 26(4) to 26(6)]:

- (i) The Board shall meet at least four times a year, with a maximum time gap of one hundred and twenty days between any two meetings. The quorum for every meeting of the board of directors of the top 1,000 listed entities with effect from April 1, 2019 and of the top 2,000 listed entities with effect from April 1, 2020 shall be one-third of its total strength or three directors, whichever is higher, including at least one independent director. The participation of the directors by video conferencing or by other audio-visual means shall also be counted for the purposes of such quorum. The top 1,000 and 2,000 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year.***

The directors of listed entities shall comply with the following conditions with respect to the maximum number of directorships, including any alternate directorships that can be held by them at any point of time:

- (a) A person shall not be a director in more than eight listed entities with effect from April 1, 2019 and in not more than seven listed entities with effect from April 1, 2020:***

It may be noted that a person shall not serve as an independent director in more than seven listed entities.

- (b) Notwithstanding the above, any person who is serving as a whole time director / managing director in any listed entity shall serve as an independent director in not more than three listed entities.***

For the purpose of this abovementioned provision, the count for the number of listed entities on which a person is a director / independent director shall be only those whose equity shares are listed on a stock exchange.

(7) Subsidiary of Listed Entity [Regulations 16(c), 24 and 46 and Part C of Schedule V]:

(i) At least one independent director on the board of directors of the listed entity shall be a director on the board of directors of an unlisted material subsidiary, ***whether incorporated in India or not.*** [Explanation- For the purposes of this provision, notwithstanding anything to the contrary contained in regulation 16, the term “material subsidiary” shall mean a subsidiary, whose income or net worth exceeds twenty percent of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year]

(vi) A listed entity shall not dispose off shares in its material subsidiary resulting in reduction of its shareholding (either on its own or together with other subsidiaries) to less than 50% or cease the exercise of control over the subsidiary without passing a special resolution in its General Meeting except in cases where such divestment is made under a scheme of arrangement duly approved by a Court/Tribunal, ***or under a resolution plan duly approved under section 31 of the Insolvency Code and such an event has been disclosed to the recognized stock exchanges within one day of the resolution plan being approved.***

(vii) Selling, disposing and leasing of assets amounting to more than twenty percent of the assets of the material subsidiary on an aggregate basis during a financial year shall require prior approval of shareholders by way of special resolution, unless the sale/disposal/lease is made under a scheme of arrangement duly approved by a Court/Tribunal, ***or under a resolution plan duly approved under section 31 of the Insolvency Code and such an event has been disclosed to the recognized stock exchanges within one day of the resolution plan being approved.***

Every listed entity and its material unlisted subsidiaries incorporated in India shall undertake secretarial audit and shall annex with its annual report, a secretarial audit report, given by a company secretary in practice, in such form as may be specified with effect from the year ended March 31, 2019.

(Note: As per Regulation 16(c), “material subsidiary” shall mean a subsidiary, whose income or net worth exceeds ***ten percent*** of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year. [Explanation- The listed entity shall formulate a policy for determining ‘material’ subsidiary.]

(8) Statement of Deviation(s) or Variation(s) [Regulation 32 and Part C of Schedule II]:

(3) *Where an entity has raised funds through preferential allotment or qualified institutions placement, the listed entity shall disclose every year, the utilization of such funds during that year in its Annual Report until such funds are fully utilized.*

(9) Disclosures - Management Discussion and Analysis [Schedule V]

(i) <i>details of significant changes (i.e. change of 25% or more as compared to the immediately previous financial year) in key financial ratios, along with detailed explanations therefor, including:</i> <i>(i) Debtors Turnover</i> <i>(ii) Inventory Turnover</i> <i>(iii) Interest Coverage Ratio</i> <i>(iv) Current Ratio</i> <i>(v) Debt Equity Ratio</i> <i>(vi) Operating Profit Margin (%)</i> <i>(vii) Net Profit Margin (%)</i> <i>or sector-specific equivalent ratios, as applicable</i>	(j) <i>details of any change in Return on Net Worth as compared to the immediately previous financial year along with a detailed explanation thereof.</i>
--	--

(10) Stakeholders Relationship Committee [Regulation 20 and Part D of Schedule II]

(i) <i>The listed entity shall constitute a Stakeholders Relationship Committee to specifically look into the - various aspects of interest of shareholders, debenture holders and other security holders.</i>
(ii) <i>The chairperson of this Committee shall be a non-executive director.</i>
(iii) <i>At least three directors, with at least one being an independent director, shall be members of the Committee.</i>
(iv) <i>The Chairperson of the Stakeholders Relationship Committee shall be present at the annual general meetings to answer queries of the security holders.</i>
(v) <i>The stakeholders relationship committee shall meet at least once in a year.</i>
(iv) <i>The role of the committee shall inter-alia include the following :</i> 1) <i>Resolving the grievances of the security holders of the listed entity including complaints related to transfer/transmission of shares, non-receipt of annual report, non-receipt of declared dividends, issue of new/duplicate certificates, general meetings etc.</i>

- 2) *Review of measures taken for effective exercise of voting rights by shareholders.*
- 3) *Review of adherence to the service standards adopted by the listed entity in respect of various services being rendered by the Registrar & Share Transfer Agent.*
- 4) *Review of the various measures and initiatives taken by the listed entity for reducing the quantum of unclaimed dividends and ensuring timely receipt of dividend warrants/annual reports/statutory notices by the shareholders of the company.*

(11) Related Party Disclosure [Regulations 27, 46 and Schedule V]: *The listed entity shall disclose the transactions with any person or entity belonging to the promoter/ promoter group which hold(s) 10% or more shareholding in the listed entity, in the format prescribed in the relevant accounting standards for annual results.*

The listed entity shall submit within 30 days from the date of publication of its standalone and consolidated financial results for the half year, disclosures of related party transactions on a consolidated basis, in the format specified in the relevant accounting standards for annual results to the stock exchanges and publish the same on its website.

(12) Disclosures in relation to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. (Schedule V) : *Amongst other matters, following should be disclosed in the section on Corporate Governance of the Annual Report:*

<i>a. number of complaints filed during the financial year</i>
<i>b. number of complaints disposed of during the financial year</i>
<i>c. number of complaints pending as on end of the financial year"</i>

(13) Risk Management Committee [Regulation 21]:

- (a) *The risk management committee shall meet at least once in a year.*
- (b) The Board of Directors shall define the role and responsibility of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit and **such function shall specifically cover cyber security.**
- (c) The provisions of this regulation shall be applicable to **top 500 listed entities**, determined on the basis of market capitalisation, as at the end of the immediate previous financial year.

(14) Nomination and Remuneration Committee [Regulation 19 and Part D of Schedule II]: The Board of Directors of **every listed public company** shall constitute the Nomination and Remuneration Committee which shall comprise at least three directors, all of whom shall be

non-executive directors and at least half shall be independent. Chairperson of the committee shall be an independent director. It may be noted that the Chairperson of the company (whether executive or nonexecutive) may be appointed as a member of the Nomination and Remuneration Committee but shall not chair such committee.

The role of such committee shall, inter-alia, include

- (i) Formulation of the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board of Directors a policy, relating to the remuneration of the directors, key managerial personnel and other employees;
- (ii) Formulation of criteria for evaluation of performance of independent directors and the Board of Directors;
- (iii) Devising a policy on Board diversity;
- (iv) Identifying persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, and recommend to the Board their appointment and removal;
- (v) whether to extend or continue the term of appointment of the independent director, on the basis of the report of performance evaluation of independent directors.
- (vi) recommend to the board, all remuneration, in whatever form, payable to senior management.**

The quorum for a meeting of the nomination and remuneration committee shall be either two members or one third of the members of the committee, whichever is greater, including at least one independent director in attendance.

The nomination and remuneration committee shall meet at least once in a year.

(15) As per Stock and Exchange Board of India circular no. CIR/CFD/CMD1/114/2019 dated 18th October, 2019 on resignation of statutory auditors from listed entities and their material subsidiaries:

1. Listed companies are required to make timely disclosures to investors in the securities market for enabling them to take informed investment decisions.
2. Under Sub-clause (2) of Clause A in Part C of Schedule II under Regulation 18(3) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("SEBI LODR Regulations"), the Audit Committee of a listed entity, inter alia, has to make recommendations for the appointment, remuneration and terms of appointment of auditors of a listed entity. Under Sub-clause (7), the Audit Committee is also responsible for reviewing and monitoring the independence and performance of auditors and the effectiveness of the audit process.
3. Further, Sub-clause (7A) inserted under Clause A in Part A of Schedule III under Regulation 30(2) of SEBI LODR Regulations requires detailed reasons to be disclosed by the listed entities to the stock exchanges in case of resignation of the auditor of a listed

entity as soon as possible but not later than twenty-four hours of receipt of such reasons from the auditor.

4. Regulation 36(5) of the SEBI LODR Regulations lays down certain disclosures to be made part of the notice to the shareholders for an AGM, where the statutory auditors are proposed to be appointed/re-appointed, including their terms of appointment.
5. Resignation of an auditor of a listed entity / its material subsidiary before completion of the audit of the financial results for the year due to reasons such as pre-occupation may seriously hamper investor confidence and deny them access to reliable information for taking timely investment decisions.
6. In light of the above, the conditions to be complied with upon resignation of the statutory auditor of a listed entity/material subsidiary w.r.t. limited review / audit report as per SEBI LODR Regulations, are as under:

A. All listed entities/material subsidiaries shall ensure compliance with the following conditions while appointing/re-appointing an auditor:

- (i) If the auditor resigns within 45 days from the end of a quarter of a financial year, then the auditor shall, before such resignation, issue the limited review/ audit report for such quarter.
- (ii) If the auditor resigns after 45 days from the end of a quarter of a financial year, then the auditor shall, before such resignation, issue the limited review/ audit report for such quarter as well as the next quarter.
- (iii) Notwithstanding the above, if the auditor has signed the limited review/ audit report for the first three quarters of a financial year, then the auditor shall, before such resignation, issue the limited review/ audit report for the last quarter of such financial year as well as the audit report for such financial year.

B. Other conditions relating to resignation shall include:

- (i) Reporting of concerns with respect to the listed entity/its material subsidiary to the Audit Committee:
 - a. In case of any concern with the management of the listed entity/material subsidiary such as non-availability of information or non-cooperation by the management which may hamper the audit process, the auditor shall approach the Chairman of the Audit Committee of the listed entity and the Audit Committee shall receive such concern directly and immediately without specifically waiting for the quarterly Audit Committee meetings.
 - b. In case the auditor proposes to resign, all concerns with respect to the proposed resignation, along with relevant documents shall be brought to the notice of the Audit Committee. In cases where the proposed resignation is due to non-receipt of information or explanation from the company, the auditor shall inform the Audit Committee of the details of information or

explanation sought and not provided by the management, as applicable.

- c. On receipt of such information from the auditor relating to the proposal to resign as mentioned above, the Audit Committee I board of directors, as the case may be, shall deliberate on the matter and communicate its views to the management and the auditor.
- (ii) Disclaimer in case of non-receipt of information: In case the listed entity/ its material subsidiary does not provide information required by the auditor, to that extent, the auditor shall provide an appropriate disclaimer in the audit report, which may be in accordance with the Standards of Auditing as specified by ICAI/ NFRA.

The listed entity/ material subsidiary shall ensure that the conditions as mentioned in 6(A) and 6(B) above are included in the terms of appointment of the statutory auditor at the time of appointing/re-appointing the auditor. In case the auditor has already been appointed, the terms of appointment shall be suitably modified to give effect to 6(A) and 6(B) above.

The practicing company secretary shall certify compliance by a listed entity with 6(A) and 6(B) above in the annual secretarial compliance report issued in terms of SEBI Circular no. CIR/CFD/CMD1/27/2019 dated February 08, 2019.

C. Obligations of the listed entity and its material subsidiary:

- (i) Format of information to be obtained from the statutory auditor upon resignation: Upon resignation, the listed entity/ its material subsidiary shall obtain information from the Auditor in the format as specified in Annexure A to this Circular. The listed entity shall ensure disclosure of the same under Sub-clause (7A) of Clause A in Part A of Schedule III under Regulation 30(2) of SEBI LODR Regulations.
 - (ii) Co-operation by listed entity and its material subsidiary: During the period from when the auditor proposes to resign till the auditor submits the report for such quarter I financial year as specified above, the listed entity and its material subsidiaries shall continue to provide all such documents/information as may be necessary for the audit I limited review.
 - (iii) Disclosure of Audit Committee's views to the Stock Exchanges: Upon resignation of the auditor, the Audit Committee shall deliberate upon all the concerns raised by the auditor with respect to its resignation as soon as possible, but not later than the date of the next Audit Committee meeting and communicate its views to the management. The listed entity shall ensure the disclosure of the Audit Committee's views to the stock exchanges as soon as possible but not later than twenty-four hours after the date of such Audit Committee meeting.
7. In case an entity is not mandated to have an Audit Committee, then the board of directors of the entity shall ensure compliance of this circular.

8. The Stock Exchanges are advised to bring the provisions of this circular to the notice of all listed entities and their material subsidiaries and also disseminate it on their websites.
9. In case the auditor is rendered disqualified due to operation of any condition mentioned in Section 141 of the Companies Act, 2013, then the provisions of this Circular shall not apply.
10. The Circular is issued in exercise of the powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 read with regulations 18(3), 30(2) and 36(5) of the SEBI LODR Regulations and shall be in addition to the provisions of Companies Act, 2013. For more details visit: https://www.sebi.gov.in/legal/circulars/oct-2019/resignation-of-statutory-auditors-from-listed-entities-and-their-material-subsiidiaries_44703.html

Chapter 14 : Audit of Non-Banking Financial Companies

1. **Merging three categories of NBFCs viz. Asset Finance Companies (AFC), Loan Companies (LCs) and Investment Companies (ICs) into a new category called Investment and Credit Company (NBFC-ICC)** :As per circular RBI/2018-19/130 DNBR (PD) CC.No.097/03.10.001/2018-19 dated February 22, 2019, in order to provide NBFCs with greater operational flexibility, it has been decided that harmonisation of different categories of NBFCs into fewer ones shall be carried out based on the principle of regulation by activity rather than regulation by entity. Accordingly, it has been decided to merge the three categories of NBFCs viz. Asset Finance Companies (AFC), Loan Companies (LCs) and Investment Companies (ICs) into a new category called NBFC - Investment and Credit Company (NBFC-ICC). Investment and Credit Company (NBFC-ICC) means any company which is a financial institution carrying on as its principal business - asset finance, the providing of finance whether by making loans or advances or otherwise for any activity other than its own and the acquisition of securities; and is not any other category of NBFC as defined by the RBI in any of its Master Directions. (Circular DBR.BP.BC.No.25/21.06.001/2018-19 dated 22 February 2019)

Differential regulations relating to bank's exposure to the three categories of NBFCs viz., AFCs, LCs and ICs stand harmonised vide Bank's circular DBR.BP.BC.No.25/21.06.001/2018-19 dated, February 22, 2019. Further, a deposit taking NBFC-ICC shall invest in unquoted shares of another company which is not a subsidiary company or a company in the same group of the NBFC, an amount not exceeding twenty per cent of its owned fund. All related Master Directions (Non-Banking Financial Company – Non-Systemically Important Non-Deposit taking Company (Reserve Bank) Directions, 2016, Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016, Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016, Standalone Primary Dealers (Reserve Bank) Directions, 2016 and Residuary Non-Banking Companies (Reserve Bank) Directions, 2016) have also been updated accordingly. These directions can be accessed at <https://www.rbi.org.in/>.

Some points that may be covered in the audit of NBFC - Investment and Credit Company (NBFC-ICC) are given below:

- i. Physically verify all the shares and securities held by a NBFC. Where any security is lodged with an institution or a bank, a certificate from the bank/institution to that effect must be verified.
- ii. Verify whether the NBFC has not advanced any loans against the security of its own shares.
- iii. Verify that dividend income wherever declared by a company, has been duly received by an NBFC and interest wherever due [except in case of NPAs] has been duly accounted for. NBFC Prudential Norms directions require dividend income on shares of companies and units of mutual funds to be recognised on cash basis. However, the NBFC has an option to account for dividend income on accrual basis, if the same has been declared by the body corporate in its Annual General Meeting and its right to receive the payment has been established. Income from bonds/debentures of corporate bodies is to be accounted on accrual basis only if the interest rate on these instruments is predetermined and interest is serviced regularly and not in arrears.
- iv. Test check bills/contract notes received from brokers with reference to the prices vis-à-vis the stock market quotations on the respective dates.
- v. Verify the Board Minutes for purchase and sale of investments. Ascertain from the Board resolution or obtain a management certificate to the effect that the investments so acquired are current investments or Long Term Investments.
- vi. Check whether the investments have been valued in accordance with the NBFC Prudential Norms Directions and adequate provision for fall in the market value of securities, wherever applicable, have been made there against, as required by the Directions.
- vii. Obtain a list of subsidiary/group companies from the management and verify the investments made in subsidiary/group companies during the year. Ascertain the basis for arriving at the price paid for the acquisition of such shares.
- viii. Check whether investments in unquoted debentures/bonds have not been treated as investments but as term loans or other credit facilities for the purposes of income recognition and asset classification.
- ix. An auditor will have to ascertain whether the requirements of AS 13 “Accounting for Investments” or other accounting standard, as applicable, (to the extent they are not inconsistent with the Directions) have been duly complied with by the NBFC.
- x. In respect of shares/securities held through a depository, obtain a confirmation from the depository regarding the shares/securities held by it on behalf of the NBFC.

- xi. Verify that securities of the same type or class are received back by the lender/paid by the borrower at the end of the specified period together with all corporate benefits thereof (i.e. dividends, rights, bonus, interest or any other rights or benefit accruing thereon).
- xii. Verify charges received or paid in respect of securities lend/borrowed.
- xiii. Obtain a confirmation from the approved intermediary regarding securities deposited with/borrowed from it as at the year end.
- xiv. An auditor should examine whether each loan or advance has been properly sanctioned. He should verify the conditions attached to the sanction of each loan or advance i.e. limit on borrowings, nature of security, interest, terms of repayment, etc.
- xv. An auditor should verify the security obtained and the agreements entered into, if any, with the concerned parties in respect of the advances given. He must ascertain the nature and value of security and the net worth of the borrower/guarantor to determine the extent to which an advance could be considered realisable.
- xvi. Obtain balance confirmations from the concerned parties.
- xvii. As regards bill discounting, verify that proper records/documents have been maintained for every bill discounted/rediscouted by the NBFC. Test check some transactions with reference to the documents maintained and ascertain whether the discounting charges, wherever, due, have been duly accounted for by the NBFC.
- xviii. Check whether the NBFC has not lent/invested in excess of the specified limits to any single borrower or group of borrowers as per NBFC Prudential Norms Directions.
- xix. An auditor should verify whether the NBFC has an adequate system of proper appraisal and follow up of loans and advances. In addition, he may analyse the trend of its recovery performance to ascertain that the NBFC does not have an unduly high level of NPAs.
- xx. Check the classification of loans and advances (including bills purchased and discounted) made by a NBFC into Standard Assets, Sub-Standard Assets, Doubtful Assets and Loss Assets and the adequacy of provision for bad and doubtful debts as required by NBFC Prudential Norms Directions.

(Note: The above checklist is not exhaustive. It is only illustrative. There could be various other audit procedures which may be performed for audit of an NBFC.)

3. **Compliance with NBFC Auditors Report - RBI Directions:** Report to Board of Directors under RBI Directions as per Master Direction No. DNBS. PPD.03/66.15.001/2016-17 dated September 29, 2016

4. **Auditors to submit additional Report to the Board of Directors:** In addition to the Report made by the auditor under Section 143 of the Companies Act, 2013 or section 227 of the Companies Act, 1956 (Act 1 of 1956) on the accounts of a non-banking financial company examined for every financial year ending on any day on or after the commencement of these Directions, the auditor shall also make a separate report to the Board of Directors of the Company on the matters specified in paragraphs 3 and 4 below.
5. **Material to be included in the Auditor's report to the Board of Directors:** The auditor's report on the accounts of a non-banking financial company shall include a statement on the following matters, namely -

(A) In the case of all non-banking financial companies:

- I. Conducting Non-Banking Financial Activity without a valid Certificate of Registration (CoR) granted by the Bank is an offence under chapter V of the RBI Act, 1934. Therefore, if the company is engaged in the business of non-banking financial institution as defined in section 45-I (a) of the RBI Act and meeting the Principal Business Criteria (Financial asset/income pattern) as laid down vide the Bank's press release dated April 08, 1999, and directions issued by DNBR, auditor shall examine whether the company has obtained a Certificate of Registration (CoR) from the Bank.
- II. In case of a company holding CoR issued by the Bank, whether that company is entitled to continue to hold such CoR in terms of its Principal Business Criteria (Financial asset/income pattern) as on March 31 of the applicable year.
- III. Whether the non-banking financial company is meeting the required net owned fund requirement as laid down in Master Direction - Non-Banking Financial Company – Non-Systemically Important Non-Deposit taking Company (Reserve Bank) Directions, 2016 and Master Direction - Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016.

Note: Every non-banking financial company shall submit a Certificate from its Statutory Auditor that it is engaged in the business of non-banking financial institution requiring it to hold a Certificate of Registration under Section 45-IA of the RBI Act and is eligible to hold it. A certificate from the Statutory Auditor in this regard with reference to the position of the company as at end of the financial year ended March 31 may be submitted to the Regional Office of the Department of Non-Banking Supervision under whose jurisdiction the non-banking financial company is registered, within one month from the date of finalization of the balance sheet and in any case not later than December 30th of that year. The format of Statutory Auditor's Certificate (SAC) to be submitted by NBFCs has been issued vide DNBS. PPD.02/66.15.001/2016-17 Master Direction- Non-Banking Financial Company Returns (Reserve Bank) Directions, 2016.

