

HIREGANGE ACADEMY

Empowering Knowledge & Employability



DUE DILIGENCE IN INDIRECT TAXES

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About Hiregange Academy

Hiregange Academy began operations on 19th June 2014, as a knowledge and employability initiative in the quest to support job aspirants. The Academy specializes in enabling them gain self-confidence, enhance their knowledge in the field of commerce and skill-set upgradation to be job ready.

The world is competitive place where building or improving capabilities to sustain is the key. There is a gap between the knowledge gained by graduates and the industry expectations, as the number of job seekers are more than the opportunities available.

Qualification is the first step to a career. Success follows for those who are hardworking. Add the knowledge with the right skills, attitude, and confidence, you have the formula to **A SUCCESSFUL CAREER**.

Knowledge as a concept is only of potential value. The application, execution and implementation of knowledge is where the real power lies. Most graduates, despite being qualified, are either underemployed or unemployed. In case of working professionals, they are either under-utilized or do not realize their full potential. Where could they have gone wrong? Primarily, understanding the wants of the employer is important.

The methodology of achieving this would be through:

1. Job-specific training in classrooms/online webinars (also uploaded on YouTube).
2. Monthly newsletter presently focused on Indirect Taxes to interested persons to spread the latest information on GST and other IDT laws.
3. Online publication of booklets, free e- books.

The Academy's programs are designed, not only for employment seeking graduates, but, also for professionals such as Accountants, Managers, Tax Practitioners, Chartered Accountants, Cost Accountants, CMAs, CA/CS students, and other professionals who are keen on learning and upgrading their skillsets.

The Academy aims to serve students from the CA fraternity, commerce graduates, colleges, and the industry at the large.

The Hiregange Academy merged with **Empower Education Foundation®**, a Trust, in 2018, as its division to further its vision. It is supported by its knowledge partners of Hiregange & Associates.

Since its inception, Hiregange Academy has successfully conducted over 30 batches of GST Certificate Courses, numerous MS Excel (Basic & Advanced) Courses, Accountants Refresher Courses, training more than three thousand students and professionals in core areas.

Preface

The need to grow exponentially makes acquisitions and mergers a particularly important aspect of business. Adding a synergy may make a whole lot of difference. However, the downside is that one may end up holding huge liabilities which might lead to an uncertain future if one is not careful. Therefore, “due diligence” exercise is imperative in all aspects of business, including taxation. It would lead to a more informed decision. In the due diligence exercise, the prospective buyer normally carries out certain agreed upon procedures to assess the deal from commercial, financial, taxation and legal standpoints.

There is no legal binding to carry out the due diligence activity. However, the business aspects aside a spectrum of taxation and regulatory issues such as those relating to exchange controls, indirect taxation, benefits under Foreign Trade Policy, capital market regulations, competition commission restrictions, etc. are also highly impactful.

Identifying tax risks that can impede or even derail a merger or acquisition is a critical aspect of the due diligence process. The confirmation after due diligence, that there are no hidden liabilities and that the balances as stated with respect to the indirect taxes are correct would be a matter of comfort.

The users of financial statements are becoming more demanding now-a-days and the liability and responsibility of auditors is being questioned. Auditors appointed for conducting a due diligence may not, in some cases, be competent to examine areas relating to compliance with respect to indirect taxes.

Hence, this booklet focuses on providing an overview of different methodologies of conducting due diligence under indirect taxation for the benefit of statutory auditors, investors, financial institutions, governmental organizations, and other users of financial statements.

We are grateful to Venkatanarayana G.M for the contribution to this booklet. I also thank CA. Susheel Padhy for the additional contribution and P.T. Rajagopalan (Hiregange Academy) & Madhurima Saha of Bangalore Audit and Assistance Division for their assistance. We hope that this booklet would prove to be useful to the readers and needless to say, comments and suggestions are welcome since they are the barometers of measuring the performance of any literary work. You may provide your feedback to akshay@hiregange.com.

About the Authors

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He has conducted more than 1500 value-added Indirect Tax (IDT) Review Audits focusing on building processes to prevent and correct non compliances while adding value.

He has jointly authored 18 books from 1997 till 2016 on Central Excise, Service Tax, Karnataka VAT and Excise/Service Tax Audit, IDT - IPCC Study Material and Central Sales Tax.

Further in GST, he has authored 10 Books - A Primer (2 Editions), GST Classification & Exemption (2017), Compendium of Issues and Solutions in GST (Jun 2019 & May 2021), GST Audit (Aug 2020), Abridged Compendium (Jul 2019 & Aug 2021), Sectoral books on Real Estate (2020) and Textiles (Feb 2021), Department Audit Manual (Feb 2021) and GST Legal Precedents (Expected Aug 2021).

