



Investigations and Audits under GST: Strategizing and preparing the businesses

The Dbriefs Geography Updates series

Hardik Gandhi / Vikram Kulkarni

17 January 2023

Agenda

- Specialized Intelligence agencies and their roles under GST
- Investigations under GST and parameters
- Audits under GST and parameters
- Preparing for audits and investigations
- Strategizing way forward during audits and investigation
- Common issues raised by revenue authorities
- Case studies
- Questions and answers

Investigation: Specialized Intelligence agencies and their roles under GST

Specialized agencies – existing (restructured/renamed by CBIC)

DGRI/DRI

Directorate General of Revenue
Intelligence



DGGI/DGGSTI

Directorate General of GST Intelligence



Local anti evasion units

Local anti evasion units of centre
and state governments



Specialized agencies – existing (restructured/renamed by CBIC) (Cont'd)

DGGI/DGGSTI

Directorate General of GST Intelligence

- Set up on 12 June 2017
 - The said agency was earlier known as Directorate General of Central Excise Intelligence (DGCEI). It was founded in 1979 as Directorate General of Anti Evasion
 - DGCEI restructured/renamed as DGGI in 2017
- It is the apex intelligence and investigative agency entrusted with the
 - a) Task of collection, collation and dissemination of intelligence relating to evasion of GST and central excise to the field formations
 - b) Analyzing the price structure, marketing pattern and classification of evasion prone goods/services
 - c) Unearthing modus operandi of tax evasion
 - d) Coordinating with other Intelligence agencies
 - e) Suggesting policy measures to government

DGRI/DRI

Directorate General of Revenue Intelligence

- Set up on 04 December 1957
- It is the apex intelligence and investigative agency for matters relating to violation of the Customs Act
- To collect intelligence, analyze and disseminate such intelligence to field formations for action to combat smuggling
- Major functions include
 - a) Keeping watch over important seizures and investigation cases
 - b) Combating international smuggling and customs frauds
 - c) Keeping liaison with CBI and foreign countries on anti-smuggling matters
 - d) Keeping statistics of seizures, watching trends and pass on information to Ministries
 - e) Suggesting remedies for loopholes in law and procedures

Local anti evasion units

Local anti evasion units of centre and state governments

- The said units work locally
- These units have always been present historically
- Each jurisdictional commission rate has in house
- Each local units function within their respective jurisdiction whereas other agencies function over pan India jurisdiction

