

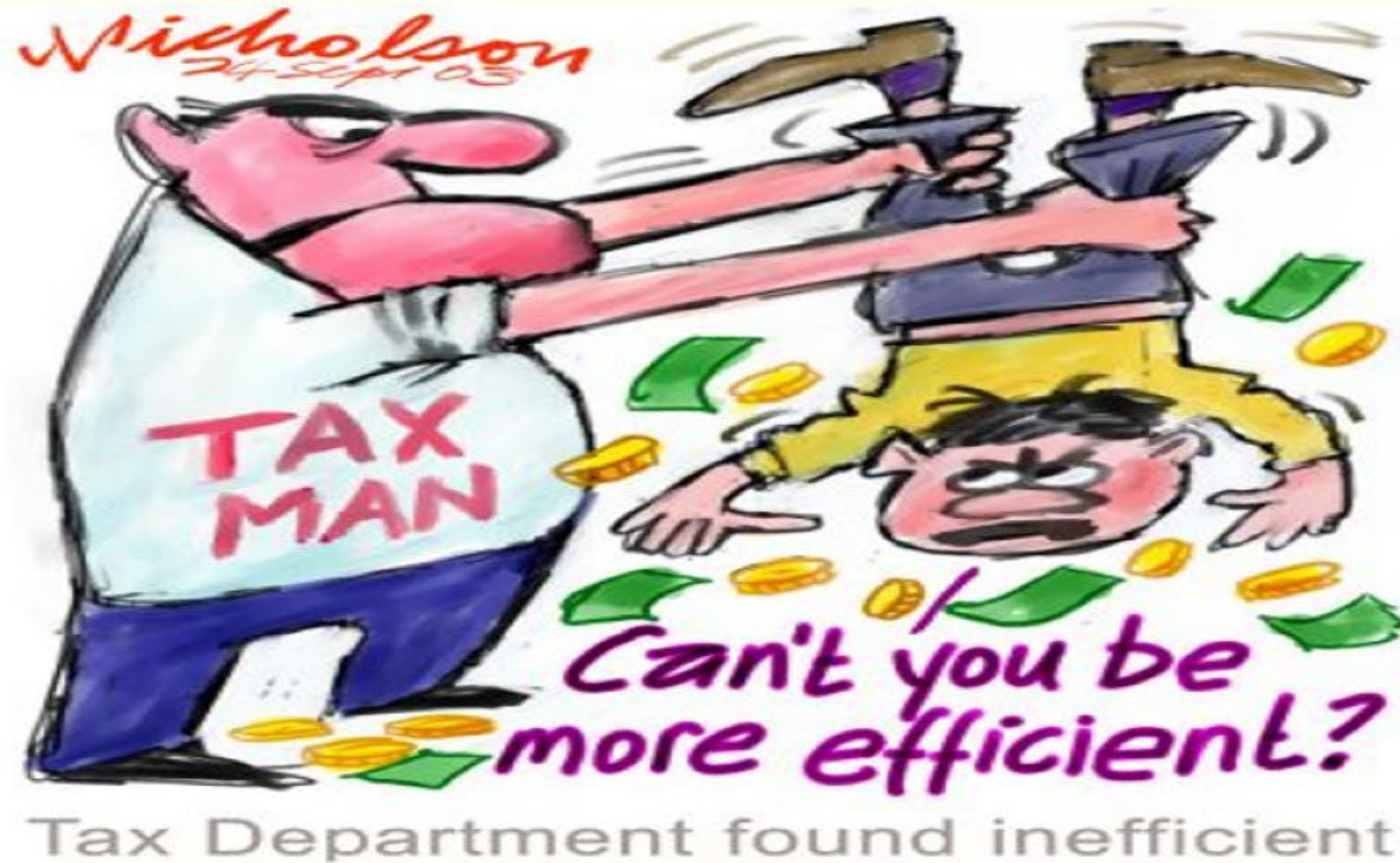


# TAX AUDIT UNDER IT ACT & GST COMPLIANCES

**By: Yash Dhadda, Chartered Accountant, Jaipur**



## HOW HAS BEEN LAST FEW YEARS?



Regular Changes

Advanced  
Accounting  
Software

Interest / Late  
Fees

No Due Date  
Extensions

Monthly  
Compliance

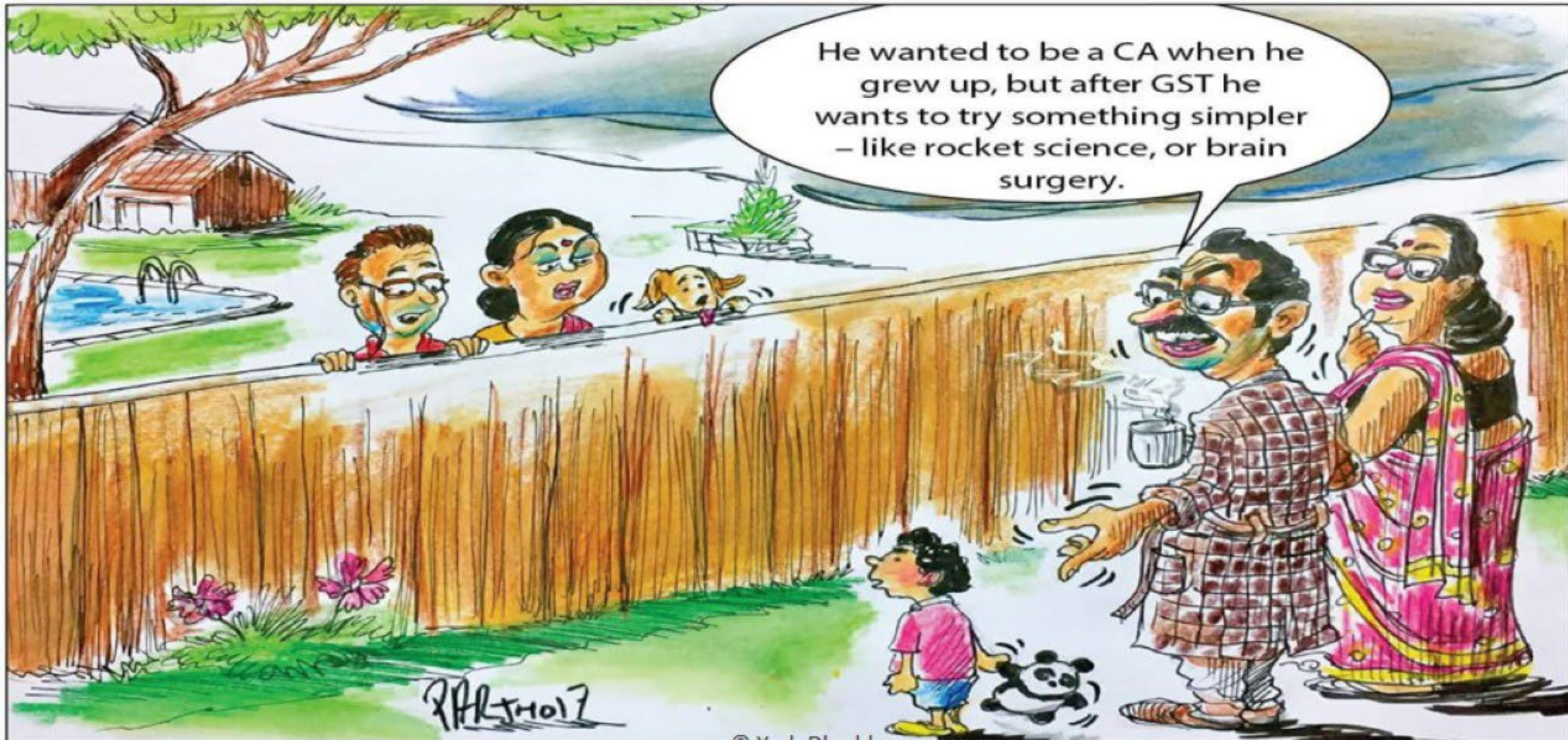


# Where do you belong to now?



## JEST IN CASE

Jug Suraiya & Partho Sengupta



© Yash Dhadda



# Agenda

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Clause 44 of 3CD

Other Clauses with GST Implication

Other GST Related Precautions



# CLAUSE 44 OF 3CD

**Break-up Of Total Expenditure Of Entities Registered Or Not Registered Under GST**





# History of Clause 44 of Form 3CD

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- Form 3CD of Tax Audit Report was originally amended in July 2018 by Notification No. 33/2018 dated 20.07.2018 to incorporate Clause 30C and Clause 44
  - 30C: GAAR transactions
  - 44: GST transactions
- The notification was to come into effect from 20.08.2018.
- Representations were done to defer it due to the **genuine hardships of the taxpayers as the time was too less to ensure the compliance**
- Order under section 119 of the Act vide Circular No. 06/2018 dated 17th August 2018, to keep the operation of Clause 44 in Form 3CD in abeyance till 31st March, 2019
- In May 2019, the CBDT once again deferred the implementation of clause 44 till March 31, 2020 to make it applicable from April 1, 2020