He has encouraged/fostered 130 + leading professionals in the industry to take up ethical practice in IDT.

Has been active in the field of spreading awareness through articles and workshops, both physical & online. He is also active through online replies and contributions on several platforms like - TaxSutra, Hiregange Academy, LinkedIn, Facebook, YouTube, etc.

He was a Central Council Member of the Institute of Chartered Accountants of India for the terms 2010-13 & 2016-19. In these 6 years on the Governing Council, he got a name as the "Conscience Keeper" of the Council. He was the Chairman of the IDT Committee for 4 years and led it in the crucial times of GST implementation. He has empowered over 1 Lakh professionals & urged them to take up ethical practice with knowledge and skill.

He is involved in efforts to make the Indirect Tax laws in India simple, certain, and fair and create an awareness of the potential of knowledge of Indirect Taxes in India.

He also serves as the Managing Trustee for Empower Education Foundation and supported the education of about 1300 lesser privileged students in the 15 years of its existence.

In 2014, he began his association with Hiregange Academy as its Knowledge Partner which has served over three thousand student and professionals in enhancing their capability mainly in IDT, Accounting and MS Excel.

CA Madhukar N Hiregange believes in "Value Based Practice and Life".

CA Akshay M Hiregange [ACA, DISA aspirant (ICAI)] qualified as Chartered Accountant in 2016. He is a Partner (Audit & Assistance Wing) at Hiregange & Associates, Bangalore.

He has experience of over 3 years in Internal Audits, Compliance & Assistance, and Indirect Taxes, and in the past 5 years he has been directing focus towards GST, including Audit and Consultancy matters.

He has headed GST Impact Assessments of various industries such as Automobile, Software, Logistics, Retail, Construction, Education, Job Work, Charitable Trusts, etc.

He has also undertaken GST Trainings for corporate clients and has been invited by ICAI as a speaker on GST.

He is a member of “Artha” - A Study Circle and a regular contributor to GST articles and replies to KSCAA, CA Club India and TaxGuru.



DUE DILIGENCE IN INDIRECT TAXES

Introduction

Due diligence is normally associated with sale, takeovers, amalgamations and mergers of entities or the divisions. It can be said to be a comprehensive appraisal of a business undertaken by a buyer to establish the fair value assets and liabilities of the seller along with the legal compliance. It may also enable estimation of the unrecorded transactions which could impact the assets or liabilities.



At times, tax considerations especially indirect taxes are an afterthought which may prove to de-stabilize the amalgamated business especially when the shares takeover route has been followed and the new entity is responsible for the past liabilities.

Generally, the due diligence can be covered under 3 major heads:

1. **Commercial due diligence:** This would generally cover operational elements such as products and services, customers, suppliers, property, stock, assets, employees, intellectual property, industry, and market trends.
2. **Financial due diligence:** This would generally cover business maintainable earnings (BME), salaries and other employee entitlements, insurance, debtors, creditors, and general financial performance.
3. **Legal due diligence:** This covers patents, trademarks, contracts/agreements with customers and suppliers, claims and warranties, contingent liabilities, tax departmental notices, closed and on-going legal cases.

In this book, we give a brief on the concept of due diligence and provide detailed information with respect to due diligence of indirect taxes in India.

We have also provided some insight of due diligence compliance in terms of information technology.

- a) The impact of indirect taxes on businesses is quite substantial. The direct impact on various industries before and after the implementation of GST would be even more.

Particulars	Before GST	After GST
Manufacturing industries	15-25%	12-28%
Traders	18-22%	16-28%
Service Providers	15%	18 - 28%

The taxes on electricity inputs, petroleum products and stamp duty on commercial ventures which can vary between 2-10% have not been considered above as they are outside GST.

The net operating loss of the entity to be taken over can be a tax attribute of that entity which can be carried over and at times may be the sole reason for the takeover. The accumulated credits, existence of

tax-free status may also be the attributes of an entity which are important from the point of a potential advantage to the next entity.

Although, VAT, CST & Excise Laws are still prevalent, these laws are applicable to only certain goods and activities. The indirect taxation system went through a paradigm shift with the introduction of GST from July 2017 onwards. Customs & FTP, still remain with some changes and amendments in the recent past. RoDTEP (Remission of Duties or Taxes on Export Products) scheme has been introduced which appears to restrict the quantum as well as the coverage of products and services. Scheme for Exporters to make Indian products cost-competitive and create a level playing field for them in the Global Market. RoDTEP Scheme (compliant with WTO norms) has replaced the MEIS scheme, which was not in compliance with WTO norms and rules. The continuation and benefit of SEIS scheme presently hangs in the balance and remains unclarified. To enable RoDTEP scheme, creation of electronic ledger in ICEGATE and declaration shipping bills are mandatory.