Specialized directorate – newly formed by CBIC

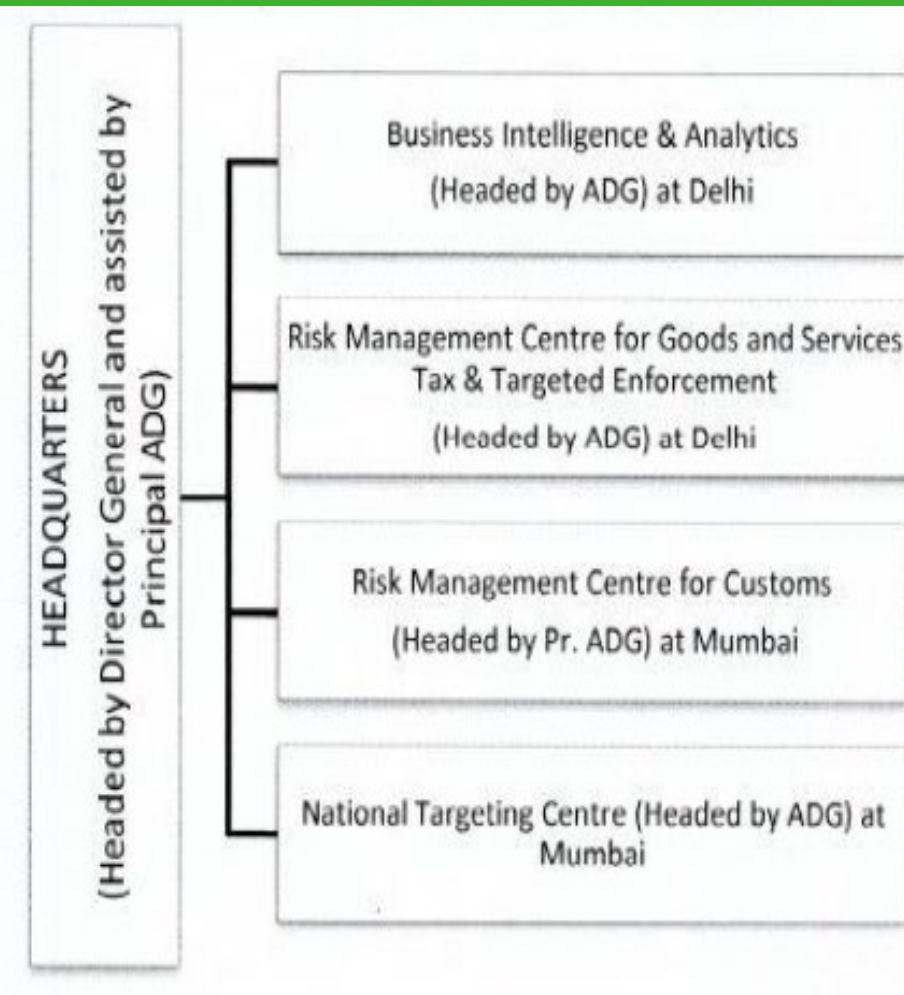
DGARM



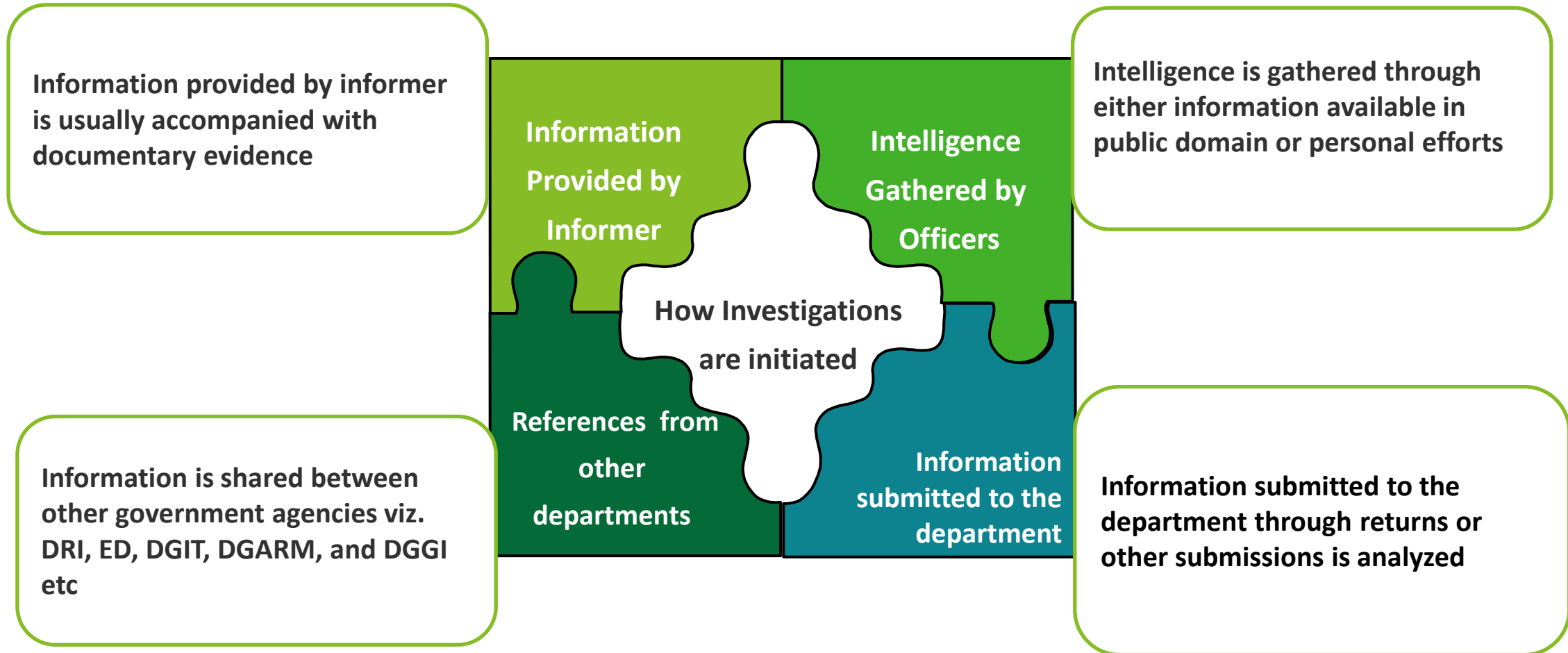
Directorate General Of Analytics & Risk Management