- Amidst Covid-19, CBDT for the **third time** extended the applicability date of Clause 44 till March 2021
- **Fourth time**, the CBDT deferred and postponed the reporting requirement of Clause 44 from 31.03.2021 to 31st March, 2022 vide a Circular No. 05/2021 dated 25.03.2021.



## Is it applicable for AY 2022-23?

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- Reading of Circular No. 5/2021 dated 25.03.2021
- *In view of the prevailing situation due to COVID-19 pandemic across the country, it has been decided by the Board that the reporting under clause 30C and Clause 44 of the Tax Audit Report shall be kept in abeyance till 31st March, 2022*
- Reading of Circular No. 06/2018 (first time extension)
- *reporting under the proposed clause 30C and proposed clause 44 of the Tax Audit Report shall be kept in abeyance till 31st March, 2019. Therefore, for Tax Audit Reports to be furnished on or after 20th August, 2018 but before 1st April, 2019, the tax auditors will not be required to furnish details called for under the said clause 30C and clause 44 of the Tax Audit Report."*

Applicable for TAR to be filled after 31.03.2022



## Arguments not available

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- Assessee was not given sufficient time to maintain the required details.
- Auditor did not get sufficient time to compile the information
- The GST Law(s) are new in India
- The reporting requirement does not have implication on IT collection





## Clause 44

SR.	Total amount of Expenditure incurred during the year	Expenditure in respect of entities registered under GST				Expenditure Relating to 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



## Following Disclaimer can be made?

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- We have been informed by the assessee that the information required under this clause has not been maintained by it in absence of any disclosure requirements under the GST Act.
- It is not possible for us to determine the breakup of total expenditure of entities registered or not under the GST as necessary information is not maintained by the assessee In its books of accounts.
- Further, the standard accounting software used by the assessee is not configured to generate any report in respect of such historical data in absence of any prevailing statutory requirements regarding the requisite information in this clause.
- In view of above, we are unable to verify and report the desired information in this clause.
- In absence of the proper system of assessee, we are unable to comment and give the details as required in Clause 44.



## Whether any disclaimer are given for other clauses?

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- Payment or Receipt without an account payee instruments : Clause 21(d)
- Prior Period items: Clause 27(b)
- ICDS: Clause 13(f)
- Inventory valuation: Clause 14(a)

Disclaimer for above is made at appropriate clauses in Form 3CD

Where to make disclaimer for clause 44?