Objectives

The main objective is to “extract” and “build knowledge” about the target company’s business operations and weave that knowledge into the important areas of the proposed transaction.



When a business opportunity first arises, it continues throughout the talks/discussions, initial data collection and evaluation. Thorough detailed due diligence is typically conducted after the parties involved in the proposed transaction have agreed in principle that a deal should be pursued and after a preliminary understanding has been reached, but prior to the signing of a binding contract.

Objectives in relation to indirect tax laws could be as under:

- ❖ Liability for past acquisitions, reorganization, disposals, restructuring prior to take over need to be stated at proper value.
- ❖ Liabilities for possible disputes, existing disputes, indemnification, or obligation like advance license, open EPCG scheme, export obligations, etc.
- ❖ Assets like credits of GST unexpired tax holiday, retaining tax collected fully or partially, TDS, TCS, etc.
- ❖ Tax sharing agreements for the past existing as on date.
- ❖ Tax planning opportunities like accumulated credit utilization, huge refunds.
- ❖ Utilizing sellers tax structure to advantage.
- ❖ Structuring major transactions to manage and optimize the indirect taxes.
- ❖ Managing indirect tax opportunities to enhance the cash flow.
- ❖ Planning to manage future indirect taxes.
- ❖ Preparing tax ruling and interpretation requests.

- ❖ Designing and reviewing systems to help ensure indirect taxes are appropriately collected.
- ❖ Test billing or point of sale systems.
- ❖ Managing indirect tax audits and other related issues.
- ❖ Educating your tax managers/taxation team through workshops, seminars, and manuals.
- ❖ Review of significant tax incentives and government subsidies enjoyed/missed out/ excess claimed.
- ❖ Review of deferred taxes.

Transactions Requiring Due Diligence

➤ **Mergers and Acquisitions** - The prospective purchaser conducts extensive due diligence. He sends a questionnaire to the target company requesting full details of the business's financials, licenses and collaboration agreements and a whole host of other information. The team doing due diligence then reviews regulatory and press filings, media reports etc. to find out whether there are any legal and regulatory issues, existing and pending lawsuits and other litigation involving the entity. The team may look for conflict of interest, insider trading and other problems. In this case, the due diligence is both for buyer and seller.

➤ **Partnership** - Some of the different types of partnerships where due diligence investigation is required include:

- strategic alliances and strategic partnerships,
- business partners and alliances, partnering agreements, business coalitions,
- just in time suppliers and relationships, sole suppliers, outsourcing arrangements, and customers,
- technology and product licensing, joint development agreements, technology sharing and cross licensing agreements,
- business partners, affiliates, franchisees, and franchisors,
- value added resellers, value added dealers, distribution relationships, etc.

➤ **Joint Venture and Collaborations** - Before entering into a major commercial agreement like a joint venture or other collaboration with a company, a collaboration partner would want to carry a certain amount of due diligence. This may not be as extensive as on an acquisition, but the larger company would be seeking comfort that their investment would be secure, and the small company has the systems, personnel, expertise, and resources to perform the obligations.



Reasons

- ❖ To confirm that the business is what it appears to be.
- ❖ To identify potential “deal killer” defects in the target and avoid a bad business transaction.
- ❖ Satisfies the officers' and directors' fiduciary duty to make sure any decision made would maximize value to the organization.
- ❖ A due diligence audit is equivalent to checking references before hiring. In general, it focuses on information outside of what is freely presented.
- ❖ To verify that the transaction complies with investment or acquisition criteria.
- ❖ To gain information that would be useful for valuing assets, defining representations and warranties and / or negotiating price concessions.

Value

- ❖ It assesses the risks and opportunities of a proposed transaction.
- ❖ It helps to reduce the risk of post-transaction unpleasant surprises.
- ❖ It is vital that the results of any due diligence process are relevant to the transaction including:
 - Valuation of the target and therefore the purchase price.
 - Sale and purchase agreement (e.g., accounting definitions, accounting and tax warranties, indemnities etc.)
 - Integration plan (e.g., deal synergies)
- ❖ There are a range of circumstances in which companies can benefit from externally provided acquisition due diligence:
 - Where any organization is considering an acquisition, merger, or joint venture.
 - Where the organization or deal manager has limited experience in their undertaking. Where existing advisors face a conflict of interest or are not well placed to undertake it.
 - Where the situation demands technical capabilities and commercial experience beyond the organization's internal resources.