Directorate general of analytics and risk management

- Set up on 11 July 2017
- It functions as an apex body of CBIC for data analytics and risk management for customs, central excise, and GST matters
- To provide intelligence inputs and carry out big data analytics to assist the tax officers for better policy formulation and nabbing evaders
- Also known as “the data wing of GST”
- 4 Verticals under DGARM having separate charter of functions



Background – investigations



Investigation under GST

- Power of search and seizure are very strong investigation tool in the hands of revenue authorities, which gives enormous opportunity to gather evidences and unearth suppressed things and information to properly identify evasion and contravention of any provision
- The provisions of Section. 67 to 72 of the central/state goods and services tax Act 2017, and Rule 139 to Rule 141 of C/SGST Act deals with powers and procedure of inspection, search, and Seizure
- Few key sections are listed below
 - Inspection [Sec. 67(1)]
 - Inspection of goods in Movement (Sec. 68)
 - Search and Seizure [Sec. 67(2)]
 - Power to Summon (Sec. 70)
 - Access to Business Premises (Sec. 71)
 - Power to Arrest (Sec. 69)

Polling question 1

What according to you is most critical aspect to understand in Investigation/audit undertaken by authorities?

- The source of information
- Nature of information
- Strategizing the way forward
- All of the above
- Not sure/Don't know

Parameters for Investigation and audit

Business intelligence and fraud analytics used by departmental authorities



What is it?

- The GSTN has developed various BIFA tools based on Artificial Intelligence (AI) and Machine Learning (ML) capabilities to identify any red flags/ outliers or inconsistencies in the data reported by taxpayers through various GST returns or other means (such as e-way bills)

What do the tools do?

- The tools analyze the data provided by the taxpayers through multiple returns filed by the taxpayers and also the associate vendors/customer to identify any gaps in payment of tax

Primary sources of data for tools


- GSTR 1
- GSTR 3B
- GSTR 2A (auto generated)
- GSTR 9
- GSTR 9C
- GSTR 6
- GSTR 8 filed by e-commerce operator

Why should we know about these tools?


- A specific cell (Business intelligence and fraud analytics) has been constituted by CBIC for collection of data and ensuring more efficient and effective monitoring of taxpayers
- The formation of this specific cell and the access by authorities increases the need to understand the mechanism and the reconciliations available in the tools

Additional factors used by BIFA (basis news articles available in public domain)

Expense ratio and turnover ratio



Client data



Filing of returns within due dates




Supply chain /related party analysis




Additional Tools/Parameters used by departmental authorities


Network exploration tool for revenue augmentation (called NETRA)



Integrated data-sharing and artificial intelligence



Deep data analytics



Various system generated mismatches



Basic reconciliations (to avoid notices basis analytics tool)