- Form 3CA / 3CB only





Is there no requirement under GST to maintain records as required in Clause 44

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- **SECTION 35. Accounts and other records.** — (1) Every registered person **shall keep and maintain,** at his principal place of business, as mentioned in the certificate of registration, a true and correct account of —
  - (a) production or manufacture of goods;
  - (b) **inward and outward supply of goods or services or both;**
  - (c) stock of goods;
  - (d) input tax credit availed;
  - (e) output tax payable and paid; and
  - (f) **such other particulars as may be prescribed :**



Is there no requirement under GST to maintain records as required in Clause 44

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- **RULE 56. Maintenance of accounts by registered persons.**
- (1) Every registered person shall keep and maintain, in addition to the particulars mentioned in sub-section (1) of section 35, a true and correct account of the **goods or services imported ..... supplies attracting payment of tax on reverse charge**
- (4) Every registered person shall keep and maintain an account, containing the details of **input tax, input tax credit claimed,**
- (5) Every registered person shall keep the particulars of -
  - (a) **names and complete addresses of suppliers from whom he has received the goods or services chargeable to tax under the Act;**
- (14) Every **registered person executing works contract** shall keep separate accounts for works contract showing –
  - (e) **the names and addresses of suppliers from whom he received goods or services.**





## Section 35(6) / 125 of CGST Act 2017

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- **Implication of Non-Maintenance of books of account as per GST provisions**
- **Section 35(6)** Subject to the provisions of clause (h) of sub-section (5) of section 17, where the registered person fails to account for the goods or services or both in accordance with the provisions of sub-section (1), the proper officer shall determine the amount of tax payable on the goods or services or both that are not accounted for, as if such goods or services or both had been supplied by such person and the provisions of section 73 or section 74, as the case may be, shall, mutatis mutandis, apply for determination of such tax.
- **SECTION 125. General penalty.** — Any person, who contravenes any of the provisions of this Act or any rules made thereunder for which no penalty is separately provided for in this Act, shall be liable to a penalty which may extend to twenty-five thousand rupees.





## Clause 44

SR.	Total amount of Expenditure incurred during the year	Expenditure in respect of entities registered under GST				Expenditure Relating to 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



## Total Expenditure vs Head Wise Expenditure

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- Information is to be given in respect of each and every head of expenditure or only the total expenditure ?
  - **The format as per clause 44 of form 3CD requires that the information is to be given as per the following details:**
    - A. Total amount of expenditure incurred during the year
    - B. Expenditure in respect of entities registered under GST
    - C. Expenditure related to entities not registered under GST
- Total expenditure including purchases as per the above format may be given.
  - If the department wanted Head-wise bifurcation, “Nature of Expenditure” would have been given in the utility or the department would have given the space to provide for the same.



# Expenditure vs .....?

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- Expenditure vs Provision

Should exclude provisions

- Expenditure vs Purchases

Should include purchases (as revenue expenditure)

- Expenditure vs Assets

Should include assets (Capital Expenditure)