(B) In the case of a non-banking financial companies accepting/holding public deposits:

Apart from the matters enumerated in (A) above, the auditor shall include a statement on the following matters, namely-

- (i) Whether the public deposits accepted by the company together with other borrowings indicated below viz.
 - (a) from public by issue of unsecured non-convertible debentures/bonds;
 - (b) from its shareholders (if it is a public limited company); and
 - (c) which are not excluded from the definition of 'public deposit' in the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016, are within the limits admissible to the company as per the provisions of the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016;
- (ii) Whether the public deposits held by the company in excess of the quantum of such deposits permissible to it under the provisions of Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016 are regularised in the manner provided in the said Directions;
- (iii) Whether the non banking financial company is accepting "public deposit" without minimum investment grade credit rating from an approved credit rating agency as per the provisions of Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016;
- (iv) Whether the capital adequacy ratio as disclosed in the return submitted to the Bank in terms of the Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016 has been correctly determined and whether such ratio is in compliance with the minimum CRAR prescribed therein;
- (v) In respect of non-banking financial companies referred to in clause (iii) above,
 - (a) whether the credit rating, for each of the fixed deposits schemes that has been assigned by one of the Credit Rating Agencies listed in Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016 is in force; and
 - (b) whether the aggregate amount of deposits outstanding as at any point during the year has exceeded the limit specified by the such Credit Rating Agency;
- (vi) Whether the company has violated any restriction on acceptance of public deposit as provided in Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016;

- (vii) Whether the company has defaulted in paying to its depositors the interest and/or principal amount of the deposits after such interest and/or principal became due;
- (viii) Whether the company has complied with the prudential norms on income recognition, accounting standards, asset classification, provisioning for bad and doubtful debts, and concentration of credit/investments as specified in the Directions issued by the Bank in terms of the Master Direction - Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016;
- (ix) Whether the company has complied with the liquid assets requirement as prescribed by the Bank in exercise of powers under section 45-IB of the RBI Act and whether the details of the designated bank in which the approved securities are held is communicated to the office concerned of the Bank in terms of NBS 3; Non-Banking Financial Company Returns (Reserve Bank) Directions, 2016;
- (x) Whether the company has furnished to the Bank within the stipulated period the return on deposits as specified in the NBS 1 to – Non- Banking Financial Company Returns (Reserve Bank) Directions, 2016;
- (xi) Whether the company has furnished to the Bank within the stipulated period the quarterly return on prudential norms as specified in the Non-Banking Financial Company Returns (Reserve Bank) Directions, 2016;
- (xii) Whether, in the case of opening of new branches or offices to collect deposits or in the case of closure of existing branches/offices or in the case of appointment of agent, the company has complied with the requirements contained in the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016.

(C) In the case of a non-banking financial company not accepting public deposits:

Apart from the aspects enumerated in (A) above, the auditor shall include a statement on the following matters, namely: -

- (i) Whether the Board of Directors has passed a resolution for non- acceptance of any public deposits;
- (ii) Whether the company has accepted any public deposits during the relevant period/year;
- (iii) Whether the company has complied with the prudential norms relating to income recognition, accounting standards, asset classification and provisioning for bad and doubtful debts as applicable to it in terms of Non-Banking Financial Company – Non-Systemically Important Non-Deposit taking Company (Reserve Bank) Directions, 2016 and Non-Banking Financial

- Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016;
- (iv) In respect of Systemically Important Non-deposit taking NBFCs as defined in Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016:
- (a) Whether the capital adequacy ratio as disclosed in the return submitted to the Bank in form NBS- 7, has been correctly arrived at and whether such ratio is in compliance with the minimum CRAR prescribed by the Bank;
- (b) Whether the company has furnished to the Bank the annual statement of capital funds, risk assets/exposures and risk asset ratio (NBS-7) within the stipulated period.
- (v) whether the non banking financial company has been correctly classified as NBFC Micro Finance Institutions (MFI) as defined in the Non-Banking Financial Company – Non-Systemically Important Non-Deposit taking Company (Reserve Bank) Directions, 2016 and Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016.

- (D) **In the case of a company engaged in the business of non-banking financial institution not required to hold CoR subject to certain conditions:** Apart from the matters enumerated in (A)(I) above where a company has obtained a specific advice from the Bank that it is not required to hold CoR from the Bank, the auditor shall include a statement that the company is complying with the conditions stipulated as advised by the Bank.

6. Reasons to be stated for unfavourable or qualified statements

Where, in the auditor's report, the statement regarding any of the items referred to in paragraph 3 above is unfavourable or qualified, the auditor's report shall also state the reasons for such unfavourable or qualified statement, as the case may be. Where the auditor is unable to express any opinion on any of the items referred to in paragraph 3 above, his report shall indicate such fact together with reasons therefor.

7. Obligation of auditor to submit an exception report to the Bank

- (I) Where, in the case of a non-banking financial company, the statement regarding any of the items referred to in paragraph 3 above, is unfavorable or qualified, or in the opinion of the auditor the company has not complied with:
- (a) the provisions of Chapter III B of RBI Act (Act 2 of 1934); or
- (b) Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016; or
- (c) Non-Banking Financial Company – Non-Systemically Important Non-Deposit

taking Company (Reserve Bank) Directions, 2016 and Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016.

It shall be the obligation of the auditor to make a report containing the details of such unfavourable or qualified statements and/or about the non-compliance, as the case may be, in respect of the company to the concerned Regional Office of the Department of Non-Banking Supervision of the Bank under whose jurisdiction the registered office of the company is located as per first Schedule to the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016.

- (II) The duty of the Auditor under sub-paragraph (I) shall be to report only the contraventions of the provisions of RBI Act, 1934, and Directions, Guidelines, instructions referred to in sub-paragraph (1) and such report shall not contain any statement with respect to compliance of any of those provisions.

8. Applicability of Indian Accounting Standards (Ind- AS) on NBFCs – As per Rule 4 (1)(iv) of the Companies (Indian Accounting Standards) Rules, 2015 and as amended by Companies (Indian Accounting Standards) (Amendment) Rules, 2016, NBFCs are required to comply with Indian Accounting Standards (Ind- AS) as under-

- (i) **Accounting periods beginning 1 April 2018:** Listed and unlisted NBFCs having a net worth of ₹ 500 crore or more and holding, subsidiary, joint venture or associate companies of such NBFCs;
- (ii) **Accounting periods beginning 1 April 2019:** All other listed NBFCs, unlisted NBFCs having a net worth of ₹ 250 crore or more but less than ₹ 500 crore and holding, subsidiary, joint venture or associate companies of such NBFCs.

The net worth shall be calculated in accordance with the standalone financial statements of the NBFCs as on 31st March 2016 or the first audited financial statements for accounting period which ends after that date.

9. Format for preparation of financial statements by NBFCs under Ind- AS – The Ministry of Corporate Affairs (MCA) vide notification dated October 11, 2018 introduced Division III under Schedule III of the Companies Act, 2013, wherein a format for preparation of financial statements by NBFCs complying with Ind- AS has been prescribed.

Every NBFC required to comply with Ind - AS shall prepare its financial statements as per below format:

Illustrative format of Balance Sheet under Division III of Schedule III-

Particulars	Notes No.	Figures as at the end of current reporting period (₹)	Figures as at the end of previous reporting period (₹)
ASSETS			
(1) Financial Assets (a) Cash and cash equivalents (b) Bank balance other than (a) above (c) Derivative financial instruments (d) Receivables (1) Trade Receivables (2) Other Receivables (e) Loans (f) Investments (g) Other Financial assets			
(2) Non-Financial Assets (a) Inventories (b) Current tax assets (net) (c) Deferred tax assets (net) (d) Investment property (e) Biological assets other than bearer plants (f) Property, Plant and Equipment (g) Capital work-in-progress (h) Intangible assets under development (i) Goodwill (j) Other intangible assets (k) Other non-financial assets (to be specified)			
Total Assets			
LIABILITIES AND EQUITY			
LIABILITIES			
(1) Financial Liabilities (a) Derivative financial instruments (b) Payables (l) Trade Payables			

Particulars	Notes No.	Figures as at the end of current reporting period (₹)	Figures as at the end of previous reporting period (₹)
(i) total outstanding dues of micro enterprises and small enterprises (ii) total outstanding dues of creditors other than micro enterprises and small enterprises (II) Other Payables (i) total outstanding dues of micro enterprises and small enterprises (ii) total outstanding dues of creditors other than micro enterprises and small enterprises (c) Debt Securities (d) Borrowings (other than debt securities) (e) Deposits (f) Subordinated liabilities (g) Other financial liabilities (to be specified)			
(2) Non-financial Liabilities (a) Current tax liabilities (net) (b) Provisions (c) Deferred Tax Liabilities (net) (d) Other non-financial liabilities (to be specified)			
(3) Equity (a) Equity share capital (b) Other equity			
Total Liabilities and Equity			

Illustrative format of Statement of Profit and Loss prescribed under Division III of Schedule III -

Particulars	Notes No.	Figures as at the end of current reporting period (₹)	Figures as at the end of previous reporting period (₹)
Revenue from operations			
(a) Interest Income			
(b) Dividend income			
(c) Rental income			
(d) Fee and commission income			
(e) Net gain on fair value changes			
(f) Net gain on derecognition of financial instruments under amortised category			
(g) Sale of products (including Excise duty)			
(h) Sale of services			
(i) Others (to be specified)			
Total revenue from operations (I)			
Other income (to be specified) (II)			
Total Income (III= I + II)			
Expenses			
(a) Finance costs			
(b) Fees and commission expense			
(c) Net loss on fair value changes			
(d) Net loss on derecognition of financial instruments under amortised category			
(e) Impairment on financial instruments			
(f) Cost of material consumed			
(g) Purchases of stock-in-trade			
(h) Changes in Inventories of finished goods, stock-in-trade and work-in- progress			
(i) Employee Benefits Expenses			
(j) Depreciation, amortization and impairment			
(k) Other expenses (to be specified)			

Particulars	Notes No.	Figures as at the end of current reporting period (₹)	Figures as at the end of previous reporting period (₹)
Total Expenses (IV)			
Profit / (loss) before exceptional items and tax (V= III - IV)			
Exceptional items (VI)			
Profit / (loss) before tax (VII= V - VI)			
Tax Expense (VIII): (1) Current tax (2) Deferred tax			
Profit / (loss) for the period from continuing operations (IX= VII - VIII)			
Profit / (loss) for the period from discontinued operations (X)			
Tax Expense of discontinued operations (XI)			
Profit / (loss) for the period from discontinued operations after tax (XII= X - XI)			
Profit / (loss) for the period (XIII = IX + XII)			
Other Comprehensive Income (XIV)			
(A) (i) Items that will not be reclassified to profit or loss (specify items and amounts) (ii) income tax relating to items that will not be reclassified to profit or loss SUB-TOTAL (A)			
(B) (i) Items that will be reclassified to profit or loss (specify items and amounts) (ii) income tax relating to items that will be reclassified to profit or loss SUB-TOTAL (B)			
Other Comprehensive Income (A+B)			

Particulars	Notes No.	Figures as at the end of current reporting period (₹)	Figures as at the end of previous reporting period (₹)
Total Comprehensive Income for the period (XV = XIII + XIV) (Comprising Profit (Loss) and other Comprehensive Income for the period)			
Earnings per equity share (for continuing operations) (XVI) Basic (₹) Diluted (₹)			
Earnings per equity share (for discontinued operations) (XVII) Basic (₹) Diluted (₹)			
Earnings per equity share (for continuing and discontinued operations) (XVIII) Basic (₹) Diluted (₹)			

Note : Student may refer illustrative format of Statement of Changes in equity prescribed under Division III of Schedule III for more understanding.

10. Differences between Division II (Ind- AS- Other than NBFCs) and Division III (Ind- AS- NBFCs) of Schedule III –The presentation requirements under Division III for NBFCs are similar to Division II (Non NBFC) to a large extent except for the following:

- NBFCs have been allowed to present the items of the balance sheet in order of their liquidity which is not allowed to companies required to follow Division II. Additionally, NBFCs are required to classify items of the balance sheet into financial and non-financial whereas other companies are required to classify the items into current and non-current.
- An NBFC is required to separately disclose by way of a note any item of 'other income' or 'other expenditure' which exceeds 1 per cent of the total income. Division II, on the other hand, requires disclosure for any item of income or expenditure which exceeds 1 per cent of the revenue from operations or ₹10 lakhs, whichever is higher.
- NBFCs are required to separately disclose under 'receivables', the debts due from any Limited Liability Partnership (LLP) in which its director is a partner or member.

NBFCs are also required to disclose items comprising 'revenue from operations' and 'other comprehensive income' on the face of the Statement of profit and loss instead of as part of the notes.

Chapter 15 : Audit under Fiscal Laws

A. AUDIT PROVISIONS UNDER DIRECT TAX LAWS

(A) **Sec. 40 A(3):** Where any expenditure in respect of which payment is made in excess of ₹ 10,000 at a time otherwise than by Account-payee cheque or draft, 100% of such payment shall be disallowed.

(B) **Section 44AB of the Income Tax Act, 1961 :** Section 44AB provides for the compulsory audit of accounts of certain persons carrying on business or profession. Section 44AB reads as under:



Section 44AB provides for the compulsory audit of accounts of certain persons carrying on business or profession. Section 44AB reads as under:

"Audit of accounts of certain persons carrying on business or profession".	
Every person -	
(a)	carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year.
(b)	carrying on profession shall, if his gross receipts, in profession exceed fifty lakhs rupees in any previous year,
(c)	carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AE or section 44BB or section 44BBB as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year,
(d)	carrying on the profession shall, if the profits and gains from the profession are deemed to be the profits and gains of such person under section 44ADA, and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his profession and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year, or
(e)	carrying on the business shall, if the provisions of sub-section (4) of section 44AD are

applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year, 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 and setting forth such particulars as may be prescribed.

[Note: Sub section (4) of section 44AD of the Income Tax Act, 1961 states that where an eligible assessee declares profit for any Previous Year in accordance with the provisions of this section 44AD and he declares profit for any of the 5 Assessment Years relevant to the Previous Year succeeding such Previous Year not in accordance with the provisions of sub-section (1) of section 44AD, he shall not be eligible to claim the benefit of the provisions of this section for 5 Assessment Years subsequent to the Assessment Year relevant to the Previous Year in which the profit has not been declared in accordance with the provisions of sub-section (1) of section 44AD.]

It may be noted that this section shall not apply to the person, who derives income of the nature referred to in section 44B or section 44BBA on and from the 1st day of April, 1985 or, as the case may be, the date on which the relevant section came into force, whichever is later.

It may also be noted that in a case where such person is required by or under any other law to get his accounts audited, it shall be sufficient compliance with the provisions of this section if such person gets the accounts of such business or profession audited under such law before the specified date and furnishes by that date the report of the audit as required under such other law and a further report by an accountant in the form prescribed under this section.



Applicability of Tax Audit Provisions

DB Pvt. Ltd. has total turnover of ₹ 125 lacs for the FY 2018-19.

- ✓ Section 44AD is not applicable to company assessee, hence Limit of ₹ 2 crore is not applicable to DB Pvt. Ltd and it has to conduct the Audit of Books of Accounts under section 44AB of the Act for the FY 2018-19 as turnover exceeds ₹ 1 crore.

ABC & Co. (a partnership firm) engaged in trading of electronic goods having a turnover of ₹ 165 lacs for the FY 2018-19.

- ✓ Section 44AD is applicable to Partnership Firm. Thus, ABC & Co. can declare the minimum profit @ 8% of the turnover as its turnover during the PY 2018-19 does not exceed ₹ 2 crores. If the firm do not opt for presumptive income scheme under section 44AD, it has to get books of accounts audited u/s 44AB of the Act.

Mr. Anand Khater, a Commission Agent has commission receipts of ₹ 137 lacs during the FY 2018-19.

✓ Though Section 44AD is applicable to an Individual, it is not applicable to Commission income. In the given case, since, Mr. Anand earns the commission income, he cannot take the benefit of section 44AD. His total turnover during the FY 2018-19 in respect of commission income exceeds ₹ 1 crore, he has to get his books of accounts audited u/s 44AB of the Act.

Mr. Vishal Raka, owning an Agency of Samsung Mobile for the city of Pune and makes the turnover of ₹ 87 lacs during the FY 2018-19.

✓ Though Section 44AD is applicable to an Individual, it is not applicable to Commission income. In the given case, since, Mr. Vishal earns the commission income, he cannot take the benefit of section 44AD. His total turnover during the FY 2018-19 in respect of commission income does not exceeds ₹ 1 crore, therefore, he need not to get his books of accounts audited u/s 44AB of the Act.

Explanation : For the purposes of this section,

- (i) “accountant” shall have the same meaning as in the explanation below sub-section (2) of Section 288;
- (ii) “specified date”, in relation to the accounts of the assessee of the previous year relevant to an assessment year, means the due date for furnishing the return of income under sub-section (1) of section 139.

The above section stipulates that every person carrying on business is required to get his accounts audited before the “specified date” by a chartered accountant, if the total sales turnover or gross receipts in the business in any previous year exceed ₹ 1 crore. A person carrying on a profession will also have to get his accounts audited before the “specified date” by a chartered accountant if his gross receipts in profession in any previous year exceed ₹ 50 lakhs w.e.f. A.Y. 2018-19.

Clause (c) of Section 44AB, provides that in the case of an assessee carrying on a business of the nature specified in sections 44AE, 44BB or 44BBB, tax audit will be required if he claims his income to be lower than the presumptive income deemed under those sections. Therefore, such assessee will be required to have a tax audit even if their sales, turnover or gross receipts do not exceed ₹ 100 lakhs (one crore rupees).

If a person is carrying on business(es), coming within the scope of sections 44AE, 44BB or 44BBB but he exercises his option given under these sections to get his accounts audited under Section 44AB, tax audit requirements would apply, in respect of such business(es) even if the turnover of such business(es) does not exceed ₹ 100 lakhs (one crore rupees).

In the case of a person carrying on businesses covered by sections 44AE, 44BB or 44BBB and opting for presumptive taxation, tax audit requirement would not apply in respect of such businesses, if such person is carrying on other business(es) not covered by presumptive taxation, tax audit requirements would apply in respect thereof if the turnover of such business(es), other than the business covered by presumptive taxation thereof, exceed ₹ 100 lakhs (one crore rupees).

The first proviso to section 44AB stipulates that the provisions of that section will not be applicable to a person who derives income of the nature referred to in sections 44B, or 44BBA. Where the assessee is carrying on any one or more of the businesses specified in section 44B or 44BBA referred to in the first proviso to section 44AB, the sales/turnover/gross receipts from such businesses shall not be included in the total sales/turnover/gross receipts for determining the applicability of section 44AB.

The report of such audit, duly signed and verified by the chartered accountant is required to be given in such form and setting forth such particulars as prescribed by the Board. Rule 6G provides that such audit report and particulars should be given in Form No. 3CA/3CB as may be applicable and the statement of particulars should be given in Form No.3CD.

A question may arise in the case of an assessee who is eligible to claim deductions under sections 80-IA, 80-IB, 80-IC etc., as to whether, it will be necessary for him to get separate audit reports/certificates under these sections in addition to an audit report under Section 44AB. The requirement of section 44AB is a general requirement covering the overall position of the accounts of the assessee. This applies to the consolidated accounts of the assessee for the relevant previous year covering the results of all the units owned by the assessee whether situated at one place or at different places. If turnover of all the units put together exceeds prescribed limits, the assessee would be required to get a separate audit report/certificate under above said sections he wants to avail deduction under the respective sections. Therefore, it will be necessary for an assessee to get separate audit reports/certificates under above said sections in addition to an audit report, if any, required under section 44AB.

AMENDMENTS IN FORM 3CD

- **Clause (4), Details as to Indirect Tax Registration:** Part A of Form No. 3CD generally requires the auditor to ensure whether the assessee is liable to pay indirect tax like excise duty, service tax, sales tax, goods and service tax, custom duty, etc. If yes, please furnish the registration number or GST number or any other identification number allotted for the same. Thus, the auditor is primarily required to furnish the details of registration numbers as provided to him by the assessee. The reporting is however, to be done in the manner or format specified by the e-filing utility in this context.

- **Clause 19: Amounts admissible under sections:**

Section:	Amount debited to profit and loss account:	Amounts admissible as per the provisions of the Income-tax Act, 1961 and also fulfils the conditions. If any, specified under the relevant provisions of Income-tax Act, 1961 or Income-tax Rules, 1962 or any other guidelines, circular, etc., issued in this behalf:
32AC, 32AD , 33AB, 33ABA, 35(1)(i), 35(1)(ii), 35(1)(ia), 35(1)(iii), 35(1)(iv), 35(2AA), 35(2AB), 35ABB, 35AC, 35AD, 35CCA, 35CCB, 35CCC, 35CCD, 35D, 35DD, 35DDA, 35E.		

- **Clause 29 A : (a) Whether any amount is to be included as income chargeable under the head 'income from other sources' as referred to in clause (ix) of sub section (2) of section 56**

(b) If yes, Please Furnish Following Details

Sr. No.	Nature of Income	Amount thereof

Clause 29 B : (a) Whether any amount is to be included as income chargeable under the head 'income from other sources' as referred to in clause (x) of sub section (2) of section 56

(b) If yes, Please Furnish Following Details

Sr. No.	Nature of Income	Amount

Audit checklist for practical understanding :

- (a) This provision is applicable where a company has issued shares during the year. This can be checked from the Financial Statements/Share Register/ MCA records etc.

- (b) Clause 29(A) The tax auditor should obtain a certificate from taxpayer regarding all such advances received towards transfer of capital asset which have been forfeited during the year. The advances might have been received during the previous year or earlier years. The auditor should examine whether any such advances have been written back during the year and examine basis for written back of such advances and determine whether such written back was on account of forfeiture.
- (c) Clause 29(B) With effect from assessment year 2019-20, in case of an immovable property, where the stamp duty value exceeds the consideration by less than the higher of (i) ₹ 50,000 or (ii) 5% of the consideration, the difference is not chargeable to tax. Therefore, for any immovable property, where the stamp duty value is up to 105% of the sale consideration, no addition can be made under section 56(2)(x). Till assessment 2018-19, the permissible difference was only ₹ 50,000 per property, and was not linked to the percentage of the consideration.
- (d) The tax auditor should obtain a certificate from the assessee regarding any such receipts during the year, either received in his business or profession or recorded in the books of account of such business or profession. He should also scrutinise the books of account to verify whether receipt of any such amount or asset has been recorded therein.
- (e) In case of other assets, the provisions of rule 11UA(1) read with rule 11U are to be followed for determination of the fair market value, to compute the income under this section.
- (f) Wherever there is a dispute or doubt as to the valuation of an asset, it would be advisable for the tax auditor to request the assessee to obtain a valuation report from a registered valuer. The report of the tax auditor may then be based on such valuation report.