GSTR 1 versus GSTR 3B

GSTR 2A versus GSTR 3B

E- Way bill versus GSTR 3B versus GSTR 1

Polling question 2

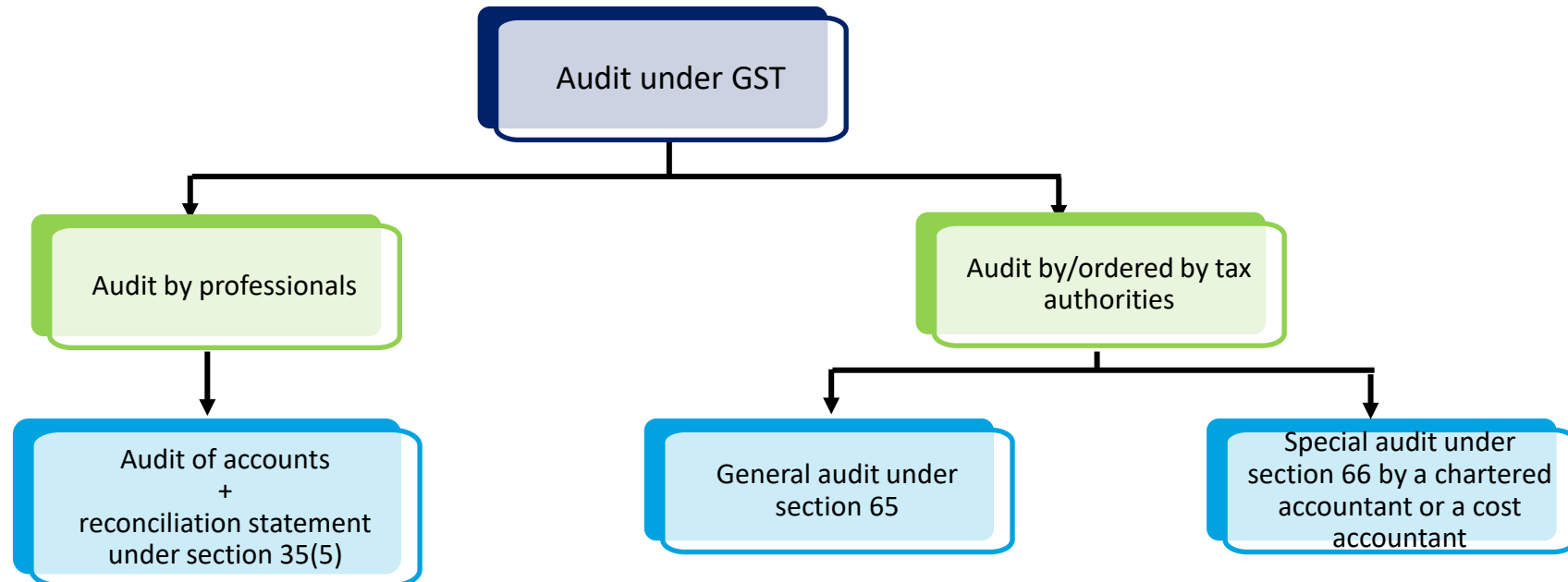
Which aspect according to you is important for businesses ?

- Uniformity in various statutory filings
- Timely compliance
- Uniformity in financial data and statutory filings
- All of the above
- Not sure

Audit under GST

Audit under GST

- The notices have been served after scrutinizing several documents during the audit under different Sections of the GST Act, depending on the issue being discovered during the audit
- An audit involves visiting the premises of business and inspecting various documents, registers and production records
- Types of Audit by tax authorities
 - **General audit:** The commissioner or on his orders an officer may conduct an audit of any registered dealer
 - **Special audit:** The department may conduct a special audit due to the complexity of the case and considering the interest of revenue



Preparing for audits and investigations

How to strategize for the investigation proceedings

Clarity about the case



- It is very important to have a clarity about the issue involved in the case/investigations
- While the IO can expand the scope of investigations if they come across any additional issues during investigations
- Having understood the issue, it is very important to assess whether the case is in favor of the business or the department and accordingly a plan of action should be devised