- Expenditure vs Bad Debts

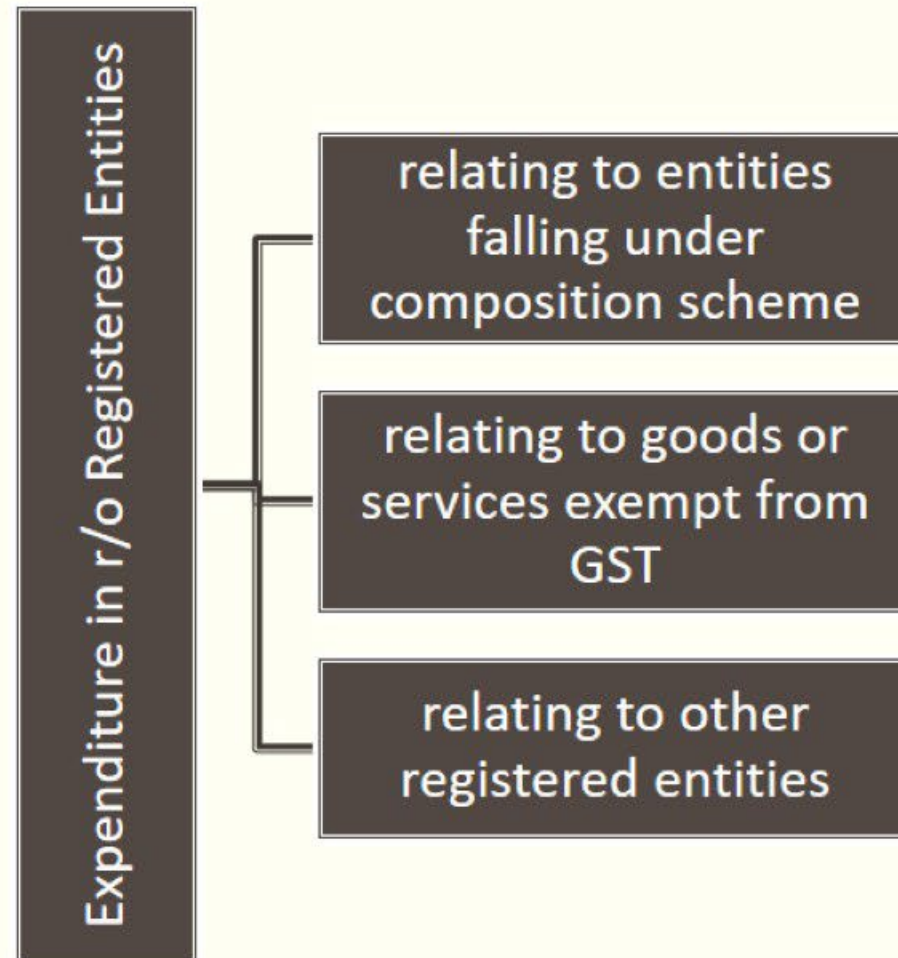
May be an expenditure but not a supply, of goods or service. Can be treated as loss and hence no reporting





## Sub-Division of Expenditure (Registered) (Column 3, 4 & 5)

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## Expenditure relating to entities falling under Composition Scheme

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- A composition dealer cannot charge GST in the invoices.
- A composition dealer cannot make inter-State supply.
- A composition dealer can issue only bill of supply and not a tax invoice.
- The composition dealer should have mentioned the following words at the top of the bill of supply issued by them:
- *“Composition taxable person, not eligible to collect tax on supplies”*

### Who cannot opt for composition scheme?

- Manufacturers of ice cream, pan masala, or tobacco
- Person engaged in the supply of non-taxable goods under the GST law (Petrol, Diesel, Natural Gas, Alcohol)



## Help from GSTR-3B?

Table 5 of GSTR-3B

. **Values of exempt, nil-rated and non-GST inward supplies**

Nature of supplies	Inter-State supplies	Intra-State supplies
1	2	3
From a supplier under composition scheme, Exempt and Nil rated supply		
Non GST supply		

**Reality:** Practice of not recording the GSTIN of Composition supplier. **Treated as Unregistered Entity in books and may be reported in Column 7 (as per ICAI).** Hence may need appropriate disclosures.

**Disclaimer:** details as required in column 4 of clause 44 is separately not maintained by the assessee and in absence of this, we are unable to comment.





## Expenditure relating to Goods or Service Exempt from GST

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- Section 2(47) of the Central Goods and Service Tax Act, 2017 defines exempt supply as follows:
- “exempt supply means supply of any goods or services or both which
- attracts nil rate of tax or
- which may be wholly exempt from tax under the Integrated Goods and Services Tax Act,
- and includes non-taxable supply;”

Notification No.1/2017 CT (R), which prescribes rates for intra-State supply of goods

**Notification No.2/2017 CT (R), which prescribes intra-State supply of goods which are exempt**

Notification No.11/2017 CT (R), which prescribes rate for intra-State supply of services