- **Clause 30A. (a) Whether primary adjustment to transfer price, as referred to in sub-section (1) of section 92CE, has been made during the previous year? (Yes/No)**
 - (b) **If yes, please furnish the following details:-**
 - (i) **Under which clause of sub-section (1) of section 92CE primary adjustment is made?**
 - (ii) **Amount (in ₹) of primary adjustment:**
 - (iii) **Whether the excess money available with the associated enterprise is required to be repatriated to India as per the provisions of sub-section (2) of section 92CE? (Yes/No)**

- (iv) If yes, whether the excess money has been repatriated within the prescribed time (Yes/No)
- (v) If no, the amount (in ₹) of imputed interest income on such excess money which has not been repatriated within the prescribed time:

A new clause 30A has been introduced, requiring reporting of primary adjustments and various other details, for the purpose of making secondary adjustments under section 92CE. Section 92CE, providing for secondary transfer pricing adjustments, has been introduced by the Finance Act 2017, with effect from assessment year 2018-19.

The section requires making of a secondary adjustment in certain cases where primary transfer pricing adjustments have been made. These cases are where transfer pricing adjustment has been:

- i. made by the taxpayer of his own accord in his return of income;
- ii. made by the assessing officer and accepted by the taxpayer;
- iii. determined under an Advance Pricing Agreement entered into by the assessee under section 92CC;
- iv. made as per Safe Harbour Rules framed under section 92CB; or
- v. arising as a result of a resolution of an assessment under Mutual Agreement Procedure under a double taxation avoidance agreement (DTAA) entered into under section 90 or 90A.

No secondary adjustment is required if the amount of primary adjustment made in any previous year does not exceed ₹ 1 crore.

Due to the primary adjustment, if there is an increase in the total income or a reduction in the loss of the assessee, the adjustment (difference between the arm's length price and the actual transaction price) is regarded as excess money available with the associated enterprise, and is to be repatriated to India within the prescribed time. Rule 10CB provides for a time limit of 90 days for repatriation of the excess money. Where the excess money is not repatriated to India within the prescribed time, it is deemed as an advance to the associated enterprise and interest is to be computed on such advance in the prescribed manner, as a secondary adjustment.

Secondary adjustments are applicable only in respect of transfer pricing adjustments relating to international transactions, and not in respect of domestic transfer pricing adjustments.

Clause 30A requires reporting of whether primary adjustment to transfer price, as referred to in section 92CE(1), has been made during the previous year. Thus the tax auditor is required to verify whether any primary adjustment is 'made' in terms of S. 92CE(1) during the previous year under consideration. The primary adjustment made may not necessarily relate to previous year under consideration.

Primary adjustments which do not warrant secondary adjustments should also be reported.

Audit checklist for practical understanding :

- For this purpose, the tax auditor should obtain a certificate from the assessee, as to what transfer pricing adjustments have been made in the return/(s) of income filed during the previous year, whether any advance pricing agreement was entered into during the previous year, whether any transfer pricing adjustment was made/confirmed in an assessment order/appellate authority order passed during the previous year, or whether any agreement has been arrived at under a Mutual Agreement Procedure during the previous year. The tax auditor should also verify tax records to check whether there is any such occurrence.
- With respect to reporting of interest income computed, there is an ambiguity whether interest income computed till the end of the previous year is to be reported or whether interest income computed up to the date of furnishing Form 3CD.
- In case interest upto to the date of filing is given, it is advisable for the tax auditor to provide breakup of the amount of interest imputed till end of relevant previous year and for the period post the end of the relevant previous year ending with the date of filing Form 3CD.
- It is advisable all the secondary adjustments made during the year irrespective of the previous year the primary adjustment is made is to be reported to avoid difference between the amounts reported in Form 3CD and the income tax return.

• **Clause 30B – Limitation on Interest Deduction**

30B. (a) Whether the assessee has incurred expenditure during the previous year by way of interest or of similar nature exceeding one crore rupees as referred to in sub-section (1) of section 94B? (Yes/No)

(b) If yes, please furnish the following details:-

- (i) Amount (in ₹) of expenditure by way of interest or of similar nature incurred:
- (ii) Earnings before interest, tax, depreciation and amortization (EBITDA) during the previous year (in ₹):
- (iii) Amount (in ₹) of expenditure by way of interest or of similar nature as per (i) above which exceeds 30% of EBITDA as per (ii) above:
- (iv) Details of interest expenditure brought forward as per subsection (4) of section 94B: A.Y. Amount (in ₹)
- (v) Details of interest expenditure carried forward as per subsection (4) of section 94B:

Assessment Year	Amount

The newly inserted clause 30B requires reporting for the purposes of examining allowability of expenditure by way of interest in respect of debt issued by a non-resident associated enterprise ("AE") under section 94B, while computing income under the head "Profits and Gains of Business or Profession".

The newly inserted clause 30B requires reporting for the purposes of examining allowability of expenditure by way of interest in respect of debt issued by a non-resident associated enterprise ("AE") under section 94B, while computing income under the head "Profits and Gains of Business or Profession".

The excess interest is to be computed as the lower of:
(i) Total interest paid or payable in excess of 30% of earnings before interest, taxes, depreciation and amortisation ("EBITDA") of the borrower in the previous year; or
(ii) Interest paid or payable to AEs for that previous year.

The excess interest, which is disallowed, is allowed to be carried forward for a period of 8 assessment years following the year of disallowance, to be allowed as a deduction against profits and gains of any business in the subsequent years, to the extent of maximum allowable interest expenditure under this section.

- **Clause 30C*. (a) Whether the assessee has entered into an impermissible avoidance arrangement, as referred to in section 96, during the previous year? (Yes/No.)**
(b) If yes, please specify:—
(i) Nature of impermissible avoidance arrangement:
(ii) Amount (in ₹) of tax benefit in the previous year arising, in aggregate, to all the parties to the arrangement:

***Note : Clause 30C is not applicable.**

- **Clause 31 (a)*: Particulars of each loan or deposit in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year:-**
(i) name, address and permanent account number (if available with the assessee) of the lender or depositor;
(ii) amount of loan or deposit taken or accepted;
(iii) whether the loan or deposit was squared up during the previous year;
(iv) maximum amount outstanding in the account at any time during the previous year;

- (v) whether the loan or deposit was taken or accepted by cheque or bank draft or use of electronic clearing system through a bank account;
- (v) in case the loan or deposit was taken or accepted by cheque or bank draft, whether the same was taken or accepted by an account payee cheque or an account payee bank draft.

***(These particulars need not be given in the case of a Government company, a banking company or a corporation established by a Central, State or Provincial Act.)**

Section 269SS prescribes the mode of taking or accepting certain loans and deposits. As per this section, no person shall take or accept from any other person any loan or deposit otherwise than by an account payee cheque or account payee bank draft if,-

- (a) the amount of such loan or deposit or the aggregate amount of such loan and deposit; or
- (b) on the date of taking or accepting such loan or deposit, any loan or deposit taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid; or
- (c) the amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b),

is twenty thousand rupees or more.

For the purposes of section 269SS "loan or deposit" means loan or deposit of money.

If the total of all loans/deposits from a person exceed ₹ 20,000 but each individual item is less than ₹ 20,000, the information will still be required to be given in respect of all such entries starting from the entry when the balance reaches ₹ 20,000 or more and until the balance goes down below ₹ 20,000. As such the tax auditor should verify all loans/deposits taken or accepted where balance has reached ₹ 20,000 or more during the year for the purpose of reporting under this clause.

- **Clause 31 (b): Particulars of each specified sum in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year:-**
 - (i) name, address and Permanent Account Number (if available with the assessee) of the person from whom specified sum is received;
 - (ii) amount of specified sum taken or accepted;
 - (iii) whether the specified sum was taken or accepted by cheque or bank draft or use of electronic clearing system through a bank account;

- (iv) in case the specified sum was taken or accepted by cheque or bank draft, whether the same was taken or accepted by an account payee cheque or an account payee bank draft.

(Particulars at (a) and (b) need not be given in the case of a Government company, a banking company or a corporation established by the Central, State or Provincial Act.)

- Clause 31 (ba) Particulars of each receipt in an amount exceeding the limit specified in section 269ST, in aggregate from a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion from a person, during the previous year, where such receipt is otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account:-
 - (i) Name, address and Permanent Account Number (if available with the assessee) of the payer;
 - (ii) Nature of transaction;
 - (iii) Amount of receipt (in ₹);
 - (iv) Date of receipt;
- Clause 31 (bb) Particulars of each receipt in an amount exceeding the limit specified in section 269ST, in aggregate from a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion from a person, received by a cheque or bank draft, not being an account payee cheque or an account payee bank draft, during the previous year:—
 - (i) Name, address and Permanent Account Number (if available with the assessee) of the payer;
 - (ii) Amount of receipt (in ₹);
- Clause 31 (bc) Particulars of each payment made in an amount exceeding the limit specified in section 269ST, in aggregate to a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion to a person, otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year:-
 - (i) Name, address and Permanent Account Number (if available with the assessee) of the payee;
 - (ii) Nature of transaction;
 - (iii) Amount of payment (in ₹);
 - (iv) Date of payment;

- **Clause 31 (bd) Particulars of each payment in an amount exceeding the limit specified in section 269ST, in aggregate to a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion to a person, made by a cheque or bank draft, not being an account payee cheque or an account payee bank draft, during the previous year:—**

(i) **Name, address and Permanent Account Number (if available with the assessee) of the payee;**

(ii) **Amount of payment (in ₹);**

(Particulars at (ba), (bb), (bc) and (bd) need not be given in the case of receipt by or payment to a Government company, a banking Company, a post office savings bank, a cooperative bank or in the case of transactions referred to in section 269SS or in the case of persons referred to in Notification No. S.O. 2065(E) dated 3rd July, 2017)”

Section 269ST was introduced by the Finance Act, 2017 with effect from 1 April 2017. It provides that no person shall receive sum of ₹ 2 lakh or more

- a) in aggregate from a person in a day; or
- b) in respect of a single transaction; or
- c) in respect of transactions relating to one event or occasion from a person otherwise than by an account payee cheque or an account payee demand draft or by use of electronic clearing system through a bank account.

Contravention of section 269ST attracts penalty under section 271DA. The new sub-clauses 31(ba), (bb), (bc) and (bd) deal with reporting of transactions of receipts and payments in excess of the specified limit made otherwise than by the modes specified in section 2 section 269ST. Provisions of section 269ST do not apply to receipt by Government, any banking company, post office savings bank or a co-operative bank or transactions of loan or deposit or ₹ specified sum’ referred to in section 269SS. ‘Specified sum’ means any sum of money receivable, whether as an advance or otherwise, in relation to transfer of an immovable property, whether not the transfer takes place. (Refer clause (iv) of the Explanation below section 269SS.)

New sub-clauses have been introduced under Clause 31 which deal with reporting of transactions of receipts and payments in excess of the specified limit made otherwise than by the modes specified in Section 269ST.

The particulars required under these sub- clauses need not be given in case of a receipt by or a payment to a government company, a banking company, a post office savings bank, cooperative bank or in the case of transactions referred to in Section 269SS or in the case of persons referred to in the Notification. Effectively, particulars are not required to be furnished of transactions to which provisions of Section 269ST do not apply. It may be noted that neither Section 269ST nor the notifications issued under this section exclude

a government company from the application of the provisions of Section 269ST. However, in view of the note under the sub-clauses, particulars required under these sub-clauses need not be given in case of a government company. On the other hand, provisions of Section 269ST do not apply to any receipt by the government. However, the note under sub clauses does not specifically refer to receipt by or payment to the government. Considering the provisions of Section 269ST, particulars of the payments made to the government need not be included and a suitable note may be given to the effect that details of payments made to government have not been included in the particulars.

Section 269ST does not distinguish between receipt on capital account and revenue account. Similarly, new sub-clauses do not distinguish between receipts and payments on capital account and revenue account. Once the receipt or the payment, as the case may be, exceeds the limit specified, the particulars of such transactions will have to be reported under these clauses.

While it is comparatively simple to work out receipts or payments to or from a single person in a day, the tax auditor will have to exercise care and caution while arriving at the particulars of receipts or payments pertaining to a single transaction or relating to a single event or occasion. The tax auditor will need to link all receipts or payments, as the case may be, otherwise than by the modes specified in this section received/made in respect of a single transaction and verify if the aggregate amount exceeds the limits specified in Section 269ST. Whether the receipts or payments, as the case may be, are pertaining to a single transaction or different transaction will depend on the facts of the case. A single invoice may relate to multiple transactions and vice-versa, multiple bills may relate to a single transaction. The tax auditor will have to exercise his judgement to decide whether the receipts/payments are pertaining to a single transaction.

Similarly, the tax auditor will have to exercise judgement in deciding whether receipts/payments though pertaining to more than one transaction, pertain to a single event or occasion.

If such receipts or payments are otherwise than by account payee cheque or an account payee draft or by use of electronic clearing system through a bank account, then the tax auditor will have to verify the mode of the receipt of payment. The tax auditor will have to classify the receipt or the payment, as the case may be, as under:

- Otherwise than by the cheque or bank draft or use of electronic clearing system through a bank account
- By cheque or bank draft not being an account payee cheque or an account payee bank draft.

Where the receipts or the payments, as the case may be, pertain to a single transaction or transactions relating to one event or occasion, such receipts/payments may be grouped together while reporting. The tax auditor may also keep in his record date of the receipts and date of the payments reported under, although the same is not required to be reported.

Where payment is made by cheque or demand draft, there will be practical difficulties in verifying whether the relevant receipt or payment is by account payee cheque or account payee draft. In such cases, the tax auditor should verify the transactions with reference to such evidence which may be available. In the absence of satisfactory evidence, the guidance given by the Council of the ICAI in similar cases to the tax auditors is to be followed. The tax auditor, in his report, may make suggested comment while reporting.

The tax auditor should maintain the specified information in his working papers for the purpose of reporting of receipts.

- **Clause 31 (c): Particulars of each repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T made during the previous year:-**

- (i) name, address and Permanent Account Number (if available with the assessee) of the payee;
- (ii) amount of the repayment;
- (iii) maximum amount outstanding in the account at any time during the previous year;
- (iv) whether the repayment was made by cheque or bank draft or use of electronic clearing system through a bank account;
- (ii) in case the repayment was made by cheque or bank draft, whether the same was taken or accepted by an account payee cheque or an account payee bank draft.

This sub-clause requires particulars of each repayment of loan or deposit in an amount exceeding the limits specified in section 269T made during the previous year. Section 269T is attracted where repayment of the loan or deposit is made to a person, where the aggregate amount of loans or deposits held by such person either in his own name or jointly with any other person on the date of such repayment together with interest, if any, payable on such deposit is ₹ 20,000 or more. The tax auditor should verify such repayments and report accordingly.

- **Clause 31 (d): Particulars of repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T received otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year:-**
 - (i) name, address and Permanent Account Number (if available with the assessee) of the lender, or depositor or person from whom specified advance is received;
 - (ii) amount of loan or deposit or any specified advance received otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year.
- **Clause 31 (e): Particulars of repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T received by a cheque or bank draft**

which is not an account payee cheque or account payee bank draft during the previous year:

- (i) name, address and Permanent Account Number (if available with the assessee) of the lender, or depositor or person from whom specified advance is received;
- (ii) amount of loan or deposit or any specified advance received by a cheque or a bank draft which is not an account payee cheque or account payee bank draft during the previous year.

(Particulars at (c), (d) and (e) need not be given in the case of a repayment of any loan or deposit or any specified advance taken or accepted from the Government, Government company, banking company or a corporation established by the Central, State or Provincial Act).

- **Clause 36A:**

- (a) Whether the assessee has received any amount in the nature of dividend as referred to in sub-clause (e) of clause (22) of Section 2.

- (b) If yes, please furnish the following details :-

In order to enable reporting under the new Clause 36A, the tax auditor should obtain from the taxpayer a certificate containing a list of closely held companies in which he is the beneficial owner of shares carrying not less than 10 per cent of the voting power and list of concerns in which he has a substantial interest.

The tax auditor should also obtain a certificate from the taxpayer giving particulars of any loans or advances received by any concern in which he has substantial interest from any closely held company in which he is a beneficial owner of shares carrying not less than 10 per cent voting power.

These certificates are necessary since the tax auditor may not be able to verify the above from the books of account of the taxpayer. The tax auditor should include appropriate remarks of his inability to independently verify the information and reliance on the certificates obtained from the taxpayer. These remarks may be included in Form No. 3CA/3CB.

The tax auditor should also verify Form 26AS in the case of the taxpayer to know if the closely held company has deducted tax at source from any payment made by it to the taxpayer or the concern under Section 194. This will indicate the view taken by the closely held company making the payment. The tax auditor may consider the same before coming to a conclusion.

So far as any payment by the closely held company made on behalf of or for the individual benefit of the taxpayer is concerned, there may not be any record available for the auditor to verify the same. In such a case auditor may make appropriate remarks in Form No. 3CA/3CB. It may be noted that if the closely held company has made payment on behalf of or for the individual benefit of the taxpayer in his capacity, say, as the managing director

of the closely held company and if such payment has been considered as part of the taxpayer's remuneration, the same payment is not again chargeable to tax under Section 2(22)(e) and is not required to be reported under this clause.

Whether an amount is chargeable to tax as dividend under Section 2(22)(e) has always been a subject matter of litigation before various judicial forums. The tax auditor needs to consider various issues while reporting under this clause, e.g. wherever the beneficial shareholder is not the registered shareholder and the closely held company has given loan or advance to the beneficial shareholder or to a concern, the tax auditor should make an appropriate remark about the basis of reporting in Form No. 3CA/3CB.

Further, the tax auditor may not be able to determine the accumulated profits of the closely held company making the payment for various reasons. The tax auditor will not have access to the records of such closely held company, the payment would often be during the course of a financial year and accounts will not have been made up as of the date of payment. The tax auditor in such a case may arrive at the accumulated profits by appropriating the profit for the year on a time basis. In such a case the auditor should include appropriate remarks in Form No. 3CA/3CB about the methodology adopted by him.

Business advance or trade advances from closely held companies to the taxpayer or concerns in which the taxpayer has a substantial interest are out of the purview of Section 2(22)(e) and need not be reported dividend under this clause of Form No. 3CD.

The taxpayer or the concern may maintain two accounts of the closely held company in its books of account. Amounts received from the closely held company and the amount receivable from the closely held company may be accounted in two separate accounts. In such a case the tax auditor will have to consider whether, for reporting under this clause only net amount should be considered.

The taxpayer or the concern may have a current account of the closely held company in its books of account. In such a case there could be various transactions accounted for in such a current account. The tax auditor will have to consider if all the transactions in such a current account are on account of normal business transactions or the transactions are in the nature of loans or advances received by the taxpayer or the concern.

Considering various judicial decisions, the tax auditor will have to take a considered view while reporting under this clause. If reliance has been placed on any judicial decision, a reference of the same may be given by the tax auditor as observations in Form No. 3CA/3CB.

It may be noted that any payment made after 1 April 2018 which satisfies the conditions of Section 2(22)(e), would be subject to Dividend Distribution Tax (DDT) under Section 115-O in the hands of the company making the payment and not in the hands of the shareholder.

- **Clause 42 (a) Whether the assessee is required to furnish statement in Form No.61 or Form No. 61A or Form No. 61B? (Yes/No)**

(b) If yes, please furnish:

S. No.	Income Tax Department Reporting entity Identification No.	Type of Form	Due date for furnishing	Date of furnishing, if furnished	Whether the form contains information about all details/transactions which are required to be reported	If not please furnish list of the details/transactions which are not reported

New Clause 42 has been introduced where the tax auditor has to report that whether the taxpayer is required to furnish a statement of the specified financial transaction (in Form No.61 or Form No. 61A or Form No. 61B).

With respect to Form 61, the tax auditor should verify whether the taxpayer has entered into any transaction where the other party was required to quote PAN. He should verify whether the taxpayer has obtained declaration in Form No. 60 where the other party has not furnished his PAN. Wherever the taxpayer has received declarations in Form No. 60, the auditor should verify if the taxpayer has filed Form No. 61 including therein all the necessary particulars.

With respect to Form 61A, the tax auditor should ascertain whether the taxpayer is required to report any transactions under Section 285BA read with Rule 114E. It may be noted that specified transactions under Section 285BA include the issue of bonds, issue of shares, buy-back of shares by a listed company, etc. These transactions may not happen every year and hence special attention should be given in the year when a company taxpayer issues any security or a listed company undertakes buyback of shares.

While verifying the same, the tax auditor should ensure that the provisions of Rule 114E(3) have been properly considered and applied.

Failure to do so may result in a certain transaction not being reported. It may be noted that the payment may be received for various transactions and on different dates, and hence these may not be covered under Section 269ST but will have to be reported under Section 285BA.

With respect to Form 61B14, the tax auditor should review the due diligence procedures carried out by the taxpayer in accordance with provisions of Rule 114H and the results of such procedures. The tax auditor should review the list of Reportable Accounts identified by the due diligence process and the information to be maintained and reported by the taxpayer.

In case any reportable account has been omitted, or there is any error or omission in Form 61B, the same may be reported under the Form No. 3CD. The auditor should verify if the taxpayer has filed Form No. 61B for correcting errors or omissions in the form filed originally. In such a case the auditor should give details of both the forms filed. The errors in the original Form 61B which are corrected in the revised Form 61B need not be reported under Form No. 3CD.

The tax auditor should verify that Form 61B is duly signed by the designated director and filed.

- **Clause 43 (a) Whether the assessee or its parent entity or alternate reporting entity is liable to furnish the report as referred to in subsection (2) of section 286 (Yes/No)**
 - (b) if yes, please furnish the following details:**
 - (i) Whether report has been furnished by the assessee or its parent entity or an alternate reporting entity**
 - (ii) Name of parent entity**
 - (iii) Name of alternate reporting entity (if applicable)**
 - (iv) Date of furnishing of report**

Clause 43 has been newly introduced in Form No. 3CD. The Finance Act, 2016 by introducing Section 286 in the Act, has introduced provisions relating to the Country by Country Report (CbCR) and Master File pursuant to the adoption of OECD's Base Erosion and Profit Shifting (BEPS), Action Plan 13 in India.

Under Section 286, an international group has to furnish CbCR containing information about the whole group comprising of various constituent entities.