Handling an Investigation



- Investigations are very stressful for the Businesses. Therefore, it is very important to remain calm and composed during the process
- The IO may try to intimidate to accept certain actions which may not be true. Such situations require tactful handling

All endeavors should be towards completion of investigations



- All efforts should be made to ensure that the investigations are completed at the earliest. Any delay may result into more trying times for the business
- Expeditious collation and submission of information and appearances for recording statements
- The goal should be to give all details to the IO so that the SCN is issued at the earliest

Polling question 3

Which aspect according to you bothers the most during an Audit/Investigation undertaken by authorities?

- Abrupt visit by officers
- Disruption of Business
- Stressful situation due to lack of preparedness
- All of the above
- Not sure/Don't know

Preparing for audits and investigations

Outward supplies

01

Reconciliation of outward supplies disclosed in GSTR-1 and GSTR-3B

02

Reconciliation of tax paid as per books and tax paid as per GST returns

03

Reconciliation of outward supplies as per books of accounts and outward supplies as per GSTR-1 and GSTR-3B

04

Reconciliation of E-way bills generated with the GST Returns

05

Reconciliation of E-way bills generated on the portal with the books of accounts

06

Reconciliation of e-invoices with e-way bills

07

Reconciliation of turnover as per financials and turnover as per returns

08

Reconciliation of tax paid on monthly basis with the liability declared in the returns

Preparing for audits and investigations

Input tax credit



Reconciliation of ITC availed as per books and ITC availed as per returns



Details of ITC attributable to taxable and exempt supplies



Reconciliation of monthly ITC as per books and ITC appearing in GSTR-2A



Invoice wise details of ITC reversed in the GST returns



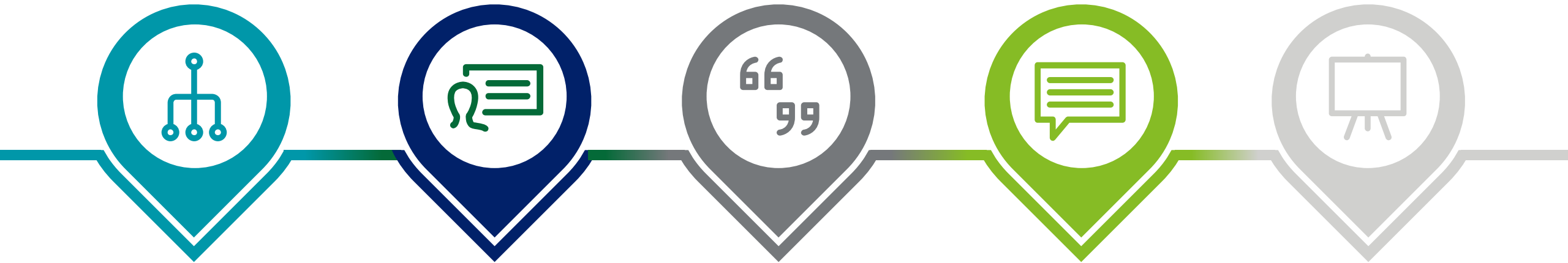
Reconciliation of ineligible ITC as per books and ineligible ITC as disclosed in the returns



Bifurcation of ITC into inputs, input services, and capital goods

Preparing for audits and investigations

Reverse charge



Reconciliation of RCM paid as per books of accounts and RCM paid as per returns

Details of line items where discharge of RCM liability is pending

Details of ITC availed on tax paid under RCM

List of line items wherein ITC is not availed on tax paid under RCM

Details of RCM paid on procurement from unregistered person (upto October 13 2017), import of services and overseas group company service

Preparing for audits and investigations

Other important points



Regular GST Health Check ups to identify potential gaps in systems and compliances