How to Conduct Due Diligence

- **Start with an open mind** - Do not assume that anything wrong would be found. What needs to be done is to identify weakness/potentially risky areas and ask for explanations.
- **Get the best team of people**- If you do not have a group of people inside your firm that can perform the task (e.g., lack of trained staff, lack of experienced persons with business knowledge), there are due diligence experts that you can be hired. When hiring such professionals look for their experience record and understand their industry knowledge.
- **Get help in all areas** - Finance, operations, tax, accounting legal, marketing, technology, and any other relevant areas to the assignment so that you get a 360-degree view of the acquisition candidate.
- **Talk to customers, suppliers, business partners and employees** - Who are great resource points for the preparatory work necessary.



- **Take a risk management approach** –Identify the areas which are prone to control weaknesses or management lapses as time to perform due diligence is limited. While doing your research you also need to make sure that you do not antagonize the team of people of the target company by bogging them down with loads of questions.



- **Prepare a comprehensive report** detailing the compliances and substantive risks / issues.

Focus

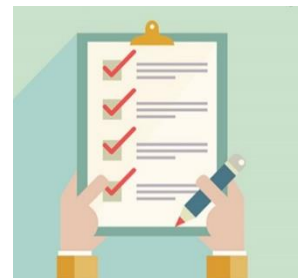
Due diligence is a process of obtaining sufficient reliable information about the proposed acquisition to help to uncover any fact, circumstances or set of conditions that would have a reasonable likelihood of influencing the offer or decision to acquire business.

The internally generated information obtained during this process would help to:

- ❖ Verify seller representations.
- ❖ Assist in the determination of value (assets and liabilities).
- ❖ Uncover problems, issues, and concerns (current and future).
- ❖ Gain a better understanding of the business and industry, key customers, trends, and regulatory requirements.
- ❖ Evaluate management and key employees.
- ❖ GST Implication on transfer/merger - this is briefly discussed below.

The externally generated information would focus on:

- ❖ Public information regarding the company, key managerial persons, and key customers.
- ❖ Market research to gain a better understanding of the dynamics of the marketplace.



Documents

At the beginning of the due diligence process, following documents are normally requested:

- ❖ The latest business plan.
- ❖ Product data sheets and literature.
- ❖ Analysis of competitors.

- ❖ Organizational chart and tax filings.
- ❖ Description of lease and detailed budget and revenue forecasts.
- ❖ Capitalization structure and shareholder information.
- ❖ Historical balance sheet, cash flow and income statements since inception.
- ❖ Forecast Balance Sheet, cash flow and income statements (possibly up to 5 years).
- ❖ Current operating budgets compared to actual.
- ❖ Property & asset details (encumbrances, loans, etc. against the same)
- ❖ Customer & vendor agreements
- ❖ Details of pending litigations, including under indirect taxes and status of the same.

Work Approach

In most cases, purchase of a business is expensive and therefore rare. Therefore, assessing the businesses fair value includes:

- ❖ Reviewing and reporting on the financials submitted by the target company.
- ❖ Assessing the business firsthand by a site visit (if applicable).
- ❖ Working through the due diligence process with the acquiring company or investor by defining the key areas.
- ❖ Helping prepare an offer based on completion of due diligence.

Important points to be kept in the mind:

- ❖ **It is about managing risk** - Double-check financials, Income tax/GST returns, patents and customers lists and make sure the company does not face a lawsuit or criminal investigation. Extra caution needs to be exercised if the company has never undergone an audit from an outside accounting firm.
- ❖ **Prioritize the people** - Background checks on the company's key officers should be undertaken.
- ❖ **Carry out the checks** - With reference to documents and third-party verification as appropriate.
- ❖ **Prepare to fix the price** - The investor can and do use any flaws that the due diligence uncovers to negotiate the sale price. **Due diligence is chance to get "a better deal"**.



Difference Between Due Diligence and Audit

Audit	Due Diligence
<p>Audit is an independent examination and evaluation of the financial statements of an organization with a view to express an opinion thereon.</p>	<p>Due diligence refers to an examination of a potential investment to confirm all material facts of the prospective business opportunity.</p>
<p>Audit is concerned with the truth and fairness of historical financial statements only.</p>	<p>The scope of a due diligence is generally wider - it includes a review of historical figures as one of the elements and also involves analysing the sustainability of business, competition, business plan, future prospects, corporate and management structure, technology, synergy of target business to company's business apart from researching regulatory compliances, legal issues, and other financial data.</p>
<p>An audit involves a study and evaluation of internal accounting controls, detailed tests of accounting records or corroborative evidence through inspection, observation and confirmation which is not usually required in a review engagement.</p>	<p>Due diligence involves review of financial and non-financial records as deemed relevant and material. Simply put, due diligence aims to take care that a reasonable person should take before entering into an agreement or a transaction with another party.</p>

GST Implication on transfer/merger

1. Outward supply of goods/services
 - a. Where entire entity, or division of entity is supplied as a going concern - then the transaction being a slump sale is considered as an exempt supply vide serial no. 2 of NN 12/2017-Central Tax (Rates)
 - b. Where only certain assets/liabilities are transferred/when not sold as a going concern - GST would be applicable on the goods and services respectively as per Section 87 of CGST Act.
2. Transfer of credit
 - a. Section 18(3) of CGST Act - Allows for transfer of unutilized credit balance from transferor to transferee entity.