Such a report is to be filed in India if the parent entity is resident of India or the international group has appointed a constituent entity which is resident in India to file CbCR on behalf of the whole group.

The report under Section 286(2) is filed by the parent entity which is resident in India or the alternate reporting entity which is resident in India.

For tax audit for the assessment year 2018-19, the tax auditor should comment upon report Section 286(2) that was required to be filed on or before 31 March 2018.

The tax auditor should verify if the taxpayer is required to file the Form 3CEAC based on the satisfaction of the conditions prescribed

The tax auditor should also verify if the taxpayer whose parent is a non-resident has filed Form No. 3CEAC.

The tax auditor may obtain a necessary certificate from the taxpayer in respect of constitution of the international.

- **Clause 44*. Break-up of total expenditure of entities registered or not registered under the GST:**

Sl. No.	Total amount of Expenditure incurred during the year	Expenditure in respect of entities registered under GST				Expenditure in respect of entities not registered under GST
		Relating to goods or services exempt from GST	Relating to entities falling under composition scheme	Relating to other registered entities	Total payment to registered entities	
(1)	(2)	(3)	(4)	(5)	(6)	(7)

***Note: Clause 44 is not applicable.**

B. AUDIT PROVISIONS UNDER INDIRECT TAX LAWS



The GST roll out on 1st July 2017 has paved the way for realization of the goal of “one nation-one tax-one market”. GST is expected to benefit Indian economy overall with most tax compliant businesses getting favourably impacted. It is a trust based taxation regime

wherein the assessee is required to self-assess his returns and determine tax liability without any intervention by the tax official. Therefore, a tax regime that relies on self-assessment has to put in place a robust audit mechanism to measure and ensure compliance of the provisions of law by the taxable person.

Objective of GST Audit: The objective of the GST audit can be ascertained from the definition of Audit given in Section 2(13) of Central Goods and Services Tax Act, 2017 (CGST Act). The said definition reads 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 there under.”

From the above, it can be deduced that:

- (a) Audit is examination of records, returns and other documents;
- (b) Those records, returns and documents might have been maintained or furnished under GST Law or any other law;
- (c) The examination is to verify the correctness of
 - (i) Turnover declared;
 - (ii) Taxes paid;
 - (iii) Refund claimed; and
 - (iv) Input tax credit availed;
- (d) The examination is also to assess auditee's compliance with the provisions of GST Act and Rules.

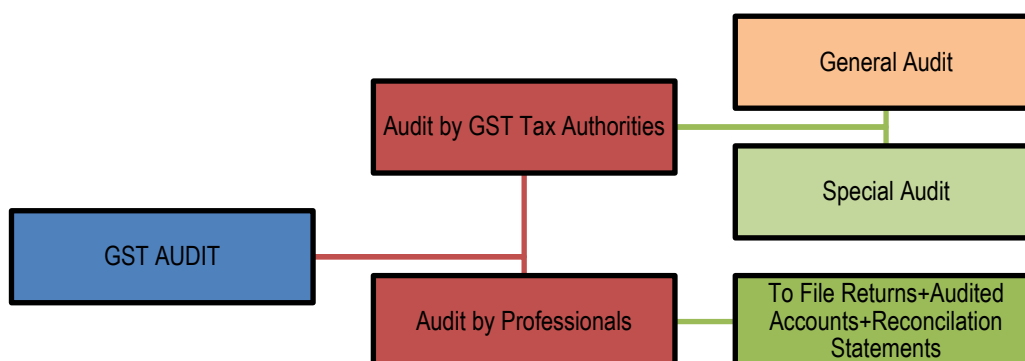
All this makes it clear that the objective of GST is to ensure the correctness of Turnover declared, Taxes paid, Refund claimed, and Input Tax Credit availed in addition to compliance of the GST Act and Rules. The intent is that the compliance of the GST law has to be confirmed by the GST audit.

1 Types of Audit under GST

GST envisages three types of Audit.

- (1) Audit of accounts [Section 35(5) read alongwith section 44(2) and rule 80]
- (2) Audit by Tax Authorities wherein the Commissioner or any officer authorised by him, can undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed. [Section 65 and rule 101]
- (3) Special Audit wherein the registered person can be directed to get his records including books of account examined and audited by a chartered accountant or a cost accountant during any stage of scrutiny, inquiry, investigation or any other proceedings; depending upon the complexity of the case. [Section 66 and rule 102]





1.1 Threshold for Audit:

Section 35(5) begins with the expression “every registered person whose **turnover** during a financial year exceeds the prescribed limit” whereas the relevant Rule 80(3) uses the expression “every registered person whose **aggregate turnover** during a financial year exceeds **two crore rupees**”. It must be noted that the word **turnover** has not been defined whereas the expression **aggregate turnover** has been defined. One may note that the expression **turnover in State or turnover in the Union territory** is defined. In this backdrop the following understanding is relevant:

- Aggregate turnover is PAN based while turnover in a State/UT, though similarly worded, is limited to turnover in a State / UT, which is limited to a State;
- It is therefore, reasonable to interpret that the word turnover used in Section 35(5) ought to be understood as aggregate turnover.
- For the financial year 2017-18, the GST period consists of 9 months whereas the relevant Section 35(5) uses the expression financial year; Therefore, in the absence of clarification from the government, and to avoid any cases of default, it is reasonable to understand that to reckon the turnover limits prescribed for audit i.e., ₹ 2 crores one has to reckon the turnovers for the whole of the financial year which would also include the first quarter of the financial year 2017-18.

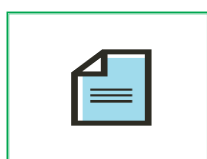
1.2. Audit of Accounts [Section 35(5) read alongwith section 44(2) and rule 80]

As per sub-section 5 of section 35 read alongwith section 44(2) and rule 80 of the CGST Rules, 2017 stipulates as follows:

(i) Every registered person must get his accounts audited by a Chartered Accountant or a Cost Accountant if his aggregate turnover during a FY exceeds ₹ 2 crores.	Such registered person is required to furnish electronically through the common portal alongwith Annual Return a copy of: ☐ Audited annual accounts
--	---

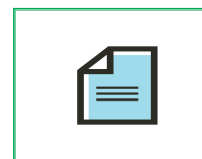
	☐ A Reconciliation Statement, duly certified, in prescribed FORM GSTR-9C.
--	--

Reconciliation Statement will reconcile 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.



Value of supplies declared in
Annual return

reconciliation



Value of supplies declared in audited
Annual Financial Statement

1.3. Audit under section 65:

Section	Description	Remarks
Section 65	Audit by tax authorities	The audit under Section 66 is a special audit to be conducted by a Chartered Accountant or Cost Accountant nominated by the Commissioner whereas the audit under Section 65 is a routine audit by the tax office.

1.4. Special Audit under section 66:

Availing the services of experts is an age old practice of due process of law. These experts have done yeoman service to the process of delivering justice. One such facility extended by the Act is in Section 66 where an officer not below the rank of Assistant Commissioner, duly approved, may avail the services of a Chartered Accountant or Cost Accountant to conduct a detailed examination of specific areas of operations of a registered person. Availing the services of the expert be it a Chartered Accountant or Cost Accountant is permitted by this section only when the officer considering the nature & complexity of the business and in the interest of revenue is of the opinion that:

- ☞ Value has not been correctly declared; or
- ☞ Credit availed is not within the normal limits.

It would be interesting to know how these 'subjective' conclusions will be drawn and how the proper officers determines what is the normal limit of input credit availed.

Circumstances for Notice for Special Audit: An Assistant Commissioner who nurses an opinion on the above two aspects, after commencement and before completion of any scrutiny, enquiry, investigation or any other proceedings under the Act, may direct a registered person to get his books of accounts audited by an expert. Such direction is to be issued in accordance

with the provision of Rule 102 (1) FORM GST ADT-03

The Assistant Commissioner needs to obtain prior permission of the Commissioner to issue such direction to the taxable person.

Identifying the expert is not left to the registered person whose audit is to be conducted but the expert is to be nominated by the Commissioner.

Time Limit to Submit the Audit Report: The Chartered Accountant or the Cost Accountant so appointed shall submit the audit report, mentioning the specified particulars therein, within a period of 90 days, to the Assistant Commissioner in accordance with provision of Rule 102(2) FORM GST ADT-04.

Extension in Submission of Audit Report: In the event of an application to the Assistant Commissioner by Chartered Accountant or the Cost Accountant or the registered person seeking an extension, or for any material or sufficient reason, the due date of submission of audit report may be extended by another 90 days.

Considering the special nature of this audit, i.e. audit having been conducted under other proceedings or under other laws; this does not preclude the proper officer from exercising this option.

While the report in respect of the special audit under this section is to be submitted directly to the Assistant Commissioner, the registered person is to be provided an opportunity of being heard in respect of any material gathered in the special audit which is proposed to be used in any proceedings under this Act. This provision does not appear to clearly state whether the registered person is entitled to receive a copy of the entire audit report or only extracts or merely inferences from the audit. However, the observance of the principles of natural justice in the proceedings arising from this audit would not fail the taxable person on this aspect.

1.5 Preparation for the GST Audit:

To start with, the following (among others) are the various steps an auditor can take in connection with the forthcoming GST audit:

- (a) Inform the concerned assessee about the applicability of the GST audit;
- (b) Confirm the eligibility to be the GST auditor under the related legislation;
- (c) Understand the nature of business, the products or services, requirements of records to be maintained, and advise the auditee to maintain accounts and records so required, beforehand;
- (d) Prepare a questionnaire to understand the operations / activities of the auditee, and specifically develop questions on those issues on which the GST law would have a bearing
- (e) Preparation of the detailed audit program and list of records to be verified;
- (f) Host of relevant reconciliations.

Expenses for Examination and Remuneration for Audit: The expenses for examination and audit including the remuneration payable to the auditor will be determined and borne by the Commissioner.

As in the case of audit under section 65, no demand of tax, even *ad interim*, is permitted on completion of the special audit under this section. In case any possible tax liability is identified during the audit, procedure under section 73 or 74 as the case may be is to be followed.

During the course of audit, the registered person to afford the auditor with the necessary facility to verify the books of account and also to furnish the required information and render assistance for timely completion of the audit. As per the CGST Rules on Assessment and Audit Rules, the auditor shall verify the documents on the basis of which the accounts are maintained and the periodical returns/statements are furnished. While conducting the audit, the auditor is authorized to:

- ☐ Verify books & records
- ☐ Returns & statements
- ☐ Correctness of turnover, exemptions & deductions
- ☐ Rate of tax applicable in respect of supply of goods and/or services
- ☐ The input tax credit claimed/availed/unutilized and refund claimed.

Some of the best practices to be adopted for GST audit among others could be:

The evaluation of the internal control *viz-a-viz* GST would indicate the area to be focused. This could be done by verifying:

- (a) The Statutory Audit report which has specific disclosure needs in regard to maintenance of record, stock and fixed assets.
- (b) The Information System Audit report and the internal audit report.
- (c) Internal Control questionnaire designed for GST compliance.
 - (i) The use of generalised audit software to aid the GST audit would ensure modern practice of risk based audit are adopted.
 - (ii) The reconciliation of the books of account or reports from the ERP's to the return is imperative.
 - (iii) The review of the gross trial balance for detecting any incomes being set off with expenses.
 - (iv) Review of purchases/expenses to examine applicability of reverse charge applicable to goods/services. The foreign exchange outgo reconciliation would also be necessary for identifying the liability of import of services.
 - (v) Quantitative reconciliation of stock transfer within the State or for supplies to job workers under exemption.
 - (vi) Ratio analysis could provide vital clues on areas of non-compliance.

Consequences of failure to submit the annual return and not getting the accounts audited:

Section 47(2) provides that in case of failure to submit the annual return within the specified time, a late fee shall be leviable. The said late fee would be ₹ 100 per day during which such failure continues subject to a maximum of a quarter percent of the turnover in the State/UT. There would be an equal amount of late fee under the respective State/UT GST law.

However, there is no specific penalty prescribed in the GST Law for not getting the accounts audited by a Chartered Accountant or a Cost Accountant. Therefore, in terms of Section 125 of CGST Act he shall be subjected to a penalty of up to 25,000/-. This section deals with the general penalty that gets attracted where any person, who contravenes any of the provisions this Act, or any rules made thereunder for which no penalty is separately provided. Similar provision also exists under the State/UT GST law as well. It is possible that since the return is to be accompanied with the report, if not done it may amount to non-filing of return and late fee also may be levied.

1.6. Audit Approach

There are no prescribed or specified approaches for conducting audit under the GST laws. Similarities can be drawn between a GST Audit and / or Tax Audit under Section 44AB of the Income-tax Act and audit under the Companies Act. The GST Auditor is not required to express his opinion on truth and fairness of the financials when it is audited by others. In any case, he is required to certify the correctness and completeness of certain reconciled data. The verification would necessarily have to be substantially more than the opinion on truth and fairness.

In this background certain time-tested methods of conducting an audit have evolved into guidelines, which among others are as follows:

- (a) Obtaining prior knowledge of the business and comparing them with similar businesses;
- (b) Preparing a master file of the clients (permanent master file);
- (c) Discussing on with the audit team on the methodology to proceed with the audit;
- (d) Studying and evaluating systems (including business systems) and internal control of the business entity;
- (e) Assessing the audit risks and deploying of suitable personnel;
- (f) Assessing the risk appetite of the business entity;
- (g) Preparing of an audit plan / audit program and conducting the audit accordingly;
- (h) Reviewing meetings with the audit team;
- (i) Drawing conclusions on the basis of audit evidence obtained in the course of conducting the audit and a discussion with the client on the observations and findings;
- (j) Discussing with the registered person and obtaining various management certificates;
- (k) Reporting the observations in the prescribed statutory format, if any, or evolving a suitable format of reporting;

- (l) Maintaining Audit working papers file (Filing of documents either in permanent file or working papers file);
- (m) Concluding the audit and intimating the management.

1.7. Accounting Standard Vs. GST

The auditor should also take into account the accounting standards followed at the time of preparation of financial statements. There could be differences in the manner of accounting treatment of certain transactions as per Accounting Standard in the financial statements vis-à-vis the treatment under GST. Some of the differences are:

- Supplies on behalf of the principal are not reflected in the financial statements of the agent and only commission is shown as the revenue of the agent. Under the GST Law, such turnover would be treated as part of the agent's turnover.
- Under the Accounting Standard 19 in the case of finance lease, in the books of the lessor, the cost of the asset is recorded as a receivable whereas in the books of the lessee, it would be recorded as an asset purchased. However, under the GST, the cost of the asset would be recorded as a purchase and the fair value of the asset would not be recorded in the books of the lessee as a purchase. In the case of the lessor, only the financial charges would be treated as revenue as per the AS, whereas under the GST, the entire amount would be treated as revenue. Similarly, as per the Accounting Standard, in the case of lessee, the amount of lease rentals would be bifurcated into interest charges and liability, whereas under the GST, the entire amount would be treated as expense.

The above is only illustrative and there could be many more cases of differences in the turnovers between the financial statements and the GST Law.

1.8. GST Audit in Computerised Environment

Compliances under the GST law are dependent upon technology because transactions are numerous. It is not only the Government which has adopted technology; businesses too have adopted technology at different levels to meet the compliance requirement.

In the GST regime, Information Systems have become an integral part of enterprise day-to-day operation, such as return filing, payment of taxes, rectification of returns filed, reconciliation of multiple returns GSTR 1, GSTR 2A, GSTR 3B, e-Way Bill, GSTR 9 etc. The increased usage of technology has pitfalls when sufficient controls are not built within. The primary responsibility of the GST Auditor is to assess the entire Computerized Information System (CIS) environment and get macro perspective of data availability and systems reliability.

Unlike the traditional audit methodology which involved manual process of checking and verification, the GST audit processes for larger assesses is carried out by using Computer Systems and Technology. For example, verification for the matching of Input Tax Credit availed with the Outward Supply declared by the supplier being large in numbers, cannot be done manually. Hence different computerized tools and methods have to be used for the purpose.

Though it is clear that computerized tools and methods have to be used for conducting the audit, at the same time it is important that the Auditor is aware of such computerized environment which can be called Computerized Information System (CIS) Environment, and the audit risks involved therein.

GST Auditor should also try to know whether the computer of any type or size used by the entity for processing financial information is important for the purposes of audit, and if it is operated by the entity or by a third party.

Controls can be classified based on whether they are, preventive, detective or corrective or based on some other parameters like physical, logical or environmental. More classifications are also possible, based on the assets they protect.

1.9 Audit Planning

The auditors should obtain an understanding of the organization Internal Process of

- (a) accounting of Transactions
- (b) reporting to the GSTN Portal
- (c) reconciliation of filed data and
- (d) internal control systems implemented

To plan the audit and develop an effective audit approach to meet audit requirements.

In planning the portions of the audit which may be affected by the client's CIS environment, the auditors should obtain an understanding of the significance and complexity of the CIS activities and the availability of data for use in the audit.

Preliminary Review

Before starting his work, the GST Auditor shall conduct a preliminary review to assess the CIS controls and the risks that could impact his work by considering the following points:

- Knowledge of the Business
- Understanding the technology deployed
- Understanding Internal Control System
- Risk assessment and Materiality

1.10. Various Returns Under GST

Following are the various forms to be filed under GST Act

- **GSTR 9:** GSTR 9 should be filed by the regular taxpayers filing GSTR 1, GSTR 2, GSTR 3
- **GSTR 9A:** GSTR 9A should be filed by the persons registered under composition scheme under GST.
- **GSTR 9B:** To be filed by e-commerce operators

- **GSTR 9C:** Should be by the taxpayers whose annual turnover exceeds ₹ 2 Crores during the financial year. All such taxpayers are also required to get their accounts audited and file a copy of audited annual accounts and reconciliation statement of tax already paid and tax payable as per audited accounts alongwith GSTR 9C.

GSTR 9 - Annual Return Filing, Format, Eligibility & Rules

GSTR 9 form is an annual return to be filed once in a year by the registered taxpayers under GST including those registered under composition levy scheme. It consists of details regarding the supplies made and received during the year under different tax heads i.e. CGST, SGST and IGST. It consolidates the information furnished in the monthly/quarterly returns during the year.

All the registered taxable persons under GST must file GSTR 9 form. However, the following persons are **not** required to file GSTR 9

- Casual Taxable Person
- Input service distributors
- Non-resident taxable persons
- Persons paying TDS under section 51 of GST Act.

Details required in the GSTR 9

Sr. No.	Parts of GSTR – 9	Information Required
1.	Part – I	Basic details of the taxpayer. This detail will be auto-populated.
2.	Part – II	Details of Outward and Inward supplies declared during the financial year(FY). This detail must be picked up by consolidating summary from all GST returns filed in previous FY.
3.	Part – III	Details of ITC declared in returns filed during the FY. This will be summarised values picked up from all the GST returns filed in previous FY.
4.	Part – IV	Details of tax paid as declared in returns filed during the FY.
5.	Part – V	Particulars of the transactions for the previous FY declared in returns of April to September of current FY or up to the date of filing of annual returns of previous FY whichever is earlier. Usually, the summary of amendment or omission entries belonging to previous FY but reported in Current FY would be segregated and declared here.
6	Part – VI	Other information comprising details of : GST demands and refunds, HSN wise summary of the quantity of goods supplied and received with its corresponding Tax details against each HSN code, Late Fees payable and paid details, segregation of inwards supplies received from different categories of taxpayers like Composition dealers, deemed supply and goods supplied on approval basis.

Analysis of GSTR 9C

Form GSTR 9C is the relevant form prescribed in terms of Rule 80(3) of the CGST Rules. This has two parts to it: Part A titled the “Reconciliation Statement” and Part B is the Certification portion. Part I captures the basic details of the Registered Person under Part A (Reconciliation Statement) which has 4 Sl. Nos. Each of the Sl. Nos is significant in terms of the disclosure requirement.

Comparative view of Form GSTR-9 and GSTR 9C

Sr. No.	Return in GSTR 9	Return in GSTR 9C
1.	It is the report of a formal or official character giving information	Means the formal statement to be made under the provisions of the Act the veracity of which needs an enquiry as to its correctness
2.	Prescribed under a Statute	Prescribed under a Statute
3.	To be filed by all registered persons	To be filed only if the aggregate turnover in a financial year exceeds ₹ 2 Crores.
4.	Not required to be filed by a Casual Taxable Person, Non-Resident Taxable Person, Input Service Distributor, Online Information and Database Access Retrieval Service, Composition Dealers, persons required to deduct taxes under Section 51 and persons required to collect taxes under Section 52.	Not required to be filed by a Casual Taxable Person, Non-Resident Taxable Person, Input Service Distributor, Online Information and Database Access Retrieval Service, Composition Dealers, persons required to deduct taxes under Section 51 and persons required to collect taxes under Section 52.
5.	No need to annex financials	Financials to be annexed
6.	A plain reading of the relevant provisions indicate that the said Annual Return in GSTR 9 and the Reconciliation Statement in GSTR 9C must be filed together. However, if one were to peruse GSTR 9C there are certain tables which state that “turnover as declared in annual return” indicating thereby that GSTR 9C is dependent on GSTR 9. This anomaly can be addressed only on the basis of the finalized annual return initialled and presented to the GST auditor by the registered person.	

Analysis of Form GSTR 9C**PART-I - Sl. No. 1 : Financial Year**

This Sl. No. requires disclosure of the “financial year” to which the Reconciliation Statement in Part A relates to. The expression financial year has not been defined under the GST laws. However, in terms of the General Clauses Act “financial year” shall mean the year commencing on the 1st day of April and closing on the 31st day of March.

Part I - Sl. No. 2 : GSTIN

GSTIN means the “Goods and Services tax Identification Number” of the tax payer or the Registered Person. Each tax payer, on his successful registration, would be assigned a State-wise PAN based 15-digit GSTIN. The first 2 digits of the said GSTIN would represent the State code, as per the Indian Census 2011 viz., Karnataka 29, Delhi 07 etc. The next 10 digits would be the PAN of the tax payer. It implies that if one is not allotted a PAN, he cannot be registered under the GST Laws. The 13th digit would be based on the number of registrations within a State, while the 14th digit would be assigned based on the nature of the business of the Registered person. The 15th digit is a check code which can be a “numeral” or an “alphabet”.