Ensure that all the records and documents are kept at place of business



Preparation of SOPs to standardize the routine activities



Audit preparedness



Re-assessing positions basis the developments in legislation

Strategizing way forward during Audits and Investigations

Handling investigation/audits under GST



01

- Audit would be done at place of business or at department's office
- Investigation can be done at any place of business

02

- Department gives 15 working days notice period before commencement of audit. No such notice is provided in case of investigations

03

- Avoid unnecessary confrontations with the officers
- Insist to give audit objections/information required in writing

04

- As far as possible all the facts and figures should be provided to the Auditor. This would help in avoiding unnecessary SCNs

05

- Make available the reconciliations/backup workings prepared to the officers
- Verify facts and figures before submitting to the audit party

Audit preparedness

1

Information to be always kept readily available to handle audit cases more effectively

2

State wise registers, invoices , documentation, and reconciliations should be readily available

3

Undertake activities such as reassessing the tax positions, reconciliations of ITC, periodic review etc. to ensure that there are no last-minute surprises from the GST department

4

Ensure compliance with respect to different reasons due to which the notices could be served for, including misdeclaration, tax not paid, short-payment, wrongly availed input-tax credit, incorrect classification of goods/services and export items, mismatch in sale and purchase of items, and so on

5

A regular professional advice, review and health checks ensures compliance of the statutory provisions of the Act