- b. ITC-02 must be filed by transferor and accepted by transferee.
 - c. A practicing CA certificate would also be required to authenticate the transaction.
3. In case of amalgamation, wherein a new entity is created based on a High Court/Tribunal order, the liability to be registered would be the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court/Tribunal.
4. In the event of a slump sale, exempt supply would have implication in relation to credit reversal as per Section 17(2) read with Rule 42 & 43.

In this booklet, we examine the methodology to conduct a due diligence under indirect taxation and impact of technology by way of:

- General Checklist - For completing the diligence exercise effectively.
- Specific Checklist - After understanding of the important aspects of indirect taxes.
- GST & Customs review programs
- Impact of Technology on due diligence

Checklists for IDT Compliance

General Checklist

- ❖ Understanding industry and the client's business.
- ❖ Indirect tax disputes in industry and current status.
- ❖ Corporate structure of the company/ group in India and outside.
- ❖ Internal Control specific to IDT like limits, authorizations, written procedures and inbuilt extent of preventive, detective, and corrective checks in place.
- ❖ Extent of IDT reporting in the Management Information System.
- ❖ Extent of information technology system integration to the indirect tax filing.
- ❖ Extent of qualified competent officers in - charge of IDT.
- ❖ External health check/ inclusion of IDT in internal audit scope.
- ❖ Estimate of risk appetite of the company. Review of Contingent liabilities, tax provisions and tax paid in the balance sheet.
- ❖ Analysis about effective tax rate and drawing a cost benefit analysis in indirect taxation.
- ❖ Status and aging of refunds if any.
- ❖ Major agreements including those which are cross border.



- ❖ Customer and vendor profiling and changes in the past year.

Specific Checklist

- ❖ Last 3 years returns under GST to be reviewed.
- ❖ Reconciliation of returns to financials including carried forward balances.
- ❖ Any advance ruling applied for and obtained / pending before any state or central authority.
- ❖ Past due diligence report if any.
- ❖ Indirect tax review as health check / internal audit if any report to be perused.
- ❖ Each tax file to be checked for adequacy of compliance, completeness and replies examined.
- ❖ Investigation and audits by revenue- reports and their replies to be examined.
- ❖ Any contingent liability in the notes to accounts.
- ❖ Past disputes status, audit queries outstanding not cleared examined.
- ❖ Exception report on management override [putting through special transactions not in compliance with the system] possibilities and listing of instances.
- ❖ Is there any existence of internal audit system at the company? If yes, review the internal audit reports to study the GST implications.
- ❖ Information systems audit report internal/ external if any.
- ❖ Review and analysis of the past 3 years Balance Sheet as well as Profit & Loss account other than reconciliation.
- ❖ Tax holiday and period for which available along with value limits if any.
- ❖ Non-compete amount paid, transfer of technology, brand, and other intangible property impact under GST.
- ❖ Obtaining tax representations and warranties from the seller organizations. Possible tax sharing agreements.
- ❖ Tax indemnity for the pre-handover transaction taxes as well as in between the handing over process.
- ❖ Review for registration obtained under GST and Customs provisions.
- ❖ Review the classification of goods sold/services supplied and rate of tax applied for sale of goods/services supplied under GST provisions to ensure accuracy of the same.



This is a brief checklist of the issues which could come up. It is certain that there would be many other issues which need to be verified depending upon the type of transactions and this would require additions to this basic checklist above.

Checklists under IDT

Here we examine the possible issues under each of the indirect tax laws which have a bearing on the value of assets and liabilities stated in the financial statements.