In the case of a Non-resident taxable person (“NRTP”), Rule 13 of the CGST Rules permits registration even without PAN. In such case, registration shall be granted based on the tax identification number or unique number on the basis of which the entity is identified by the Government where the said entity is based.

GSTIN based on PAN ought to be validated. As and when such errors are noticed during the GST audit, the GST Auditor should disclose such information appropriately. He must also consider other implications due to such errors.

Part I - Sl. No. 3A and 3B: Legal Name and Trade Name

The word “trade” used in Sl.No. 3B of Part A may not be limited to occupation or business. It could be a connotation. The word “trade” ought to be understood in its ordinary sense, without any reference to “business”. For instance, “Indigo” could be a trade name while the legal name is “InterGlobe Aviation Limited”.

Therefore, understood, trade name is used by trade and industry to identify their businesses symbolizing their reputation. Caution must be exercised in listing the trade name and legal name in Sl. Nos. 3A and 3B.

It is possible that some Registered Persons may not have a trade name. In such situations, Sl.No. 3B of Part A would not be applicable. Therefore, NOT APPLICABLE is to be stated in Part A which could be verified from the <<auto populated>> data.

The legal name and trade name ought to be verified with the certificate of registration issued by the tax department in Form GST REG – 06. Similarly, if the Registered Person is a company registered under the Companies Act, 2013, the legal name / trade name can be verified with the Certificate of Incorporation and in case of partnership firm by the certificate issued by the Registrar of Firms.

Therefore, the distinction between a trade name and a legal name must be clearly understood and borne out in Sl.No. 3A and 3B of Part A, and should not be used interchangeably.

Part I - Sl. No. 4 : Are you liable to audit under any Act?

The Sl. No. “Are you liable to audit under any Act?” mentioned in GSTR 9C needs elaboration. It is possible that an entity could be subjected to audit under several statutes. For instance a

Proprietary Concern could be subject to audit under the Income tax Act, 1961 and a Private Limited Company could be subject to the

statutory audit under the Companies Act, 2013 as well as under the Income tax Act. Similarly, a society registered under the Societies Registration Act may be subject to audit under that Act as well as under the Income tax Act. This fact must be specified in Sl. No. 4. It is currently not clear if the response to this question would be YES / NO or would be to select from a drop-down menu the statute under which the tax payer has been subjected to audit.

Part II - Sl. No. 5A: turnover (including exports) as per audited financial statements for the State / UT (For multi-GSTIN units under same PAN the turnover shall be derived from the audited Annual Financial Statement)

Sl. No. 5A is intended to report the turnover as per the audited Annual Financial Statement for a GSTIN. There may be cases where multiple GSTINs (State-wise) registrations exist for the same PAN. This is common for persons / entities with presence over multiple States or in respect of multiple registration in a single State/UT. The Government vide its instructions has indicated that such persons / entities would have to internally derive their GSTIN wise turnover and provide to the Auditor to verify and declare in this Sl. No.

The Auditor must bear in mind that in a real business environment several entities may not be in a position to provide such derived turnovers. In such a situation, the Auditor has to engage suitably himself and carryout this exercise.

Checks and balances to validate correctness and completeness:

To ensure completeness and correctness of the details of turnover to be declared under this Sl.No., the following checks could be used:

1. turnover in State/UT (in case of single registration) must reconcile to the turnover disclosed in the audited financial statements;
2. turnover in State/UT (in case of multiple registration) must reconcile to the turnover as recorded in the books of accounts of each registration;
3. Master reconciliation to ensure that the details of turnover declared for different registrations (in case of multiple registrations either due to presence in multiple States/UTs' or due to unit(s) in SEZ) with the total turnover of the entity

List of documents

The following list of documents could be obtained by the Auditor for the purpose of declaring the details of turnover under this Sl. No.:

- a. Annual Financial Statements
- b. Registrant wise Trial Balance to facilitate furnishing the Form GSTR 9C for each registrant;
- c. Communication with the other Auditor to obtain details of the turnover declared by them to ensure completeness and holistic reconciliation of turnover of the Registered Person;

- d. Form GSTR 9C, if already filed by a different Auditor, in case of multiple registrations of the Registered Person;
- e. GST (Viz. Form GSTR 3B and Form GSTR 1) returns filed by the Registered Person to ensure that the turnover declared in the returns match the turnover captured in the audited financial statements
- f. Income tax Returns (ITR) to ensure that the turnover details are reconciled with the turnover per GST.

SI. No. 5B. Unbilled revenue at the beginning of Financial Year

To comprehend the scope of these SI. Nos, there is need to understand the concept of 'Unbilled revenue'. In simple terms, unbilled revenue is the revenue recognized in the books of accounts before the issue of an invoice at the end of a particular period. Accounting Standard - 9 / IND AS 115 provides for recognition of revenue on full completion / partial completion of the services though the due date for issuing invoice as per the contract would be on a later date. It is advisable to refer to AS-9 / IND AS 115 for a better understanding of the concept.

Clause 5B requires the addition of unbilled revenue at the beginning of a Financial Year. Unbilled revenue which was recorded in the books of accounts on the basis of accrual system of accounting in the earlier financial year for which the invoice is issued under the GST law is required to be declared here. In other words, when GST is payable during the financial year on such revenue (which was recognized as income in the earlier year), the value of such revenue is to be declared here.

Unbilled revenue would appear in the profit and loss account of the previous year. For information of unbilled revenue at the beginning of a Financial Year, reference may be made to previous year's audited financial statements. However, as the GST was introduced from 1st July 2017 one needs to be careful to exclude invoices raised during the period April 2017 to June 2017 from the computation.

SI. No. 5C Add: Unadjusted advances at the end of the Financial Year

The scope of Part II SI No. 5C and 5I is to make adjustment of Unadjusted Advances to Audited Financials for arriving towards the GSTR 9 turnover.

It is a business practice to collect advances from customers before effecting supplies. When an advance is received, since the goods and / or services would not have been delivered / rendered, the revenue is not yet earned, whereby this advance would be recorded as a liability (either as current liability or long-term liability) in the balance sheet as at the end of the financial year.

For Supply of Goods

Sec 12(2): The time of supply of goods shall be the earlier of the following dates, namely: —

- (a) the date of issue of invoice by the supplier or the last date on which he is required, under sub-Section (1) of Section 31, to issue the invoice with respect to the supply; or

(b) ***the date on which the supplier receives payment with respect to the supply:***

The Government issued NN 40/2017-CT dated 13th October 2017 in terms of Section 148 of CGST Act to relax Registered Persons having aggregate turnover less than ₹ 1.5 crores from paying tax on such advances. This facility was extended to all Registered Persons without threshold limit vide NN 66/2017-Central tax, dated 15th Nov 2017 but only in the case of supply of goods.

In terms of the above notifications, an Auditor has to examine whether the Registered Person has paid tax on advances till 15th Nov 2017.

For Supply of Services

CGST Section 13 (2)

The time of supply of services shall be the earliest of the following dates, namely: —

- (a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under Section 31 or the date of receipt of payment, whichever is earlier; or
- (b) the date of provision of service, if the invoice is not issued within the period prescribed under Section 31 or the ***date of receipt of payment***, whichever is earlier; or
- (c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:

Explanation—For the purposes of clauses (a) and (b)—

- the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;
- “the date of receipt of payment” shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

Therefore, any advances received from customers before the date of supply, on receipt of advance GST, have to be discharged.

Sl. No. 5D. Deemed Supply under Schedule I

Clause 5D seeks to cover aggregate value of four classes of deemed supplies transactions specified under Schedule I of the CGST Act. Any deemed supply which is already reported as part of the turnover in the audited Annual Financial Statements is not required to be included in this Sl. No.

As the requirement of this Sl. No. is to report the transactions which were not reported in the financial statements, though the same are reported in the returns filed since they are treated as deemed supplies under the GST law, there is no direct source will indicate the value of deemed supplies under any part of the returns or statement filed. Details regarding this have to be extracted from the books/records.

E-Way bills raised would be a good guiding factor to identify such instances in respect of goods while an Auditor may have to delve deeper to understand the transactions relating to services. For instance, transactions relating to stock transfer of goods may be extracted from delivery challans or on an analysis of e-way bills, whereas transactions of service transfers will be based on an understanding of the nature business. It is better to take proper management representation for the completeness of these transactions.

The Auditor should look beyond the books of accounts and look for alternative evidence and information for reporting in Sl. No. 5D. Such as

1. Permanent Transfer or disposal of business assets where input tax credit has been availed on such assets
2. Supply of goods or services or both between related persons or between distinct persons as specified in Section 25, when made in the course or furtherance of business.
3. Supply of goods-
 - (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
 - (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.

Disclosure by Auditor

1. The Auditor has to assess the systems and processes adopted by the entity with a view to identifying such transactions. Suitable disclosure may need to be provided by the Auditor for the basis of such identification and its treatment under the GST Laws.
2. If there is any system / methodology for such an identification, then the Audit has to assess the completeness and correctness of the said system so as to cover all the aspects;
3. To examine records and to confirm if the system is followed consistently.
4. If there is no proper system, to consider the possibility of any transactions that may have escaped attention.
5. In cases of deemed supply transactions, it would be relevant to include suitable disclosures even in the management representation letter.

Sl. No.5E. Credit notes issued after the end of the financial year but reflected in the annual return.

This Sl. No. mandates reporting of the aggregate value of credit notes which were issued after Mar 31, 2018 in respect of any supply accounted in the current financial year (2018-19) but for credit notes were reflected in the annual return (GSTR –9 for the financial year 2017-18). But, it is uncommon, although not impossible, for credit notes dated beyond Apr 1, 2018 to be given effect in the financial accounts. This Sl. No. applies only in such rare cases. For the most part, this Sl. No. may well be 'nil'.

5E of GSTR 9C contains information pertaining to credit notes which were issued after 31st of March for any supply accounted in the current financial year but such credit notes were reflected in the annual return (GSTR-9).

Sl. No. 5F. Trade discounts accounted for in the audited Annual Financial Statement but are not permissible under GST

Clause 5F requires disclosure of trade discounts which have been given effect to, in the audited financial statements but which are not permissible as part of deductions from the value of supply under the GST Laws.

This data / information can generally be obtained from the credit side of the Profit and Loss account. It is also a business practice that trade discounts would be netted off against the turnover of outward supplies. In the case of entities with multiple registration, a separate statement is to be obtained for each GSTIN reconciling the total with the amount disclosed in the financials.

Non-allowance of the same has to be identified on the basis of the documents maintained by looking into the conditions of allowance as deduction against the supply made as per Section 15(3) of the CGST Act.

Since it may be difficult to verify all the cases of trade discounts by the Auditor to consider the eligibility for deduction, it may have to adopt some other audit techniques to ascertain the same. Also, it would be important to obtain the appropriate management representation letter from the entity.

The following are the control checks that a person should perform for validation of the amounts reported under this head:

- (a) The valuation of trade discounts for the purposes of disclosures under this head, has to be clearly documented.
- (b) The input tax credit reflected in GSTR-2A attributable to such trade discounts has to be maintained.
- (c) The trade discount has to be demarcated between the supplies made in the erstwhile law and the GST regime.
- (d) The customer agreements have to be scrutinised to determine the quantum of nonallowable discounts.

Sl. No. 5G: turnover from April 2017 to June 2017

In terms of this Sl. No. the turnovers included in the audited financial statement for the period April 2017 to June 2017 shall be declared and deducted from the annual turnover to arrive at the turnover as per the GST Laws.

There could be cases where the books of accounts are closed quarterly, or financial statements are drawn up quarterly. In such cases, the quarterly turnovers can be adopted, and adjustments can be made relating to the point of taxation under the excise law, State level vat law and service

tax law to arrive at taxable values as per the erstwhile laws. The said value must be entered under this head.

Turnovers forming part of the tax periods 1.4.17 to 30.06.17, which were *liable* to tax under the erstwhile laws as per the provisions relating to the point of taxation rules should be deducted from the turnover.

It may be noted that tax is liable to be paid on removal in case of excise/ on sale under VAT law/ on provision of service or issue of invoice as the case may be under service tax law provisions and not on accrual basis or cash basis (which is the basis of accounting and hence basis of annual turnover as per financial statements). Thus, the criteria for reducing turnover for the period April 2017 to June 2017 is not when the revenue was recognised as per relevant accounting standards, but whether or not the said amounts were liable to tax under the erstwhile laws as per the point of taxation under the said laws.

Amounts forming part of turnover relating to works contracts, where consideration was received during the period April 2017 to June 2017, but supplies were effected or services were rendered after June 2017, needs to be deducted under this Sl. No. because the said consideration was liable to tax on receipt basis as per the service tax law and State level VAT laws. However, the self-same value needs to be added back in Sl. No. 5(O), since the aforesaid supplies would be liable to tax under the GST law also as per Section 142(11)(c). At this juncture, it is important to note that the relevant service tax and value added tax paid on such advances for which supplies are effected during the GST regime would be available as CGST / SGST credit as per section 142(11)(c) of the CGST Act.

It is opportune to mention at this stage that there is a saving clause in section 142(11)(a) and (b) of CGST/ SGST Act, which states that transactions liable to VAT/ service tax would not be eligible to GST in case the provision of time of supply under the GST also stands attracted to the very same transaction. There is no such saving clause mentioned for excise duty (i.e. for goods manufactured and *cleared* from April 2017 to June 2017) but sold after June 2017 (e.g.: clearances made on sale or approval basis prior to July 2017, sold after July 2017). However, N.No.12/17 CE dt.30.6.17 grants exemption in the case of goods manufactured prior to 30.6.2017 but cleared/ supplied after 1.7.2017, provided GST is leviable on such goods.

Illustration

Please specify which of the following supplies would form part of reporting under turnover for the period April 2017 to June 2017

- (a) Services were provided during the period June 2017. The service was completed on 20.6.2017, but invoice for the service was raised only on 1.8.2017.

Reply: Since the invoice was raised after a period of thirty days, service tax is liable to be paid for the period ending June 2017 as per the proviso to Rule 3(a) of the Clause of Taxation Rules. Since the said transaction is liable to service tax, it is not liable to GST as per Section 142(11)(b) of the CGST Act, though the invoice is raised during the GST

regime. Therefore, the said value of invoice must be deducted for the period April 17 to June 2017.

- (b) Service has been provided in the month of May 17 amounting to ₹ 1,00,000/-. Invoice has been raised within 30 days. There was a deficiency in the provision of service. The customer has paid only ₹ 20,000/-. The company has issued credit note amounting to ₹ 80,000/- on 31.3.2018 and closed the customer's account. Should any amount be reduced for the period April 2017 to June 2017. Are any adjustments required to be made for the period July 2017 to March 2018?

Reply: As per S.142(2)(b) of the GST Act, where in pursuance of contract entered into prior to the appointed date, where the price of service is revised downwards after 1.7.2017 and the provider issues a credit note within 30 days of such price revision, such credit note shall be deemed to have been issued in respect of outward supply, provided the recipient has reduced his input tax credit. Assuming the input tax credit is reduced by the recipient, the credit note shall be reduced from outward supply for the tax period March 2018. Thus ₹ 80,000/- would be reduced from the GST turnover for the period of March 2018. The said amount of ₹ 80,000/- would be reduced from the turnover in the month of March 2018 because credit note is issued in the month of March 2018. Thus, only ₹ 20,000/- is required to be reduced for the period April 2017 to June 2017, though invoice for ₹ 1,00,000/- is issued in the month of May 2017 and service tax is paid on ₹ 1,00,000/- in the month of May 2017.

Sl. No. 5H. Unbilled revenue at the end of Financial Year

Unbilled revenue which was recorded in the books of accounts on the basis of accrual system of accounting during the current financial year, but GST was not payable on such revenue in the same financial year shall be declared here.

Sl. No. 5I Less: Unadjusted Advances at the beginning of the Financial Year

Value of all advances for which GST has not been paid but the same has been recognized as revenue in the audited Annual Financial Statement shall be declared here.

Sl. No. - 5J. Credit notes accounted for in the audited Annual Financial Statement but are not permissible under GST

This Sl. No. has to be filled up with the information available in the audited Financial Statements whereas such amounts have not been adjusted against the supplies in the GST returns. All the adjustments made to the turnover where there is an effect of reduction due to a Credit Note issued have to be quantified for the purpose of reconciliation between the books of accounts and the GST returns to be filed. There could be an adjustment made to the receivable and payable in the books of accounts. Care should be exercised to extract the information of credit note that only calls for reduction of the turnover.

Auditor has to disclose the practice adopted for collating relevant information from the books of accounts and the basis for determining the adjustments eligible for reconciliation purposes.

Sl. No. 5K. Adjustments on account of supply of goods by SEZ units to DTA Units

Such outward supplies are not required to be reported by SEZ units in their GST Returns and hence the data cannot be retrieved from the returns filed by such SEZ units.

SEZ units are required to maintain records of the assets / goods admitted into the SEZ unit and also the details of disposal of such goods. Such records can assist an Auditor in identifying the outward supply made by the SEZ unit. Additionally, disposal of capital goods would be disclosed as deletion in the Fixed Asset Registers.

Sl. No. 5L. Turnover for the period under composition scheme

There may be cases where Registered Persons might have opted out of the composition scheme during the year. Their turnover as per the audited Annual Financial Statement would include turnover both as composition taxpayer as well as normal taxpayer. Therefore, the turnover for which GST was paid under the composition scheme shall be declared under this Sl. No. 5L.

A person registered under the composition scheme who has opted out of the scheme should file both GSTR 9 and GSTR 9A. An Auditor may note that even a person violating the conditions stipulated in Section 10 of the CGST Act or Rule 5 of the CGST Rules or Notification CT 8/2017 dated 27/06/2017 would stand to exit the scheme. In such cases, the composition person should file Form COMP-4 and opt out of the scheme.

Sl. No. 5M. Adjustments in turnover under section 15 and rules thereunder

There may be cases where the taxable value and the invoice value differ due to valuation principles under section 15 of the CGST Act, 2017 and rules thereunder. Therefore, any difference between the turnover reported in the Annual Return (GSTR 9) and turnover reported in the audited Annual Financial Statement due to difference in valuation of supplies shall be declared here.

In terms of Section 9 of the CGST Act, GST is applicable on supplies of goods or services on the value of supply as determined under Section 15. Section 15 of the CGST, 2017 provides that the transaction value (value at which the supply has been transacted) would be the basis for the computation of tax when two conditions are satisfied

1. The price actually paid or payable should be the sole consideration for the supply; and
2. The supplier and the recipient are not related.

Even if the price for a supply is agreed to be the transaction value, few adjustments (provided for under Section 15 itself) are required to be carried out to such price for the purpose of the computation of value on which GST is required to be paid.

Valuation Rules also provide instances where the value of a transaction as per the financial records can be significantly different from the value to be considered for discharge of taxes under the GST.

There may be cases where the taxable value and the invoice value differ due to valuation principles under Section 15 of the CGST Act and rules thereunder. Therefore, any difference between the turnover reported in the Annual Return (GSTR 9) and turnover reported in the audited Annual Financial Statement due to differences in the valuation of supplies shall be declared here.

Sl. No. 5N. Adjustments in turnover due to foreign exchange fluctuations (+/-)

Any difference between the turnover reported in the Annual Return (GSTR9) and turnover reported in the audited Annual Financial Statement due to foreign exchange fluctuations shall be declared here.

Illustration

1. *PQR Limited has exported goods to a Company located in USA. The value of goods is \$100,000. The exchange rate (Rs/\$) on the date of filing Shipping Bill is*

CBEC Notified ₹ 65

RBI Reference Rate ₹ 68

At the time of receiving money, the bank exchanged the foreign currency at ₹ 70.

Solution

For the purpose of GST Returns, the exchange rate would be ₹ 65 and the exports to be disclosed in the GST Returns would be ₹ 65,00,000. For the purpose of accounting records, the exchange rate would be ₹ 68 and the exports recorded in the books would be ₹ 68,00,000. The difference in revenue being ₹ 300,000 would have to be **reduced** from the Annual turnover as per the financials to arrive at the revenue as per GSTR 9.

Additionally, difference in the amount booked in the accounts and actual amount received being ₹ 70 – ₹ 68 = ₹ 2 x \$100,000 = ₹ 200,000 would be credited to the Profit and Loss Account as Forex Gain which again needs to be **reduced** from the Annual turnover as per the financials to arrive at the revenue as per GSTR 9.

2. *PQR Limited has exported goods to a Company located in USA. The value of goods is \$100,000. The exchange rate (Rs/\$) on the date of filing Shipping Bill is*

CBEC Notified ₹ 65

RBI Reference Rate ₹ 68

At the time of receiving money, the bank exchanged the foreign currency at ₹ 66.

Solution: For the purpose of GST Returns, the exchange rate would be ₹ 65 and the exports to be disclosed in the GST Returns would be ₹ 65,00,000. For the purpose of accounting records, the exchange rate would be ₹ 68 and the exports recorded in the books would be ₹ 68,00,000. The difference in revenue being ₹ 300,000 would have to be **reduced** from the Annual turnover as per the financials to arrive at the revenue as per GSTR 9.

Additionally, the difference in the amount booked in the accounts and actual amount received being ₹ 66 – ₹ 68 = (-) ₹ 2 x \$100,000 = (-) ₹ 200,000 would be debited to the Profit and Loss Account as Forex Loss which again needs to be **added** from the Annual turnover as per the financials to arrive at the revenue as per GSTR 9.

Sl. No. 5O. Adjustments in turnover due to reasons not listed above (+/-)

Clause 5O is a residuary Sl.No. which requires disclosure of reconciliation details relating to adjustments for which specific column is not provided under any other Sl.No.s under Item No. 5. This Sl.No. may contain an option to insert multiple line items to add / reduce the amount from the gross turnover declared in the audited Annual Financial Statements so as to reconcile the same with the turnover declared in Form GSTR 9.

Sl. No. 5P: Annual turnover after adjustments as above

The reconciliation statement in Sl.No.5P is auto-populated and based on the values declared against Sl. Nos. 5B to 5O.

Sl. No.5Q: turnover as declared in Annual Return (GSTR 9)

Clause 5Q requires a taxable person to disclose his turnover as per the Annual Return i.e., GSTR 9 filed for the relevant financial year. Therefore, the turnover arrived at Sl. No. 5N as per the Annual Return in GSTR – 9 should be declared under Sl. No. 5Q. Accordingly, the Annual Return in GSTR – 9 should be filed along with or before filing the reconciliation statement in Form GSTR – 9C.