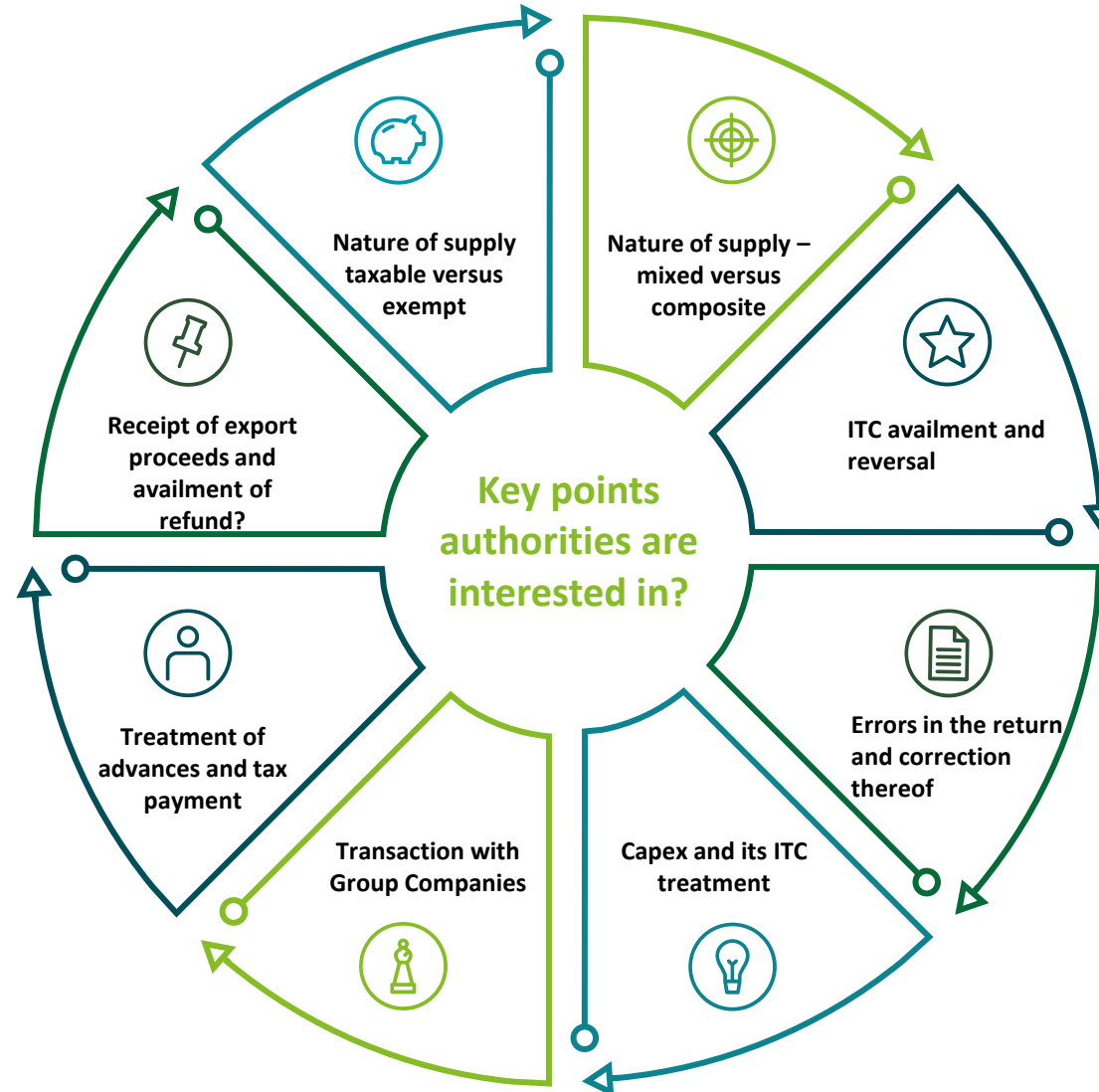
Polling question 4

Do you think if the taxes are paid along with interest during investigation, will the authorities close the proceedings?