GST Checklist

- ✓ Whether goods or services under GST are taxable or exempt?
- ✓ Whether conditional exemption/concessional rates for specific goods or services are considered appropriately?
- ✓ Whether there is any ambiguity in relation to classification, place of supply, time of supply, tax rates etc. If yes, whether expert legal opinion has been obtained?
- ✓ Whether exports (if any) satisfy conditions in GST law (considering Finance Act 2021 amendments)?
- ✓ Whether the valuation has been performed as per section 15 r/w applicable rules?
- ✓ Whether credit is claimed as per section 16 subject to restrictions mentioned in section 17? (ensure amendments in GST law vide Finance Act 2021 are considered)
- ✓ Whether all eligible credit is claimed and all ineligible credit is reversed/un-availed?
- ✓ Whether deemed supply transactions are considered (ex: stock transfer to entity with same PAN [such as branch offices in other states])?
- ✓ Whether stock reports have been verified to ensure there are no goods lost/damaged being abnormal in nature?
- ✓ Whether ISD registration is obtained when a vendor invoice pertains to two or more GSTINs. (to transfer eligible/ineligible credit to GSTINs with same PAN)?
- ✓ Whether cross charge is performed for services provided by one GSTIN to another. (Ex: admin team in HO performs functions for branches in other States)?
- ✓ Whether GST returns and other applicable returns/statements under GST are being filed periodically within timelines?
- ✓ Whether management is able to substantiate reconciliations between GST returns and audited financial statements to your satisfaction?
- ✓ Whether all procedural formalities are complied with (Ex: updating authorized signatory, additional place of business, current address, etc.)?
- ✓ Whether they have received any notice/communication from GST department/officers and the status of the same?
- ✓ Whether any legal cases remain pending from Service Tax, Excise, VAT era?



- ✓ ITC/ IGST Refund issues -A useful article on this topic has been provided - link <https://hiregange.com/a/impact-of-itc-refund-due-to-merger-demerger-spinoff-and-split-within-india-as-well-as-outside-india>



Customs Checklist

- ✓ Whether exporter/ importer has obtained Import- Export Code (IEC) number from DGFT (Director General Foreign Trade).
- ✓ Whether exporter has a current a/c in the designated bank for the credit of any drawback incentive.
- ✓ Classification and rate applicable -The possibility of paying a higher rate of customs duty at present than applicable.
- ✓ Whether the goods imported/ exported are valued as per section 14 of Customs Act, 1962 read with valuation rules.
- ✓ Examination of exemption, if any, available considering the customer profile.
- ✓ Whether correct information is declared in bill of entry and relevant documents are filed with the customs officer for clearance of imported goods. (sample basis)



The time limit for presentation of bill of entry has been changed to ‘end of the day preceding the date of arrival of the aircraft/ vessel/ vehicle. The Board has discretionary powers to prescribe a different time limit for presentation of bill of entry.

- ✓ Whether there is violation of any prohibition/ restriction given under Customs act, FTP (Foreign Trade Practice) and other allied acts.
- ✓ Whether there is any attachment of property due to violation under customs law.
- ✓ Where imports are from related companies whether the Special Valuation Branch application has been made and followed up.
- ✓ Where imports are without payment of customs duty or at concessional rates such as: EPCG [Export Promotion Credit Guarantee Scheme], Advance License, under 100% EOU (Export Oriented Unit) scheme- whether the obligations are in line or outstanding or not complied with.
- ✓ Whether Manufacture and Other Operations Regulations, 2019 (MOOWR) scheme has been taken, if yes, whether eligibility, conditions are complied with.
- ✓ Whether the company has applied for private warehousing and conditions (like bond, demarcation of the warehouse area) are complied with.
- ✓ Whether drawback has been claimed. If yes, whether the conditions have been complied with.
- ✓ Whether bonds or bank guarantees are executed for availing duty-free benefits under various export promotion schemes.
- ✓ Whether refund claim has been filed. If yes, ensure that unjust enrichment concept is not violated, and application is not time barred.

- ✓ Check whether the assessee is eligible for interest on delay in getting refunds and if yes, whether applied for.
- ✓ Whether there are any valuations or other disputes as on date.
- ✓ From FTP point of view - verify whether any benefits under MEIS/SEIS (Merchandise/Service Export from India Scheme) as well as RoDTEP if any are eligible for said category of goods/services.
- ✓ Whether scrips are applied for periodically and at the appropriate rate
- ✓ Whether scrips are used against imports or sold in the market. Ensure optimum rates are considered.

GST Review Program

A periodical review of GST provisions compliance would ensure the businessmen avoid high tax, interest and penalty demands and reduce departmental visits. A brief GST review programme along with important areas of implications has been given below which can be customised to the business of the assessee.