**Notification No.12/2017 CT (R), which prescribes intra-State supply of services which are exempt**



# Non GST Supply?

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- The term “non-taxable supply” has been defined in section 2(78) of the CGST Act, 2017 as follows:
- *“non-taxable supply” means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act”*
  - Supply of alcoholic liquor for human consumption is not leviable to tax.
  - Supply of petroleum crude, high speed diesel oil, motor spirit, natural gas and aviation turbine fuel.
- **Schedule –III – Transactions ?**
  - Sale of Land
  - Sale of completed building
  - Salary to employees
  - High Seas Purchase
  - Purchase of Goods within Customs Warehouse
  - Drop Shipment Purchases



**Treated neither as  
supply of goods nor  
as supply of services**

**As pe ICAI:** Should be reported in  
Column 7



## Expenditure relating to Other Registered Entities

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- Value of all inward supplies from registered dealers, other than
  - supplies from composition dealers and
  - exempt supply from registered dealers.
  
- There is a possibility that assessee may procure both exempt and taxable supplies from one registered person.
  
- Every inwards supply from a registered person should be analysed and if it is an exempt supply, the same should be reported under column (3).
  
- Only value of **taxable inwards supply** should be reported under column (5).





## Total payment to registered entities

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- Total payment for
  - Exempted
  - Composition Supplier
  - Other supplies from registered person
- Whether the total payment to the registered entities is to be reported or
- the total expenditure as booked in the books of account is to be reported here i.e. total of column (3) + (4) + (5) ?

**As per ICAI:** A harmonized interpretation shall be that in column (6), the total of column (3) (4) and (5) is to be reported and hence, the value of expenditure booked as per books of account shall be reported.



## Expenditure relating to entities not registered under GST

- The value of inward supply of goods and/or services received from unregistered persons should be reported here.
- Include here, Import of Goods or Services which are leviable to GST also
- Expenditure which may be treated as from Unregistered Person but may be from registered person

Section under GST	Nature of Expenditure	Possible Solution
17(5)	Blocked ITC- ITC not allowed and GST booked with expenses	Check GSTR-2A Reconciliation & Table 4D(1) of GSTR-3B
9(3)	Supplies under RCM -	For Registered: Check GSTR-2A. For Unregistered: Check RCM Invoice / Purchase Invoice – Sec 31(3)(f)
10 / 11	Composition Supplier Exempt Supplies from Registered Person	Check Table 5 of GSTR-3B
GSTIN of Auditee not mentioned	ITC not claimed and tax booked with expense / Expense in Cash	Only possible to verify from supplier master or vouching

- **As per ICAI:** It should be ensured that the total of columns 6 (Registered) and 7 (Unregistered), tallies with the amount mentioned in column (2) (Total Expenditure).



## Risk of Over reporting in Table 7

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- Over reporting of expenditure from unregistered may attract scrutiny.
- A disclosure for Table 7 about possibility of inaccuracy due to reasons listed above should be given in Form 3CD.
- A declaration should be taken from the auditee that he has not recorded GSTIN where ITC has not been claimed





# Support from GSTR 2A

Year				
Month				

1.	GSTIN																
2.	(a)	Legal name of the registered person															
	(b)	Trade name, if any															

PART A

(Amount in Rs. all Tables)

## 3. Inward supplies received from a registered person including supplies attracting reverse charge

GSTIN of supplier	Trade/ Legal name	Invoice details				Rate (%)	Tax-able value	Amount of tax			
		No.	Type	Date	Value			Integrated tax	Central tax	State/ UT tax	Cess
1	2	3	4	5	6	7	8	9	10	11	12

Place of supply (Name of State/ UT)	Supply attracting reverse charge (Y/N)	GSTR-1/5 period	GSTR-1/5 filing date	GSTR-3B filing status (Yes/ No)	Amendment made, if any (GSTIN, Others)	Tax period in which amended	Effective date of cancellation, if any
13	14	15	16	17	18	19	20



## GSTR 2A Reconciliation

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- **Checking of GSTR-2A thoroughly**
- To identify the Purchases unaccounted in Books of accounts
- To Identify the purchases which are not reported /short reported by suppliers.
- To identify the purchase which are reported but having difference in amount /tax.
- Helps it taking timely rectification steps / follow up.