The turnover arrived at Sl. No. 5P of Form GSTR 9C as stated earlier, should match with the turnover as declared in the Annual Return if the turnover is reckoned appropriately as per the GST law and declared in the returns filed in GSTR – 3B and the annual return in GSTR – 9. The turnover as arrived at Sl. No. 5N of the Annual Return in Form GSTR 9 shall be the turnover to be declared against Sl. No. 5Q.

The turnover as declared in the monthly return in GSTR – 1 by virtue of which the same is declared in the annual return in GSTR – 9 may not include all the taxable outward supplies on account of omissions or errors. Such differences in the turnover should not be adjusted under Sl. No. 5O for the purpose of matching the turnover between the annual return and the audited annual financial statements. The turnover as arrived at Sl. No. 5N of the Annual Return in Form GSTR 9 shall be declared against Sl. No. 5Q of GSTR 9C. The differences in turnover as per the audited annual financial statement and the turnover as per the annual return in GSTR – 9 should be reconciled and the reasons thereof should be mentioned at Part II Sl. No. 6.

Sl. No. 5R: non-reconciled turnover (Q-P)

The un-reconciled turnover at Sl. No. 5R is the difference between the 'Annual turnover after adjustments as above' at Sl.No. 5P and 'turnover as declared in the Annual Returns (GSTR 9)' as declared at Sl.No. 5Q. The difference would be auto generated.

The value of supplies either taxable, exempted or non-GST outward supplies not declared in the monthly returns and annual returns would form part of the auto-generated value at Sl.No. 5R. The reasons for such un-reconciled turnover should be given under Part II Sl. No. 6 of the reconciliation statement in GSTR – 9C. This could lead to any one of the following two situations:

(i) The 'Annual turnover after adjustments as above' at Sl.No. 5P is higher than the 'turnover as declared in the Annual Return (GSTR 9)' at Sl.No. 5Q:

This situation arises if a taxable person has not declared some taxable outward supplies, exempted supplies and non-GST outward supplies. The value of taxable supplies forming part of the differences should be declared under Part III Sl. No. 11 and the applicable taxes thereon shall be paid appropriately by cash. The differences in exempt supplies and non-GST outward supplies shall be declared against Part II Sl. No. 7B or 7C *as the case may be* and reduction from the total turnover may be sought.

(ii) The 'Annual turnover after adjustments as above' at Sl.No. 5P is lower than the 'turnover as declared in the Annual Return (GSTR 9)' at Sl.No. 5Q:

This situation may arise if a taxable person has erroneously declared a higher turnover in the monthly return in GSTR – 3B and the annual return in GSTR – 9. The reconciliation statement in GSTR – 9C does not specifically provide to claim the benefit of tax paid erroneously. The statement which would be made available on the GST portal should be checked to verify whether the taxable value at Sl. No. 11 may be declared in the negative so that refund of tax remitted on such turnover can be claimed. Clarification on this issue is awaited.

Sl. No. 6- Reasons for Un - Reconciled difference in Annual Gross turnover

This portion of GSTR 9C identifies the turnover differences to be placed on record for explaining the differences between the GST Returns and the Audited Financials. All the information filled up in the GST returns has to be flown from the Books of Accounts. However, the un-reconciled turnover on account of disclosure norms as per the Accounting Standard issued by the ICAI or other statutory provisions or practices adopted by the Registered Person on a special approval basis, which are not reconciled at turnover level should be disclosed in this Sl. No.

For instance, the mechanism for the determination of Revenue in case of Sale of a Capital Asset shall differ for the value to be disclosed in the GST Returns compared with that of the practice adopted in the Book of Accounts

Examine the turnover available as per the Audited Financial Statements with that of the Annual turnover determined as per GSTR 9. Information available in Notes to Accounts as

per the Audited Financial statements gives the additional information for the Exceptions if any to the regular practice of maintenance of the Books of Accounts.

Information has to be compared on equitable basis for clarity on what is to be compared as turnover considered in the Financial Statements with that of the turnover compared in the GST Returns. For instance, turnover on the sale of Fixed Assets should be considered for the whole consideration value in the GST Returns. However, only Profit/ Loss on such sale shall be considered in the Books of Accounts. For having an equitable basis for both the turnovers, we need to gross up the Profit/Loss in the Books of Accounts for a matching comparison with the GST Returns.

The Auditor shall make a reference to the basis for reconciliation of the turnover related adjustments called for on the basis of the information available in the Notes to Accounts and any special adjustments caused by reference to other statutory requirements.

The Auditor needs to report whether the Books and Returns can be compared and quantify the reasons duly justifiable for the discrepancies reported, if any.

The Auditor should make a disclosure regarding the reasons that come in the way of the reconciliation process or concluded for sake of clarity on taxable nature.

Sl. No. 7B. Value of Exempted, Nil rated, Non-GST supplies, No-Supply turnover

7	RECONCILIATION OF TAXABLE TURNOVER	
7A	Annual Turnover after Adjustments (From 5P Above)	<Auto>
7B	Value of Exempted, Nil Rated, Non-GST supplies, No-Supply Turnover	

Clause 7B requires reduction of value of Exempted, Nil rated, Non-GST supplies, No-Supply turnover from the Annual turnover after adjustments to arrive at taxable turnover.

All the supplies on which tax has not been charged except for exports and reverse charge supplies should be reported under Clause 7B. The information can generally be obtained from the credit side of the Profit and Loss account. In case of a barter transaction, the sale of fixed assets at loss etc would not appear in the profit and loss account. Therefore, that information shall be obtained from the Fixed assets schedule or the stock register. The value of No-supply can be taken as reported in the Books.

Clause 7B essentially comprises the following 4 classes / types of supplies:

- (a) Supplies taxable at a 'NIL' rate of tax; currently there are no goods / services under 'NIL' rate category
- (b) Supplies that are wholly or partially exempted from CGST, SGST or IGST, by way of a notification; E.g.: Milk, water, education service, health care services, etc.,
- (c) Non-taxable supplies as defined under Section 2(78) of the CGST Act – supplies that are not taxable under the Act (viz. alcoholic liquor for human consumption).

- (d) No supplies include the activities covered under Schedule III which are neither a supply of goods nor a supply of services. Examples- Sale of land or completed building, actionable claims, other than lottery, betting, and gambling.

Illustration

The following supplies would form part of the reporting under value of Exempted, Nil rated, Non-GST supplies, No-Supply turnover in the case of a hospital:

- (a) Consultation fees received by the hospital ₹ 2,50,00,000/- (Exempted supply)
- (b) Diagnostic services provided by the hospital ₹ 40,00,000/- (Exempted supply)
- (c) Excess petrol available in the hospital sold to a related party ₹ 10,000/- (Non-GST supply)
- (d) Land sold by the hospital ₹ 5,00,00,000/- (No-supply)

Sl. No. 7C. Zero rated supplies without payment of tax

7C	Zero rated supplies without payment of tax	
----	--	--

Clause 7C of GSTR 9C requires disclosure of value of zero-rated supplies without the payment of tax which forms part of the 'Annual turnover after adjustments (from 5P above)' at Sl.No. 5P. This should also consist of the value of zero-rated supplies which have not been declared in the monthly return / annual return erroneously for the reason that the adjusted turnover at Sl.No. 5P contains even such zero-rated supplies. Therefore, such value of zero-rated supplies should be deducted from the adjusted annual turnover arrived at Sl.No. 5P so as to claim exemption. In short, the zero-rated supplies as recorded in the audited annual financial statements should be declared against Sl.No. 7C provided such zero-rated supplies have also not been declared in monthly returns filed for the period April to September following the relevant financial year.

Zero rated supply under the provisions of GST law means:

- (a) Exports of goods or services or both.
- (b) Supply of goods or services or both to Special Economic Zone developer /Special Economic Zone unit.

The source of information for zero-rated supplies shall be obtained from the outward supply statement in GSTR – 1 and revenue register forming part of books of accounts. The outward supply statement filed in GSTR -1 shall be correlated with the zero-rated supplies declared in the monthly returns in GSTR – 3B.

Sl No. 7D - Supplies on which tax is to be paid by recipient on reverse charge

7D	Supplies on which tax is to be paid by the recipient on reverse charge basis	
----	--	--

Section 2(98) defines reverse charge to mean a case where liability to pay tax is on recipient of supply of goods or service instead of supplier u/s 9(3) and 9(4) of CGST/ SGST Act or S.5(3) or 5(4) of IGST Act.

The Auditor has to verify if the supplier has more than one vertical. One of them vertical must be on forward charge and one on reverse charge. The vertical on reverse charge should be taken under '*supplies on which tax is to be paid by recipient on reverse charge basis*'.

Data entered Table 4B of GSTR 1 (Supplies attracting tax on reverse charge) should be taken as the source for this information. The data would have been entered in Table 4B providing invoice level details.

The aforesaid information should be also entered in Table 3.1(c) (Other outward supplies – Nil rated, exempted) of GSTR 3B.

Table 7 provides for 'Reconciliation of taxable turnover'. Table 7A starts from the Annual turnover after adjustments. The data in Table 7A is auto populated from entries in Table 5P, which refers to 'Annual turnover after adjustments. From the said turnover, the following turnovers are reduced:

- (a) value of the exempted turnover
- (b) nil rated turnover
- (c) Non-GST turnovers
- (d) No Supply turnovers
- (e) Zero rated turnover made without payment of tax

In light of the above, it can be inferred and concluded that the data to be entered under Sl.No. 7D is supplies made by the supplier, on which tax is to be paid by the recipient.

It is reiterated at the sake of repetition that expenses on which tax is paid by Registered person as recipient of service should not be inserted in this column and reduced from Annual Adjusted turnover since table 7 is seeking to reduce items from Annual turnover after adjustments to arrive at turnover of Registered person which is liable to tax.

In case the invoice does not contain the declaration required under Rule 46 or credit has not been reversed under Rule 39, 42 or 43 or tax has been wrongly collected by the supplier on services liable for reverse charge (and retained by the supplier), then such infractions should be reported in the Audit Report because the Audit Report has to have disclosures regarding non-maintenance of records and documents/ observations and inconsistencies relating to reversals of credit.

Illustration

Please state which of the following are liable to reverse charge

- (a) GTA issued a consignment note on 1.1.18. The consignment notes charges GST @ 12%. The consignor has booked the GTA. The recipient has paid the freight to GTA on 'to collect' basis. Would this turnover be mentioned in Table 7D?

- (b) GTA issued a consignment note on 1.1.18. The consignment note does not charges GST. The consignor has booked the GTA. The recipient has paid the freight to GTA on 'to collect' basis. Would this turnover be mentioned in Table 7D?
- (c) Advocate Mr. X has provided legal service and charged GST of ₹ 18 on his invoice of ₹ 100. The advocate's client has paid 118 to the advocate. The advocate has remitted ₹ 18 to government and is of the opinion that the aforesaid transaction should not be reduced in Table 7D. Is the stand taken by the advocate correct?

Solution

1. The Consignment note contains GST @ 12%, so reverse charge does not attract as per N.No.13/17 CT (R) w.e.f 22.8.10. Hence tax has to be paid by GTA under forward charge, and this transaction should not be entered in Table 7D.
2. Since consignment note has not charged GST @ 12%, reverse charge provisions would apply. Tax is to be paid by the person liable to pay freight, that is, the recipient and not the GTA under forward charge. Because of this, the impugned transaction has to be entered in Table 7D.
3. Supplies by a Registered Person, whose suppliers are liable for reverse charge, are to be inserted in Table 7D. Legal service provided by the advocate to his client is liable for reverse charge (assuming all other conditions in reverse charge notification stand satisfied). Hence the impugned transaction should be inserted in Table 7D. GST wrongly collected and paid by the advocate under forward charge will not change the fact that the aforesaid service is liable to reverse charge and hence merits insertion in Table 7D.

It must be ensured that if the supplier has turnover which is liable to both forward charge and reverse charge then the turnover liable to reverse charge should be accounted in FORM 7D. It may be ensured for purposes of control that the aggregate of turnover under forward charge and reverse charge is the total turnover.

Sl. No. 7F - taxable turnover as per liability declared in Annual Return

7F	Taxable turnover as per liability declared in Annual Return (GSTR9)	
----	---	--

Clause 7F of GSTR 9C requires that the taxable turnover as per the liability should be declared in the Annual Return (GSTR 9).

Instruction as per GSTR 9C - taxable turnover as declared in Table 4N of the Annual Return (GSTR 9) shall be declared here. The information must flow from GSTR 9 which contains supplies and advances on which tax is paid. The turnover arrived at Part II Sl. No. 8F of Form GSTR 9C should match the turnover as declared in the Annual Return.

Sl. No.8 Reasons for Un - Reconciled difference in Taxable Turnover

8	Reasons for Un - Reconciled difference in Taxable Turnover	
A	Reason 1	<<Text>>
B	Reason 2	<<Text>>
C	Reason 3	<<Text>>

This part of GSTR 9C identifies the taxable turnover differences to be placed on record for explaining the differences between the GST Returns and the Audited Financials. All the information filled up in the GST returns has to flow from the Books of Accounts. However, the un-reconciled turnover on account of disclosure norms as per the Accounting Standard issued by the ICAI or other statutory provisions or practices adopted by the Registered Person on special approval basis, which are not reconciled at turnover level should be disclosed in this Sl. No.

For instance, the mechanism for the determination of Revenue in case of Sale of a Capital Asset shall differ for the value to be disclosed in the GST Returns compared with that of the practice adopted in the Book of Accounts.

The data which has to be filled up in this table is drawn out of Sl. No.s 5, 6, 7. Further, review of the transactions effected through the E-Way Bill gives details about the exceptional transactions, if any, to be reported through the above reconciliation

Illustration

The following illustrations can be considered for reporting the reconciliation differences:

- (a) Zero-rated supply made by the Registered person during the previous year. If the conditions relevant for the supply have not been complied by the Registered person, then the supplies can be construed to be regular supplies.
- (b) Transaction reported in a delivery challan during the financial year for supply on sale or approval basis beyond a period of six months shall be deemed to be supply under the GST. However, that may not be a sale for revenue recognition in the books of accounts for such a transaction. Assuming the GST returns carry the supply details and no revenue recognition has been done in the books of accounts, this shall call for reconciliation.
- (c) Exemption conditions not fulfilled by the Registered person while exercising the option to supply either a Nil rated or Exemption, shall be reported as Regular Supply.

Part III: Reconciliation of tax Paid

After reconciling the turnover declared and reported in the Audited Financial Statement with turnover declared in Annual Return along with reasons for reconciliation if any, the

relevant Part III of Form 9C requires an Auditor to reconcile the rate-wise liability of tax, total amount payable thereon with tax actually paid as declared in the Annual Return and recommendation of additional tax payable due to non-reconciliation of the taxable value.

Pt. III	Reconciliation of tax paid					
9	Reconciliation of rate wise liability and amount payable thereon					
			Tax payable			
	Description	Taxable Value	Central tax	State tax/ UT tax	Integrated Tax	Cess, if applicable
	1	2	3	4	5	6
A	5%					
B	5% (RC)					
C	12%					
D	12% (RC)					
E	18%					
F	18% (RC)					
G	28%					
H	28% (RC)					
II	3%					
J	0.25%					
K	0.10%					
L	Interest					
M	Late Fee					
N	Penalty					
O	Others					
P	Total amount to be paid as per tables above		<Auto>	<Auto>	<Auto>	<Auto>
Q	Total amount paid as declared in Annual Return (GSTR 9)					
R	Un-reconciled payment of amount				PT 1	

The relevant Table 9 requires the Auditor to provide details of taxable value along with the Gross tax Liability booked by the Registered Person whose Form 9C is being filed by him. The said tax liability needs to be reported rate wise in Table 9. Further, the taxable value and liability of tax on which the given Registered Person is required to pay tax under Reverse Charge

Mechanism are also required to be reported rate-wise separately. After reporting of the same, the details of Total tax payable for the Financial Year 2017-18 as declared in GSTR 9 i.e. under the Annual Return is also required to be disclosed. The given table also requires the disclosure of Interest, Late Fees and Penalty Payable.

From the scheme of Table 9 it is clear that the Auditor is required to report the GST payable rate wise dissected total taxable turnover calculated in Table 7E under Part II of GSTR 9C. Once the taxable value is reported under various rates as specified in sub-parts A, C, E, G, I, J, and K, the relevant amount of tax shall be calculated by the system.

The values that are to be reported in Table 9 should be taxable value as reported under Table 7E of GSTR 9C, i.e. Adjusted Total turnover for the FY 2017-18 under the GST and the amount of tax (rate wise) should be derived mathematically.

7E	Taxable turnover as per adjustments above (A-B-C-D)	<Auto>
----	---	--------

The details of adjusted Total turnover needs to be broken down in accordance with the GST rates based on the reports generated from the books of accounts and necessary adjustments made in Part II of GSTR 9C which have not impacted the books of accounts of the Registered Person should also be considered rate-wise for the purpose of finding the taxable value.

Once all the details are entered, and the difference in tax payable as per the books with actual tax payable is identified, the amounts of non-reconciliation shall be raised as per CGST, SGST/IGST and Cess wise. On these amounts the Auditor shall be required to disclose the reasons in Table 10.

Sl. No.10: Reasons for un-reconciled payment of amount

10	Reasons for un-reconciled payment of amount	
A	Reason 1	<<Text>>
B	Reason 2	<<Text>>
C	Reason 3	<<Text>>

The given table mandates the Auditor to identify and disclose the reasons for un-reconciled payment of amount of tax, Interest, Penalty, Cess and Others. Reasons, amounts along with description of reason needs to be disclosed.

The Auditor needs to identify the reasons due to which some amount is reflected in Table 9R.

The various reasons can be as under

(A) GSTR 3B shows less/more tax paid

- GSTR 1 matches with the audited financials with regard to the tax payable
- GSTR 3B shows the tax paid differently from the books of accounts.

In this situation, even though Table 6 and 8 may not show any differences as given in point (i) above, Table 10 would show a difference of the amount of tax to be paid

and tax actually paid. So, any tax payable occurring due to this would automatically form part of Table 11 and the Auditor's recommendations in Part V.

In case any excess tax has been paid, there will be no reporting in Table 11. There is also no provision of negative reporting in Table 11.

(B) GSTR 1 and GSTR 3B inter se matching but not with the Audited Financials

- GSTR 3B and GSTR 1 match with each other
- Matched GSTR 1 and GSTR 3B are different with regard to the audited financial statements.

Such differences would be depicted in Table 6, 8 and 10. If the turnover is lesser than what it is in the audited financials, they could indicate a short payment of tax, if differences thereof are not explained. The cause of the differences needs to be clearly identified. Taking the values after considering the audited financial statements Table 10 will be compared with the actual tax paid as per GSTR 3B. As there is a difference between the audited financial statements and GSTR 3B, an unreconciled difference would be shown in Table 10.

(C) Taxable turnover as per the books matching in GSTR 1 and GSTR 3B but tax is not matching.

- The value of taxable supply in Form GSTR 3B matches with that in GSTR 1
- Tax payable as self-assessed in GSTR 3B is different from what is shown in GSTR 1.

The possible reason for the same can be because of the difference in the classification of supply in GSTR 1 and GSTR 3B. The reporting shall be required in Table 10 only in such cases where an error has occurred in Form GSTR 3B due to reasons of classification like the following

- HSN Disputes
- GST rate disputes
- Inter State vs Intra State Supply
- Place of Supply
- Type of Supply Dispute- taxable, Exempt, Nil rated

As the amount of tax in Table 9P shall be calculated on the basis of turnover reported and shall be treated as correct. Any deviation from the same shall be disclosed in Table 10.

It has to be ensured that for the whole amount of non-reconciliation reported in Table 9, the reason wise quantification of the same is done in Table 10.

Sl. No. 11: Additional amount payable but not paid (due to reasons specified under Tables 6, 8 and 10 above)

11	Additional amount payable but not paid (due to reasons specified under Tables 6,8 and 10 above)					
			To be paid through Cash			
	Description	Taxable Value	Central tax	State tax/ UT tax	Integrated tax	Cess, if applicabl e
	1	2	3	4	5	6
	5%					
	12%					
	18%					
	28%					
	3%					
	0.25%					
	0.10%					
	Interest					
	Late Fee					
	Penalty					
	Others (please specify)					

In the Table 11 under Part III of the GSTR 9C, the amount of tax, interest, penalty, late fees and their dues which are payable in accordance with the non-reconciliation reported under Table 6, 8 and 10 but not actually paid as declared in Annual Return in GSTR 9 are to be reported with rate-wise bifurcation.

A) For Additional tax Payable

After due verification and analysis of the amounts along with reasons reported in Table 6, 8 and 10 in the GSTR 9C pertaining to non-reconciliation of Annual Gross turnover, taxable turnover and tax payable, the details of taxable value needs to be identified GST rate-wise which should be reported in Table 11 on which appropriate tax has not been paid as declared in the Annual Return i.e. Form GSTR 9.

There may be several reasons due to which amounts may be reported in Table 6 and 8.

However, in the case of amounts reported in Table 6, reasons for non-reconciliation may be due to difference in timing or due to a permanent difference in turnover as per the books of accounts and the GST Returns. However, every non-reconciliation might not lead to a situation where there is a requirement to pay GST on the said difference.

Some examples where non-reconciliation is reported in Table 6 in Form GSTR 9C but shall not require any additional tax payment are illustrated as under:

- Difference in turnover where the time of Supply is postponed but revenue is recognized in books of accounts (Supply between Developer and Landlord in light of Notification No 04/2018-CT rate)
- Difference in the value of Export turnover reported in the books of accounts on the basis of Invoice value shown in the Shipping Bill whereas turnover reported in GSTR 1 on the basis of Invoice prepared in INR on the basis of Exchange rate applicable on the date of preparation of Invoice.
- Difference in turnover of Services due to tax paid on advances and shown in GSTR 1 but not required to be disclosed as turnover in the Audited Financial Statements.
- Difference in turnover due to disclosure of Profit / Loss on Sale of Fixed Assets in the Audited Financial Statements and disclosure of whole sale proceeds in GST Returns.

In the given cases, no reporting is required to be done in Table 11.

Further, in other types of non-reconciliations reported in Table 6, there can be an impact on the tax Liability to be paid. The instances for the same shall principally cover such cases where there is difference in taxable turnover in GST Returns and the Adjusted Total turnover. These set of differences which shall have impact on tax Liability shall actually be a part of Table 8 again.