GST COMPLIANCE REVIEW PROGRAM
Name and Address of the entity:
Contact persons:
Phone numbers:
E-mail ID:
Nature of business:
Review team:
Date of commencement of review:
Date of conclusion of review:
Review period:

Sl. No.	Particulars	Reviewed by	Remarks, If Any
A.	UNDERSTANDING OF BUSINESS		
1	Review of AOA/MOA (Articles/Memorandum of Association) to understand the objectives of business		
2	Peruse the website of entity and google other information available on business		

Sl. No.	Particulars	Reviewed by	Remarks, If Any
3	Physical walk through in visit to principal place of business / head office (if required one branch)		
4	Review of audited financial statements for last 2 financial years		
5	Review of product / service including advertisement material, literature, video etc.		
6	Review the corporate structure in India including related parties		
7	Understanding the industry, major competitors, and various business process as prevalent in industry to assess the general tax practices		
8	Discussion with HODs to get clarity and understand challenges in business & compliance		
9	Review of standard operating procedures of entity		
10	Understanding future plans in business - Expansion, Acquisition, Merger etc.		
11	Review the major contracts of sales and purchase to understand tax impact, compliance		
12	Review of different software/s and ERPs in organization		
13	State-wise Registration / Business Verticals/ Additional place of business - Understanding		
B.	UNDERSTANDING THE INTERNAL CONTROLS		
14	Review if functions and duties of the internal GST officer and accounts overlap		
15	Review of authorizations in place for functions like use of digital signature, uploading of returns and GST payments etc.		
16	Review if present SOP (Standard Operating Procedures) covers GST compliance		
17	Understanding if SOP for GST compliance is revised at regular intervals		

Sl. No.	Particulars	Reviewed by	Remarks, If Any
18	Review if there are authorizations for tax payments, credit reversals, interest / penalty payments		
19	Review if there is a system of preparation of Management Information Systems report (MIS) on GST compliance		
20	Review if internal audit function covers review of GST compliance and extent of coverage		
21	Review of adverse comments in internal audit / other reports on GST and ascertaining compliance		
22	Understanding if top management is aware of GST compliance including cost control measures		
23	Review of internal financial control report (only in case of companies) to understand controls with respect to matters having tax impact		
24	Review if there is a system for flow of information from branches / divisions to central / head office for GST compliance such as cross charge / time of supply / valuation		
C.	UNDERSTANDING THE AUTOMATION / ERP		
25	Broad review of automation/ computerization in the reconciliation covering hardware, software, physical, access controls		
26	Review if the software/ ERP including link to GSTN has controls / options to take care of all the updated legal provisions of GST.		
27	Review if GST package is linked to finance and inventory and is not stand alone. If not, review if proper reconciliation between the information available and filed has been conducted.		
28	Review if there is any manual of instructions for use of software / package		
29	Review if there is a system of IS audit / coverage of IT aspects in internal audit		
30	Review if there are any adverse comments on GST reports / aspects in IS audit		

Sl. No.	Particulars	Reviewed by	Remarks, If Any
31	Review if there is a system of updating the masters / ledgers with updated information of customers, vendors, procedural change etc.		
32	Review if there is a system of providing adequate training to users of software		
D.	REVENUE / SUPPLY OF GOODS / SERVICES		
33	Review of Profit and Loss account to ascertain and understand following:		
34	a. Exemptions / Concessions / Composition scheme opted		
	b. Supply in DTA/ Exports / SEZs		
	c. Deemed exports such as supplies to EOU / advance license holders/ EPCG holders		
	d. Transactions with related parties / distinct persons according to Schedule I		
	e. Other special transactions such as United Nations, embassy clearances etc.		
35	Review of nature of supply and implication - Composite supply / Mixed supply		
36	Review of system of advance receipts to study GST impact and treatment, documentation		
37	Review of adjustments made for advance receipts with sale/service invoices		
38	Review of treatment of sales / service return and tax adjustments		
39	Review of conditions fulfilled for deductions claimed for sale / service return, defects		
40	Review of discount policy in organization and impact under GST		
41	Review of conditions fulfilled for deductions against discounts allowed		
42	Review the tax structure to suggest optimization considering profile of customers		

Sl. No.	Particulars	Reviewed by	Remarks, If Any
43	Review of inter-unit supplies and GST impact on such supplies		
44	Review of benefits adopted for exports and fulfillment of conditions		
45	Review of terms of agreements entered with customers having impact on valuation		
46	Review of recoveries from employees and GST impact on such recoveries		
47	Review of rate of tax adopted for taxable supplies made		
48	Review of rate of tax in case of mixed supplies / composite supplies		
49	Review of rates adopted in case of changes in rates in between different rates		
50	Review of sales to SEZ to ascertain if they are for authorized operations		
51	Review of exports/ SEZ supplies made with tax payment or without tax payment		
52	Review of rebate/ refunds claimed against exports		
53	Review of sales made as deemed export		
54	Review of refund claims in respect of deemed exports		
55	Review of sale of fixed assets and impact under GST		
56	Review if any goods / services liable under RCM (reverse charge mechanism) are being provided		
57	Review if billings for support services to own branches / units are done		
58	Review of sales made on approval basis to ascertain GST compliance		
59	Review of sales made from exhibitions to ascertain GST compliance		
60	Review of sales made as casual taxable person in any state to ascertain GST compliance		
61	Review different sale schemes and impact in GST		
62	Review the reconciliation of outward supply prepared		