## Other Issues

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- **Whether expenditure of capital nature is to be reported?**
- In the table under clause 44, the language used is “expenditure in respect of”.
- As per ICAI: Since, the word used is ‘expenditure’, it is advised that **the capital expenditure may also be reported** separately as serial no. 2 in the format prescribed
- **If Reporting inclusive or separately.**
- **What about depreciation / amortization of expenses / Provision of expenses**
  
- **How reporting to be done – GSTIN Wise / Entity Wise / Branch Wise**
- - This report may be prepared for an entity as a whole or for a branch thereof, as may be required and accordingly the information in these clauses may have to be filled up consolidating the expenditure incurred under various GST registrations





## Check List- Date from Auditee

Expenditure head	Name of the entity to whom payment is made	GSTIN of the entity	Value debited to expenditure account	Value for which input tax credit is taken	Total amount paid to the vendor	Reason for NIL GST	General Remarks , if any

- ☐ The Tax auditor should verify the details keyed in with the underlying document on a test check basis and retain the same as part of his working papers.



## Disclosure suggested by ICAI

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- An appropriate disclosure should be made by the Tax auditor in Form 3CA/3CB, as the case may be, for the view taken by the assessee in relation to the
  - meaning of “Total expenditure” and
  - the method of filling up the appropriate columns.
  - If the assessee is not in a position to give the details as required in clause 44, an appropriate disclosure/disclaimer may be made by the auditor in Form 3CA/3CB.



## Illustration

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- **Total expenditure of the entity debited to Profit and loss – Rs 250 Lakhs.**
- Purchase made from composition dealers during the year.- Rs 5 Lakhs
- Total expenditure incurred on exempt supplies –Rs 5 Lakh from Registered entities and Rs 15 Lakh from unregistered entities.
- Total Security services expenditure paid under RCM (supplier unregistered) – Rs 5 Lakh.
- Total expenditure on Fuel & Power – Rs 30 Lakhs
- Total expenditure in Freight – RCM/FCM- Rs 10 Lakh (Rs 5 Lakh from Unregistered and Rs 5 Lakh from registered )
- Total employee cost – Salary – Rs . 17 Lakh
- Total Interest paid – Rs. 25 Lakh out of which Rs.15 Lakh to banks and Rs. 10 Lakh to individual for unsecured loan.
- Depreciation debited to profit and loss account – Rs. 5 Lakhs
- During the year, the entity purchase the land worth Rs 100 Lakhs and motor vehicle worth Rs 25 Lakh .





## Table Presentation

SR.	Total amount of Expenditure incurred during the year	Expenditure in respect of entities registered under GST				Expenditure Relating to 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	
Total Exp	245 (not 250)				0	
Purchases	5		5		5	
Exempt	20	5			5	15
Security	5				0	5
Pwr & Fuel	30	30			30	
Freight	10			5	5	5
Salary	17				0	17
Int on Loan	25	15			15	10
Others	133			133	133	
	245	50	5	138	193	52



# Table Presentation

Capital Expenditure :

SR.	Total amount of Expenditure incurred during the year	Expenditure in respect of entities registered under GST				Expenditure Relating to entities not Registered under GST
		Relating to services exempt from GST	Relating to entities falling under Composition scheme	Relating to other Registered entities	Total payment to registered entities	
Land	100				100	100
MV	25			25	25	
	<b>125</b>	<b>0</b>	<b>0</b>	<b>25</b>	<b>125</b>	<b>100</b>



# HOW WILL YOU HELP GST CONSULTANT?





# Table 14 of GSTR-9C

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			



Q & A



# Thank You

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