However, out of such non-reconciliation filtered out and reported in Table 8, a further filter of non-reconciliation shall be reported in Table 10 regarding tax Liability which should have been paid on un-reconciled turnover reported in Table 8, but the same was not paid as declared in GSTR 9, i.e. the Annual Return.

Since Table 11 requires the disclosure of Additional tax Liability payable and not paid on non-reconciliations, it is evident that such details shall be reported in Table 10 also.

B) For Interest, Penalty and Late Fees Payable

The method suggested for calculating Interest, Late Fees and Penalty shall be employed to find the Gross amounts and difference of amounts not reported in GSTR 9 shall be required to be disclosed in the given Table.

PART IV

Sl. No. 12 – Reconciliation of Net ITC

12A. ITC availed as per audited Annual Financial Statement for the State/ UT (For multi-GSTIN units under same PAN this should be derived from books of accounts)

Pt. IV	Reconciliation of Input Tax Credit (ITC)
12	Reconciliation of Net Input Tax Credit (ITC)
12A	ITC availed as per audited Annual Financial Statement for the State/ UT (For multi-GSTIN units under same PAN this should be derived from books of accounts)

Clause 12A of GSTR 9C is the detail of ITC availed in the audited financial statements. The row aims to collect information on the ITC availed in the books of accounts by the Registered person. This shall be the total ITC including the one availed in the books of accounts on Inputs, Input Services and Capital Goods.

Right in the beginning, information of all the tax account codes / ledger names should be obtained from the Registered person in which he enters the ITC availed. ITC availed (after reversals) as per the audited Annual Financial Statement shall be declared here. There may be cases where multiple GSTINs (State-wise) registrations exist on the same PAN. This is common for persons / entities with presence in multiple States. Such persons / entities would have to internally derive their ITC for each individual GSTIN and declare the same here. It may be noted that reference to the audited Annual Financial Statement includes reference to books of accounts in case of persons / entities having presence in multiple States. Further, it is important to understand from the Registered person whether he has maintained separate ledgers for availing ITC for different States or a common one.

12B. ITC booked in earlier Financial Years claimed in current Financial Year

12B	ITC booked in earlier Financial Years claimed in current Financial Year	(+)	
-----	---	-----	--

Any ITC which was booked in the audited Annual Financial Statement of the earlier financial year(s) but availed in the ITC ledger in the financial year for which the reconciliation statement is being filed shall be declared here. Since this is the first year of the GST, this column should ideally be zero. However, as per the instruction related to the form, transitional credit which was booked in earlier years but availed during Financial Year 2017-18, the same would not be required to be reported here. This would leave the Registered person with ITC which are carry forward balances of the earlier taxes.

However, from next year onwards, this column would have the same amount as is reported in column 12C of Form 9C of the previous financial year. Hopefully, the same should be auto populated by the system. There can be a scenario also where an Input tax credit which related to FY 2017-18 was not booked in the books in FY 2017-18 inadvertently and was also not claimed in GSTR 3B of FY 2017-18. However, during reconciliation of returns during FY 2018-19 the claim was taken in both the books of accounts as well as GSTR 3B filed during FY 2018-19, such cases would not be reported in this column.

12C. ITC booked in current Financial Year to be claimed in subsequent Financial Years

12C	ITC booked in current Financial Year to be claimed in subsequent Financial Years	(-)	
-----	--	-----	--

Clause 12C of GSTR 9C is the Input tax Credit which is booked in the current financial year but claimed in the returns of GSTR 3B filed during FY 2018-19. This includes all credits which were for any reason (inadvertent or conditions not being fulfilled) were not taken in returns as filed from July 2017- March 2018.

All amounts which are debited in the books of accounts but not claimed as Credit should be reported here. The Auditor must run a check to arrive at Input tax Credits which appear in the GST receivable ledgers but do not find place in the Input tax register providing amounts as reported in GSTR 3B of FY 2017-18. The difference of such unclaimed balance shall be reported here.

Value in this Sl.No. should be equal to the amount reported in Clause 13 of GSTR 9. However, amount of Credits relating to FY 2017-18 which are booked in FY 2018-19 only in the books of accounts shall be subtracted from such reported amount in Clause 13 of GSTR 9.

Illustration

The Input tax credit as booked in the GST receivable ledger for the month of August 2017 includes the following:

- (a) Input tax credit on purchase of inputs claimed in GSTR 3B of August 2017: ₹ 3,00,000
- (b) Input tax credit on purchase of inputs claimed in GSTR 3B of December 2017: ₹ 150,000
- (c) Input tax credit on purchase of inputs claimed in GSTR 3B of May 2018: ₹ 2,00,000

Ans. The reporting of the following transactions shall be made in this column:

Input tax credit on purchase of inputs claimed in GSTR 3B of May 2018: ₹ 2,00,000

12E. ITC Claimed in Annual Return (GSTR 9)

Clause 12E of GSTR 9C Net ITC available for utilization as declared in Table 7J of Annual Return (GSTR 9) shall be declared here.

12F. And 13 Unreconciled ITC

12F	Un-reconciled ITC	
-----	-------------------	--

Clause 12F of GSTR 9C provides for the difference between the ITC as computed from the books of account in Clause 12D and ITC as claimed for the financial year in Clause 7J of Annual return. Reasons for such difference shall be explained in point 13 of GSTR 9C.

13	Reasons for un-reconciled difference in ITC	
A B	Reason 1	<<Text>>
C	Reason 2	<<Text>>

	Reason 3	<<Text>>
--	----------	----------

While 12F is the differential value and has no source. Clause 13 seeks reasons from the books of accounts and claims in GSTR 9 for the difference. In case the difference is positive, possible reasons of difference should primarily include:

- the amount of ITC for the financial year claimed in point 13 of the Annual return form which is the amount of ITC claimed in returns of the subsequent year for the financial year.
- the amount of ITC available but not availed which can be divided in two further categories:
 - Ineligible ITC not availed in the return
 - ITC which has lapsed as not availed

In case the difference is negative, the matter is of concern as it is a clear indication of more than available ITC claimed. This could be on account of the following reasons:

- ITC of another GSTIN claimed in returns of GSTIN under audit
- IGST on imported goods used as FOC replacement warranty (customs duty + IGST paid by Exporter of original equipment.
- Duplicate ITC availed
- ITC of subsequent year where goods / services were received later but their invoice was received prior was availed.

14. Reconciliation of ITC declared in Annual Return (GSTR 9) with ITC availed on expenses as per audited Annual Financial Statement or books of account

14	Reconciliation of ITC declared in Annual Return (GSTR9) with ITC availed on expenses as per audited Annual Financial Statement or books of account			
	Description	Value	Amount of Total ITC	Amount of eligible ITC availed
	1	2	3	4
A	Purchases			
B	Freight / Carriage			
C	Power and Fuel			
D	Imported goods (Including received from SEZs)			
E	Rent and Insurance			
F	Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples			

G	Royalties			
H	Employees' Cost (Salaries, wages, Bonus etc.)			
I	Conveyance charges			
J	Bank Charges			
K	Entertainment charges			
L	Stationery Expenses (including postage etc.)			
M	Repair and Maintenance			
N	Other Miscellaneous expenses			
O	Capital goods			
P	Any other expense 1			
Q	Any other expense 2			
R	Total amount of eligible ITC availed	<<Auto>>		
S	ITC claimed in Annual Return (GSTR9)			
T	Un-reconciled ITC	ITC 2		

This table is for reconciliation of ITC declared in the Annual Return (GSTR 9) against the expenses booked in the audited Annual Financial Statement or books of account. This point calls for examination of ITC detailed by the Auditor to determine the available ITC as booked in ledgers of various expenses and in the books of accounts viz a viz the ITC availed by the Registered person. In case the Auditor finds any ineligible or unavailable ITC as per the books of accounts, suitable disclosures are to be made in this regard.

Illustration: The Input tax credit as booked in purchase account is as follows:

- (a) ITC on purchase of raw material: ₹ 1,50,000 (Purchase value: 20,00,000)
- (b) ITC on purchase of consumable: ₹ 60,000 (Purchase value: 4,00,000)
- (c) ITC on purchase of food items for staff: ₹ 12,000 (Purchase value: 120,000)
- (d) ITC availed by the registered person from the Purchase account: ₹ 222,000

Ans. The reporting of the following transactions shall be made in this column:

- value of Purchases: 25,20,000
- Amount of Total ITC: 222,000

Amount of eligible ITC availed: ₹ 210,000

15. Reasons for un-reconciled difference in ITC

15	Reasons for un - reconciled difference in ITC
----	---

A B C	Reason 1	<<Text>>
	Reason 2	<<Text>>
	Reason 3	<<Text>>

Reasons for non-reconciliation between ITC availed on the various expenses declared in Table 14R and ITC declared in Table 14S shall be specified here.

This column is auto populated as it is a calculation of difference between Table 14R and 14S. This is the differential amount between the eligible availed ITC and the availed ITC. Difference can arise on any of the following counts:

- Ineligible ITC availed by the Registered person
- ITC booked in the books of accounts but not availed including ineligible ITC not availed (lapsed)

In case of a negative amount, such difference can arise on account of ITC booked in the books of accounts but availed in return GSTR 3B of the subsequent year. This can be correlated with point 13 of GSTR 9.

16. Tax payable on un-reconciled difference in ITC (due to reasons specified in 13 and 15 above)

Any amount which is payable due to reasons specified in Table 13 and 15 above shall be declared here.

Part V to GSTR 9C

Auditor's Recommendation on additional liability due to non-reconciliation

Pt. V	Auditor's recommendation on additional Liability due to non-reconciliation					
			To be paid through Cash			
	Description	Value	Central tax	State tax/ UT tax	Integrated tax	Cess, if applicable
	1	2	3	4	5	6
	5%					
	12%					
	18%					
	28%					
	3%					
	0.25%					
	0.10%					
	Input Tax Credit					
	Interest					
	Late Fee					

	Penalty					
	Any other amount paid for supplies not included in Annual Return					

Part V consists of the auditor's recommendation on the additional liability to be discharged by the taxpayer due to non-reconciliation of turnover or non-reconciliation of input tax credit. The auditor shall also recommend if there is any other amount to be paid for supplies not included in the Annual Return. Any refund which has been erroneously taken and shall be paid back to the Government shall also be declared in this table. Lastly, any other outstanding demands which is recommended to be settled by the auditor shall be declared in this Table.

Some issues

(a) Is the additional liability determined by the Auditor binding on the Registered person?

- ✓ At the outset, it can be inferred from the heading to Part V of GSTR 9C that the Auditor has only a recommendatory power, for recommendations given by the Auditor may or may not be acceptable to the Registered Person. If it is acceptable, there are no further questions. But if it is not acceptable, then the question that arises is how can the Auditor resolve the issue.
- ✓ At this juncture, the Auditor needs to exercise his professional diligence, skill, legal knowledge and care in determining any additional tax liability which is payable by the Registered Person. The Registered Person has the option to accept, reject or partially accept the recommended additional tax liability. In line with such recommendations, though not explicitly stated anywhere in the relevant Form or GST laws –
 - (i) the Registered Person can choose to make the payment of the additional tax liability in full or in part;
 - (ii) the Registered Person can even choose to reject the complete recommendations of the Auditor and not make the payment at all.
- ✓ Before an Auditor ventures into recommending any additional tax liability due care, caution and diligence must be exercised. For instance, in respect of commodity classification based on HSN if an Auditor believes that there are two possibilities then he may choose to place reliance on an expert opinion. In such a situation, a proper disclosure may suffice.
- ✓ However, when looked at from the perspective of the government, the recommendation shall form the foundation for an effective show cause notice

and enquiry into the affairs of the Registered Person.

(b) Scope of the Auditor's review for recommendation

- ✓ On a perusal of the heading to Part V of GSTR 9C, it appears that the responsibility of the Auditor is restricted to report only the additional liability which may arise on account of non-reconciliation matters only. An Auditor may take the view that he is not required to step into the shoes of an investigator to mine any undisclosed supplies which are neither reported in the annual return nor in the financial statements. But at this point in time the instruction provided to fill in the relevant GSTR 9C plays an important role.
- ✓ Para 7 of the instructions provided to the relevant GSTR 9C makes it clear that apart from recommending any additional tax liability that may arise on account of reconciliations matters, an Auditor is also required recommend:
 - cases relating to supplies that are not reported in the annual return;
 - refunds erroneously taken;
 - any outstanding demands that may be settled by the Registered Person.
- ✓ Performing this reconciliation accurately and analysing reasons for the differences falls within the domain of the Auditor's responsibility. Making disclosures in respect of the differences which are accurate, exhaustive and understandable form an intrinsic part of his duty.

(c) Reasons for additional tax liability

- ✓ Non-reconciliation between the books of accounts and the annual return can either occur (among other reasons) in respect of the turnover, tax paid or availment of the input tax credit. Any additional tax liability that may arise due to non-reconciliation between the turnovers or the tax payable on such turnovers would be reported in Table 11 of GSTR 9C. Further, any additional tax liability arising due to non-reconciliation of the input tax credit are to be disclosed in Table 16 of GSTR 9C. The amount reported in these two tables would be summarized and reported in Part V of the GSTR 9C.
- ✓ Additional tax liability may arise on account of any other amount paid for supplies not included in the annual return, erroneous refund to be paid back, outstanding demands to be settled, etc., (if any).

Verification	
I hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and nothing has been concealed there from.	
**Signature and stamp/seal of Auditor	
Place:	Name of Signatory
Date:	Membership No.
Full address	

Understanding “Verification” under GSTR 9C

- I. In terms of Rule 80(3) of the CGST rules, 2017 the relevant “verification” portion to the reconciliation statement in Form GSTR 9C reads as under :
- II. The verification part of the said GSTR 9C is quite crucial in so far as the GST Auditor is concerned. Several important words and phrases are used in this part, such as “**solemnly affirm, declare, true and correct, knowledge and belief, conceal etc.,**”. An understanding of the true import of these words is crucial for understanding the manner in which the Auditor is expected to meet his professional obligation.
- III. According to The Random House Dictionary the word solemn means “**serious or earnest**” and the word **affirm** means “**confirm, establish or ratify**”. A solemn affirmation is ratification under a statute.
- IV. In the case of Dilip N. Shroff V. Joint Commissioner of Income tax, 2007 (219) ELT 15 (SC) their lordships extracted the meaning of the word “conceal” from the Law Lexicon which reads:

“to hide or keep secret. The word “conceal” is con + celare which implies to hide. It means to hide or withdraw from observation; to cover or keep from sight; to prevent the discovery of; to withhold knowledge of. The offence of concealment is, thus, a direct attempt to hide an item of income or a portion thereof from the knowledge of the income tax authorities.”

In the very same judgement in para 67 and 68 the Honourable Supreme Court goes on to analyse certain phrases, which are relevant and reproduced below:

‘Concealment of income’ and ‘furnishing of inaccurate particulars’ are different. Both concealment and furnishing inaccurate particulars refer to deliberate act on the part of the Registered person. A mere omission or negligence would not

constitute a deliberate act of suppressio veri or suggestio falsi. Although it may not be very accurate or apt but suppressio veri would amount to concealment, suggestio falsi would amount to furnishing of inaccurate particulars.

The authorities did not arrive at a finding that the consideration amount fixed for the sale of property was wholly inadequate. The authorities also do not show the inaccurate particulars furnished by the Appellant. They also do not state what should have been the accepted principles of valuation. We, therefore, do not accept the submissions of the learned Additional Solicitor General that concealment or furnishing of inaccurate particulars would overlap each other, the same would not mean that they do not represent different concepts. Had they not been so, the Parliament would not have used the different terminologies.

To conclude, malafide or dolus molus becomes a pre-requisite to prove an act of concealment. While every action is not malafide – negligence, carelessness, recklessness coupled with intention to withhold information tantamount to malafide. It is reiterated that mere failure to provide information or providing inaccurate information also would not amount to concealment.

V. Certificate and Report:

A certificate is a written confirmation of the accuracy of the facts stated therein and does not involve any estimate or opinion. It is certification of factual accuracy of what is stated therein.

A report, on the other hand, is a formal statement usually made after an enquiry, examination or review of specified matters under report and includes the reporting an opinion thereon. It is giving an opinion based on factual data and that is arrived at by the application of due care and skill.

Part B - GSTR 9C – An analysis

Module I – Certification in cases where the reconciliation statement (FORM GSTR 9C) is drawn up by the person who had conducted the audit and GST audit certification

Hierarchy of Clauses for Certification

Step 1: 'Examine' the 'financials'

Step 2: Based on such 'audit', report that books of account, etc. under the GST Acts have or have not been maintained

Step 3: Report the following observations / comments / discrepancies / inconsistencies, if any:

Step 3(b): Report further whether:

Step 3(b) (A): Information and explanations has / has not been obtained which were necessary

Step 3(b)(B): Proper books of accounts have / have not been kept Step 3(b)(C): Financials are/are not in agreement with the books

Step 4: State whether GSTR 9C and other relevant documents are annexed

Step 5: Particulars in GSTR 9C are 'true and correct' subject to observations / qualifications:

Step 5(a):

Step 5(b): refer list of matter's for Auditor's attention listed below.....

Step 5(c):

Step 6: Signature and Stamp and Seal of the Auditor duly disclosing the date, place and full address

Module II – Certification in cases where the reconciliation statement in (GSTR 9C) is drawn up by a person other than the person who had conducted the audit of the accounts

Hierarchy of Clauses for Certificate

Step 1: Audit conducted by another Auditor and a copy of the Audit Report and Financials to be annexed

Step 2: Even without conducting audit, report whether books of account, etc. under the Act have / have not been maintained; It means the Auditor has to analyse, understand and check the nature of books and records that are to be maintained or have / have not been maintained;

Step 3: Report the following observations / comments / discrepancies / inconsistencies

Step 4: State whether GSTR 9C is annexed

Step 5(a): Now 'examine' books of accounts and other relevant documents Step

5(b): Then, particulars in GSTR 9C are true and correct subject to:

Step 5(c):

Step 5(d):refer list of matter's for the Auditor's attention listed below.....

Step 5(e):

Step 6: Signature and Stamp and Seal of the Auditor duly disclosing the date, place and full address

1.11 Format of Audit report under the GST law: Form GST ADT - 04

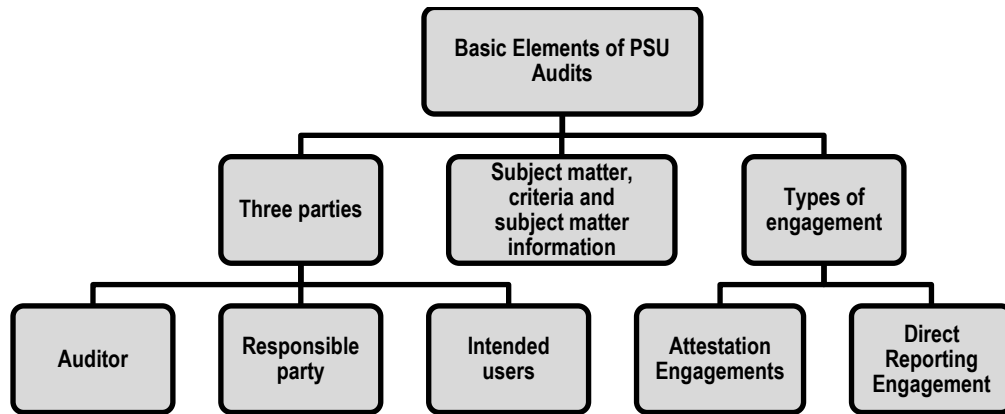
Form GST ADT-04				
[See Rule 102(2)]				
Reference No. :				
Date :				
To,				

GSTIN				
Name				
Address				
Information of Findings upon Special Audit				
Your books of account and records for the F.Y..... has been examined by (chartered accountant/cost accountant) and this Audit Report is prepared on the basis of information available/documents furnished by you and the findings/discrepancies are as under :				
Short payment of	Integrated tax	Central tax	State/UT tax	Cess
Tax				
Interest				
Any other amount				
[Upload pdf file containing audit observation]				
You are directed to discharge your statutory liabilities in this regard as per the provisions of the Act and the rules made thereunder, failing which proceedings as deemed fit may be initiated against you under the provisions of the Act.				
Signature				
Name				
Designation				

Chapter 18 - Audit of Public Sector Undertakings

Elements of PSU Audits: Public sector auditing augments the confidence of the intended users by providing relevant information and independent and objective assessments concerning deviations from accepted standards or principles of good governance.

Audit of all public-sector undertakings has the following basic elements:



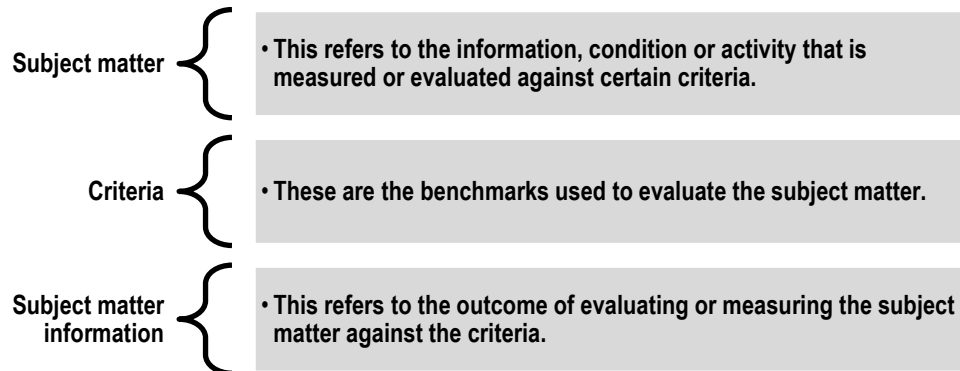
(a) **The Three parties - Auditor, Responsible party and Intended users.**

Auditor: The role of auditor is fulfilled by Supreme Audit Institution (SAI), India and by its personnel delegated with the duty of conducting audits.

Responsible party: The relevant responsibilities are determined by constitutional or legislative arrangement. Generally, auditable entities and those charged with governance of the auditable entities would be the responsible parties. The responsible parties may be responsible for the subject matter information, for managing the subject matter or for addressing recommendations.

Intended users: Intended users are the individuals, organizations or classes thereof for whom the auditor prepares the audit report.