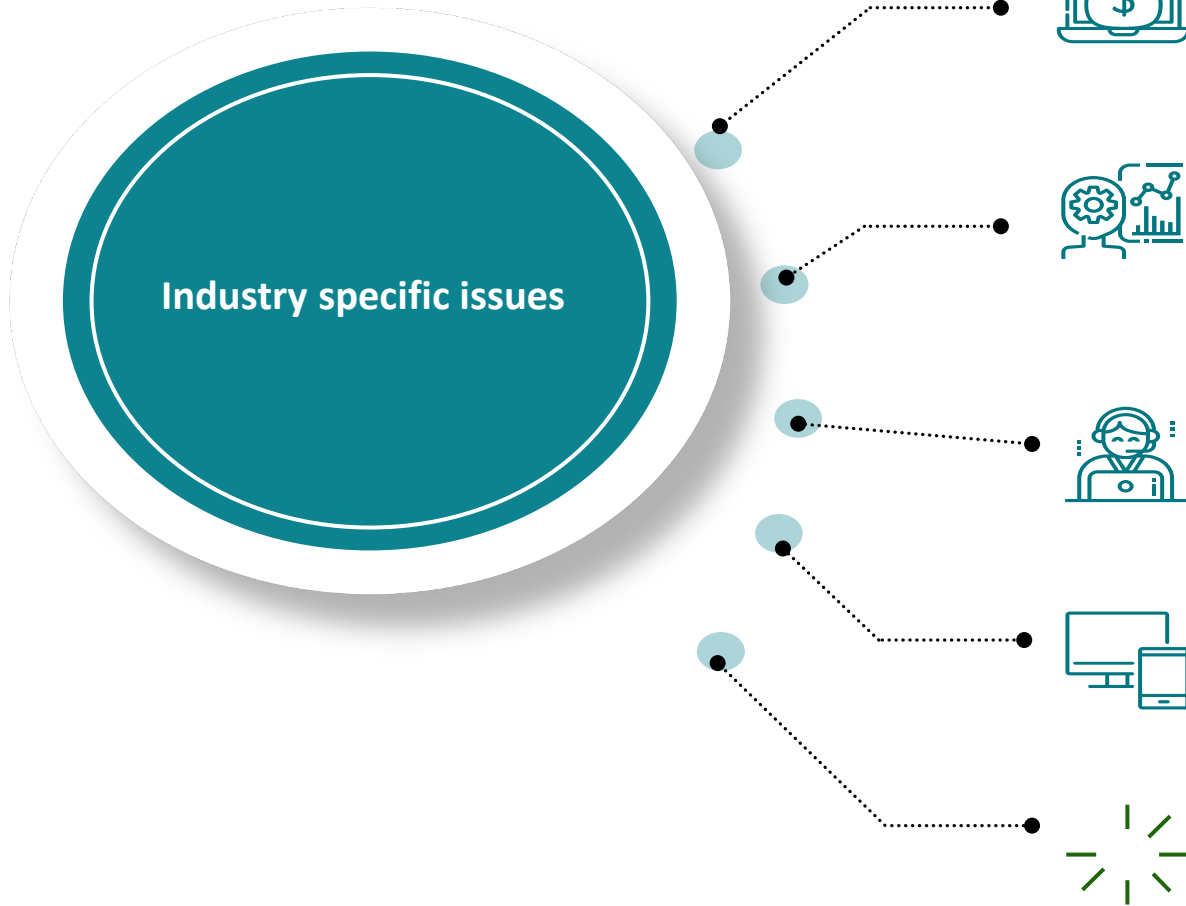
- Yes
- No
- Not sure/don't know

Common issues raised by revenue authorities

Common issues raised by revenue authorities



Common issues raised by revenue authorities



RCM liability on secondment of employees Pursuant to the ruling by SC in case of Northern operating systems, department has been issuing notices with respect to non payment of RCM liability on seconded employees in India



Discount schemes: Loosely worded agreements with the distributors and customers along with irregular transfer of post sales discount GST benefit has invited department's attention on discount schemes rolled out by such companies



RCM liability on usage of royalty Multinational companies in India use brand name/technical know how of foreign parent companies but do not discharge any GST on such deemed import of service, thereby inviting scrutiny by department



ITC reversal on destruction of goods Department has conducted drives to crack down companies who have not reversed/incorrectly reversed input tax credits in case of expired goods returned by the customers and destroyed



GST rates Online change gaming with speculative in nature attracts GST at 28%, whereas companies are paying GST at 18% as is applicable to skill based gaming

Case studies

Case study 1 – DGGI raising issues pertaining to non payment of GST on brand royalty



- There is a concept under GST of deemed supply i.e., in certain cases, providing services/goods without any consideration also qualifies as supply. GST is required to be discharged on the same. One such case is supplies between related entities
- In the above case study, we may see that parent company 'ABC' is registered outside India. It is the owner of all the brand names, trade names, technical know how, etc.
- The Indian company "PQR" which is a subsidiary of the parent company uses the trade names, technical know how, patents, etc., in India to carry out its Indian business. In other words, the parent company is providing the services of usage of such trade name, brand name, technical know how, etc.
- Even though no consideration is charged, the above transaction qualifies as a "Deemed supply" under GST
- The DGGI has issued notices to PQR company for discharge of GST on such services under reverse charge basis. Further, since these notices pertain to period starting from FY 2017, PQR may not even be able to avail input tax credit on the same and the same may be litigious

Case study 2 – Investigations by DGGI on the issue of non payment of tax on secondment of employees

- 1 Hon'ble Supreme Court of India recently held that if any employees are provided by a group entity on secondment then it will be treated as taxable service and liable to service tax
- 2 This decision has been relied upon by the department for demanding GST on such arrangement
- 3 DGGI and the field formations have initiated enquiries against many assesses on this issue and recoveries have also been made

Question and answers

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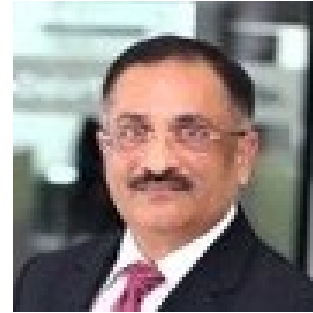


Hardik Gandhi

Tax Partner

Deloitte India

ghardik@DELOITTE.com



Vikram Kulkarni

Tax Director

Deloitte India

vikrkulkarni@deloitte.com



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