(b) **Subject matter, criteria and subject matter information.**



(c) **Types of engagement - Attestation Engagements and Direct Reporting Engagement.**

Attestation Engagements: In attestation engagements, the responsible party measures the subject matter against the criteria and presents the subject matter information, on which the auditor then gathers sufficient and appropriate audit evidence to provide a reasonable basis for expressing a conclusion.

Direct Reporting Engagement: In direct reporting engagements, it is the auditor who measures or evaluates the subject matter against the criteria.

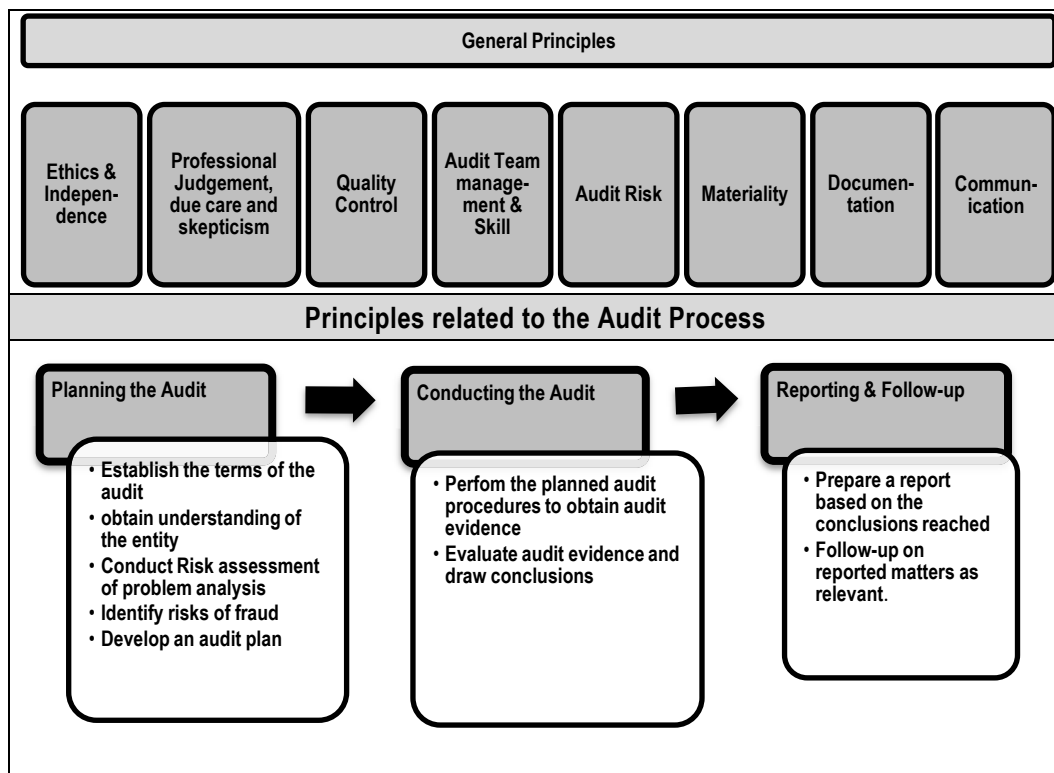
Financial audits are always **attestation engagements**, as they are based on financial information presented by the responsible party.

Performance audits and compliance audits are generally **direct reporting engagements**.

Principles of PSU Audits: The principles of PSU Audits constitute the general standards that apply to SAI India's personnel as auditors and are fundamental to the conduct of all types of PSU Audits.

The principles are categorized into two distinct groups as below:

- I. General Principles
- II. Principles related to the Audit Process



Financial Audit: Financial audit is primarily conducted to:

- ✓ express an audit opinion on the financial statements
- ✓ enhance the degree of confidence of intended users in the financial statements.

The C&AG shall express an opinion as to whether the financial statements are prepared, in all material respects, in accordance with the applicable financial reporting framework.

In the case of financial statements prepared in accordance with a fair presentation financial reporting framework, whether the financial statements are presented fairly, in all material respects, or give a true and fair view, in accordance with that framework.

Compliance Audit: Compliance audit is the independent assessment of whether a given subject matter is in compliance with the applicable authorities identified as criteria.

This audit is carried out by assessing whether activities, financial transactions and information comply in all material respects, with the regulatory and other authorities which govern the audited entity.

Compliance audit is concerned with:

- (a) **Regularity-** adherence of the subject matter to the formal criteria emanating from relevant laws, regulations and agreements applicable to the entity.
- (b) **Propriety-** observance of the general principles governing sound financial management and the ethical conduct of public officials.

While regularity is emphasized in compliance auditing, propriety is equally pertinent in the public-sector context, in which there are certain expectations concerning financial management and the conduct of officials.

Perspective of Compliance Audit: Compliance Audit is part of a combined audit that may also include other aspects.

Compliance auditing is generally conducted either-

- (i) in relation with the audit of financial statements, or
- (ii) separately as individual compliance audits, or
- (iii) in combination with performance auditing.

Compliance Auditing is generally conducted either:

(i) in relation with the audit of financial statements, or

(ii) separately as individual compliance audits, or

(iii) in combination with performance auditing

Chapter 22 - Code of Ethics

I. KYC Norms for CA in Practice: The financial services industry globally is required to obtain information of their clients and comply with Know Your Client Norms (KYC norms). Keeping in mind the highest standards of Chartered Accountancy profession in India, the Council of ICAI thought it necessary to issue such norms to be observed by the members of the profession who are in practice.

In light of this background, the Council of ICAI approved the following KYC Norms which are mandatory in nature and shall apply in all assignments pertaining to attest functions.

The KYC Norms approved by the Council of ICAI are given below:

1. Where Client is an Individual/ Proprietor A. General Information  Name of the Individual  PAN No. or Aadhar Card No. of the Individual  Business Description  Copy of last Audited Financial Statement B. Engagement Information  Type of Engagement
2. Where Client is a Corporate Entity A. General Information  Name and Address of the Entity  Business Description  Name of the Parent Company in case of Subsidiary  Copy of last Audited Financial Statement B. Engagement Information  Type of Engagement C. Regulatory Information  Company PAN No.  Company Identification No.  Directors' Names & Addresses  Directors' Identification No.
3. Where Client is a Non-Corporate Entity A. General Information  Name and Address of the Entity  Copy of PAN No.  Business Description  Partner's Names & Addresses (with their PAN/Aadhar Card/DIN No.)  Copy of last Audited Financial Statement B. Engagement Information  Type of Engagement

II. Joining/Association with “Networks” by Members in Practice: It is hereby clarified that associations with “Network” as a medium of referral of professional work is permissible only if the Network is registered with the Institute, comprising only of Chartered Accountants/Chartered Accountant Firms, and governed by the Institute’s Network Guidelines, which may be accessed at <https://resource.cdn.icai.org/24427announ14280.pdf>

Members" attention is also drawn towards following provisions of Chartered Accountants Act, 1949 (hereinafter referred to as the "Act") :-

Clause (2) of Part I of First Schedule to the Act

A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the Fees or profits of his professional business, to any person other than a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner, or a member of any other professional body or with such other persons having such qualifications as may be prescribed, for the purpose of rendering such professional services from time to time in or outside India.

Explanation — In this item, "partner" includes a person residing outside India with whom a chartered accountant in practice has entered into partnership which is not in contravention of item (4) of this Part;

Clause (3) of Part I of First Schedule to the Act

A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he accepts or agrees to accept any part of the profits of the professional work of a person who is not a member of the Institute:

Provided that nothing herein contained shall be construed as prohibiting a member from entering into profit sharing or other similar arrangements, including receiving any share commission or brokerage in the fees, with a member of such professional body or other person having qualifications, as is referred to in item (2) of this Part;

Clause (5) of Part I of First Schedule to the Act

A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he secures, either through the services of a person who is not an employee of such Chartered Accountant or who is not his partner or by means which are not open to a chartered accountant, any professional business.

Provided that nothing herein contained shall be construed as prohibiting any arrangement permitted in terms of items (2), (3) and (4) of this Part;

Clause (6) of Part I of First Schedule to the Act

A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he solicits clients or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means:

Provided that nothing herein contained shall be construed as preventing or prohibiting —

- (i) any chartered accountant from applying or requesting for or inviting or securing professional work from another chartered accountant in practice; or

- (ii) a member from responding to tenders or enquiries issued by various users of professional services or organisations from time to time and securing professional work as a consequence;

In view of the above provisions, it is not permissible for members in practice to join Networks (by whatever name called) other than the Networks registered with the Institute.

Members may note that joining such Networks as mentioned above may result in noncompliance of the above stated provisions of the Act resulting in disciplinary proceedings in accordance with the provisions of the Act.

A -Meaning of Network & Network Firm –

Network - A larger structure (a) That is aimed at co-operation; and (b) That is clearly aimed at profit or cost sharing or shares common ownership, control or management, common quality control policies and procedures, common business strategy, the use of a common brand name, or a significant part of professional resources.

Network Firm – “Network Firm” means a firm or Entity that belongs to a Network.

B - Concept of Network

1. To enhance their ability to provide professional services, firms frequently form larger structures with other firms and entities. Whether these larger structures create a network depends on the particular facts and circumstances and does not depend on whether the firms and entities are legally separate and distinct. For example, a larger structure may be aimed only at facilitating the referral of work, which in itself does not meet the criteria necessary to constitute a network. Alternatively, a larger structure might be such that it is aimed at co-operation and the firms share a common brand name, a common system of quality control, or significant professional resources and consequently is deemed to be a network.
2. The judgment as to whether the larger structure is a network shall be made in light of whether a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances, that the entities are associated in such a way that a network exists. This judgment shall be applied consistently throughout the network.
3. Where the larger structure is aimed at co-operation and it is clearly aimed at profit or cost sharing among the entities within the structure, it is deemed to be a network. However, the sharing of immaterial costs does not in itself create a network. In addition, if the sharing of costs is limited only to those costs related to the development of audit methodologies, manuals, or training courses, this would not in itself create a network.

Further, an association between a firm and an otherwise unrelated entity to jointly provide a service or develop a product does not in itself create a network.
4. Where the larger structure is aimed at cooperation and the entities within the structure share common ownership, control or management, it is deemed to be a network. This could be achieved by contract or other means.

5. Where the larger structure is aimed at co-operation and the entities within the structure share common quality control policies and procedures, it is deemed to be a network. For this purpose, common quality control policies and procedures are those designed, implemented and monitored across the larger structure.
6. Where the larger structure is aimed at co-operation and the entities within the structure share a common business strategy, it is deemed to be a network. Sharing a common business strategy involves an agreement by the entities to achieve common strategic objectives. An entity is not deemed to be a network firm merely because it co-operates with another entity solely to respond jointly to a request for a proposal for the provision.
7. Where the larger structure is aimed at co-operation and the entities within the structure share the use of a common brand name, it is deemed to be a network. A common brand name includes common initials or a common name. A firm is deemed to be using a common brand name if it includes, for example, the common brand name as part of, or along with, its firm name, when a partner of the firm signs an audit report.
8. Even though a firm does not belong to a network and does not use a common brand name as part of its firm name, it may give the appearance that it belongs to a network if it makes reference in its stationery or promotional materials to being a member of an association of firms.

Accordingly, if care is not taken in how a firm describes such memberships, a perception may be created that the firm belongs to a network.

9. Where the larger structure is aimed at co-operation and the entities within the structure share a significant part of professional resources, it is deemed to be a network. Professional resources include:
 - Common systems that enable firms to exchange information such as client data, billing and time records;
 - Partners and staff;
 - Technical departments that consult on technical or industry specific issues, transactions or events for assurance engagements;
 - Audit methodology or audit manuals; and
 - Training courses and facilities.
10. The determination of whether the professional resources shared are significant, and therefore the firms are network firms, shall be made based on the relevant facts and circumstances. Where the shared resources are limited to common audit methodology or audit manuals, with no exchange of personnel or client or market information, it is unlikely that the shared resources would be significant. The same applies to a common training endeavor. Where, however, the shared resources involve the exchange of people or information, such as where staff are drawn from a shared pool, or a common technical

department is created within the larger structure to provide participating firms with technical advice that the firms are required to follow, a reasonable and informed third party is more likely to conclude that the shared resources are significant.

C- Forms of the Network: The different forms of Network can be as under:-

1. A network can be constituted as a mutual entity which will act as a facilitator for the constituents of the Network. In such a case the Network itself will not carry out any professional practice.
2. A network can be constituted as a partnership firm subject to the condition that the total number of partners does not exceed twenty.
3. A network can be constituted as a Limited Liability Partnership subject to the provision of the Chartered Accountant Act and Rules and such other laws as may be applicable.
4. A network can be constituted as company subject to the guidelines prescribed by Institute for corporate form of practice and formation of management consultancy services company.
5. Network Firms shall consist of sole Practitioner/proprietor, partnership or any such entity of professional accountants as may be permitted by the Act
6. A firm is allowed to join only one network.
7. Firms having common partners shall join only one Network.

D- Approval of Name of Network amongst firms registered with Institute:

1. The Network may have distinct name which should be approved by the Institute. To distinguish a "Network" from a "firm" of Chartered Accountants, the words "& Affiliates" shall be used after the name of the network and the words "& Co." / "& Associates" shall not be used. The prescribed format of application for approval of Name for Network is at Form 'A' (enclosed). Illustrative examples of names of Network: -
 - (a) If the Network is a Mutual Entity or Partnership Firm: AB & Affiliates
 - (b) If the Network is a LLP: AB Affiliates LLP
 - (c) If the Network is a Limited Company: AB Affiliates P. Ltd/Limited
2. Provisions of Regulation 190 of the Chartered Accountants Regulations, 1988 shall be applicable to the name of Network. However, even if a name is approved and subsequently it is found that the same is undesirable then, the said name may be withdrawn at any time by the Institute. The Institute shall reject any undesirable name and the provisions in respect of names of companies as prescribed in the Companies Act, 1956 shall be applicable in spirit.
3. The Institute shall approve or reject the name of the Network and intimate the same to the Network at its address mentioned in Form 'A' within a period which shall not be later than 30 days from the date of receipt of the said Form.

4. Mere approval of the name of the Network shall not entitle the Network to carry on practice in its own name.

E- Registration of Network with entities in India

1. After the name of a Network is approved as per provision under Guideline 5, the Institute same shall reserve such name for a period of three (3) months from the date of approval.
2. The Network shall get itself registered with the Institute by applying in Form B within the period of 3 months, failing which the name assigned shall stand cancelled on the expiry of the said period.
3. Registration of Network with Institute is mandatory.
4. If different Indian firms are networked with a common Multinational Accounting Firm, they shall be considered as a part of network.

F- Listing of Network with entities outside India

1. The duly authorized representative(s) of the Indian Member firm (s)/Member constituting the Network with entities outside India shall file a declaration with the Institute in Form 'D' for Listing of such Network within 30 days from the date of entering into the Network arrangement.
2. Proprietary/individual members, partnership firms as well as members in LLP or any such other entity of members as may be permitted by the Act, shall be permitted to join such network with entities outside India provided that the proprietary/individual members, partnership firms as well as members in LLP or any such other entity of members are allowed to join only one network and firms having common partners shall join only one such network.

G- Change in constitution of registered Network: In case of change in the constitution of registered Network on account of any entry into or exit from the Network, the network shall communicate the same to the Institute by filing Form 'C' within a period of thirty (30) days from the date of change in the constitution.

H - Ethical Compliance: Once the relationship of network arises, it will be necessary for such a network to comply with all applicable ethical requirements prescribed by the Institute from time to time in general and the following requirements in particular: -

1. If one firm of the network is the statutory auditor of an entity then the associate [including the networked firm(s)] or the said firm directly/indirectly shall not accept the internal audit or book-keeping or such other professional assignments which are prohibited for the statutory auditor firm.
2. The guidelines of ceiling on Non-audit fees is applicable in relation to a Network as follows:
i) For a Network firm who is doing statutory audit (including its associate concern and/or firm(s) having common partnership), it shall be the same as mentioned in the said

notification; and ii) For other firms of the same Network collectively, it shall be 3 times of the fee payable for carrying out the statutory audit of the same undertaking/company.

3. In those cases where rotation of firms is prescribed by any regulatory authority, no member firm of the network can accept appointment as an auditor in place of any member firm of the network which is retiring.
4. The Network may advertise the Network to the extent permitted by the Advertisement Guidelines issued by Institute. The firms constituting the network are permitted to use the words "Network Firms" on their professional stationery.
5. The constituent member firms of a Network and the Network shall comply with all the Ethical Standards prescribed by the Council from time to time.

I - Consent of Client: The effect of registration of network with Institute will be deemed to be a public notice of the network and therefore consent of client will be deemed to be obtained.

J - Framework of Internal Byelaws of Network: To streamline the networking, a network shall formulate operational bye-laws. Bye-laws may contain the following clauses on which the affiliates of the network may enter into a written agreement among themselves:

- (i) Appointment of a Managing Committee, from among the managing partners of the member firms of the network and the terms and conditions under which it should function. The minimum and maximum number of members of the Managing Committee shall also be agreed upon.
- (ii) Administration of the network
- (iii) Contribution of membership fees to meet the cost of the administration of the network.
- (iv) Identifying a partner of any of the member firms of the network to be responsible for the assignment (engagement partner)
- (v) Dispute settlement procedures through arbitration and conciliation
- (vi) Development of training materials for members of the network
- (vii) Issue of News-letters for staff and clients
- (viii) Development of softwares for different types of assignments
- (ix) Development and maintenance of data bases relevant for different types of assignments
- (x) Library
- (xi) Appointment of a technical director to whom references can be made
- (xii) Determining the methodology for drawing resources from each member firm
- (xiii) Determining compensation to member firms for resources to be drawn from them
- (xiv) Peer review of the member firms These clauses are illustrative.

K - Repeal and Saving: The erstwhile "Rules/Guidelines of Network" issued by the Institute stands repealed from the date of commencement of these Guidelines.

Provided that notwithstanding such repeal, anything done or any action taken or purported to have been done or taken in respect of the erstwhile Rules/Guidelines prior to the date of applicability of these Guidelines shall be deemed to have been done or taken under the corresponding provisions of these Guidelines.

III. Recent Decisions of Ethical Standards Board:

1. A Chartered Accountant in practice may be an equity research adviser, but he cannot publish retail report, as it would amount to other business or occupation.
2. A Chartered Accountant, who is a member of a Trust, cannot be the auditor of the said trust.
3. A Chartered Accountant in practice may engage himself as Registration Authority (RA) for obtaining digital signatures for clients.
4. A Chartered accountant can hold the credit card of a bank when he is also the auditor of the bank, provided the outstanding balance on the said card does not exceed rupees 10000 beyond the prescribed credit period limit on credit card given to him.
5. A Chartered Accountant in practice can act as mediator in Court, since acting as a “mediator” would be deemed to be covered within the meaning of “arbitrator”; which is inter-alia permitted to members in practice as per Regulation 191 of the Chartered Accountants Regulations, 1988.
6. A Chartered Accountant in practice is not permitted to accept audit assignment of a bank in case he has taken loan against a Fixed Deposit held by him in that bank.
7. The Ethical Standards Board in 2013 generally apply the stipulations contained in the then amended Rule 11U of Income Tax generally, wherein statutory auditor /tax auditor cannot be the valuer of unquoted equity shares of the same entity.

The Board has at its recent Meeting (January, 2017) has reviewed the above, and decided that where law prohibits for instance in the Income Tax Act and the rules framed thereunder, such prohibition on statutory auditor/tax auditor to be the valuer will continue, but where there is no specific restriction under any law, the said eventuality will be permissible, subject to compliance with the provisions, as contained in the Code of Ethics relating to independence.

8. The Ethical Standards Board had in 2011 decided that it is not permissible for a member who has been Director of a Company, upon resignation from the Company to be appointed as an auditor of the said Company, and the cooling period for the same may be 2 years.

The Board has at its recent Meeting (January, 2017) has reviewed the above, and noted that the Section 141 of Companies Act, 2013 on disqualification of auditors does not mention such prohibition; though threats pertaining to the said eventuality have been mentioned in Code of Ethics.

Further, the Board was of the view that a member may take decision in such situation based on the provisions of Companies Act, 2013 and provisions of Code of Ethics.

9. A chartered accountant in practice cannot become Financial Advisors and receive fees/commission from Financial Institutions such as Mutual Funds, Insurance Companies, NBFCs etc.
10. A chartered accountant cannot exercise lien over the client documents/records for non-payment of his fees.
11. It is not permissible for CA Firm to print its vision and values behind the visiting cards, as it would result in solicitation and therefore would be violation of the provisions of Clause (6) of Part-I of First Schedule to the Chartered Accountants Act, 1949.
12. It is not permissible for chartered accountants in practice to take agencies of UTI, GIC or NSDL.
13. It is permissible for a member in practice to be a settlor of a trust.
14. A member in practice cannot hold Customs Brokers Licence under section 146 of the Customs Act, 1962 read with Customs Brokers Licensing Regulations, 2013 in terms of the provisions of Code of Ethics.
15. A Chartered accountant in service may appear as tax representative before tax authorities on behalf of his employer, but not on behalf of other employees of the employer.
16. A chartered accountant who is the statutory auditor of a bank cannot for the same financial year accept stock audit of the same branch of the bank or any of the branches of the same bank or sister concern of the bank, for the same financial year.
17. A CA Firm which has been appointed as the internal auditor of a PF Trust by a Government Company cannot be appointed as its Statutory Auditor.
18. A concurrent auditor of a bank 'X' cannot be appointed as statutory auditor of bank 'Y', which is sponsored by 'X'.
19. A CA/CA Firm can act as the internal auditor of a company & statutory auditor of its employees PF Fund under the new Companies Act (2013).
20. The Ethical Standards Board while noting that there is requirement for a Director u/s 149(3) of the Companies Act, 2013 to reside in India for a minimum period of 182 days in the previous calendar year, decided that such a Director would be within the scope of Director Simplicitor (which is generally permitted as per ICAI norms), if he is non – executive director, required in the Board Meetings only, and not paid any remuneration except for attending such Board Meetings.
21. Internal Auditor not to undertake GST Audit simultaneously.

Note: Students are also advised to refer RTP of Paper 1 Financial Reporting (for AS, Ind AS and NBFCs updates) and Paper 4 Corporate and Allied Laws (for academic updates relating to Company Law).