Sl. No.	Particulars	Reviewed by	Remarks, If Any
63	Review of reconciliation of supplies as either goods or service - Schedule II compliance		
64	Review compliance of time of supply concept for goods / services		
65	Review applicability of TDS / TCS provisions		
E.	PROCUREMENT OF GOODS AND SERVICES		
66	Review of procurement policy of the organization including imports		
67	Review the nature of services and goods procured to ascertain GST impact		
68	Review whether procurements are made through registered dealer/manufacturer/service provider / unregistered dealer		
69	Review purchase and expense invoices on sampling basis to study impact under GST with respect to taxation and credits		
70	Review of expenses including foreign currency payments liable to GST under RCM		
71	Review of financial ledgers to ensure that ITC is taken on all eligible purchases		
72	Review treatment of purchase returns to ascertain impact under GST and compliance such as ITC reversal		
73	Review the foreign currency payments to ascertain RCM liability		
74	Review if goods / services are sourced at respective branches and ITC impact, cross charge and ISD (Input Service Distributor) compliance		
75	Review terms of purchase orders vis a vis purchase invoices including systems to ensure proper taxes charged, concessions / exemptions claimed		
76	Review if rate of taxes and type of taxes quoted by vendors are appropriate		

Sl. No.	Particulars	Reviewed by	Remarks, If Any
77	Review of classification of goods as inputs or capital goods based on accounting		
78	Review system of claiming credit and timing involved for taking credit, compliance of ITC provisions		
79	Review if payments made within stipulated time for taking credit		
80	Review if discounts agreed and valuation adopted by vendors are in line with law		
81	Review if invoices are addressed to goods / services receiving location		
82	Review of job worker invoices		
83	Ascertaining possibility of tax planning considering the quantum and value of purchases		
84	Review impact of mixed supply and composite supply and tax optimization		
85	Review the reconciliation of all expenses on which ITC availed been prepared and verified		
F	CLASSIFICATION AND VALUATION		
86	Review the system of reconciliation of sales / services and system of invoicing customers		
87	Review the present classification policy of goods/services		
88	Review if schedule II to CGST been considered for classification of deemed service / goods		
89	Review terms of agreement/ invoices to ensure description / classification is matching		
90	Review the rate of tax adopted		
91	Review the fulfillment of conditions attached to concessional rate adopted		
92	Review present valuation mechanism adopted for regular sales to customers, supplies to related parties, supplies without monetary consideration		
93	Review free supplies if any to study GST impact		

Sl. No.	Particulars	Reviewed by	Remarks, If Any
94	Review of reimbursements claimed and impact on GST valuation		
95	Review impact on valuation on free supplies received such as moulds, dies, tools etc.		
96	Review if there are advance receipts and their impact on valuation		
97	Review valuation adopted for supplies to agents, own branches or godowns		
98	Review valuation principles followed in case of different sale schemes		
99	Review valuation adopted in case of recoveries from employees		
100	Review valuation of gifts issued to related parties or others		
101	Review of valuation for RCM compliance		
G	FINANCIAL STATEMENTS REVIEW		
102	Review the shareholding pattern by investment by group companies / associated enterprises		
103	Review of employee / director/ partner benefits provided which could be treated as supplies and have impact under GST		
104	Review of credit accumulations if any and option exercised for encashment of such credits		
105	Studying the nature of accounts maintained by the organization		
106	Review of taxes under refund / rebate claim to ascertain status [No follow up with authorities]		
107	Review of debit notes and credit notes		
108	Review of notes to accounts and special items to ascertain GST impact		
109	Review of important ratios such as credit to total GST payable, credit to total purchases		

Sl. No.	Particulars	Reviewed by	Remarks, If Any
110	Review of foreign currency expenditures and earnings		
111	Review of transactions with related parties		
112	Review of contingent liabilities, pending litigation status		
113	Review of additions / deletions to assets		
114	Review of accounting treatment for capital goods, construction related expenditure for ITC claim		
H	REVIEW OF DOCUMENTATION		
115	Review of tax invoices/e-invoices where applicable issued including compliance for time of supply and place of supply		
116	Review of tax invoices or bill of supply issued for disclosure compliance in GST		
117	Review of delivery challans issued for movement of goods for approval, job work, testing, exhibition, display etc.		
118	Review of intimations /returns filed for goods removed under job work		
119	Review of various returns filed under GST		
120	Review of various reconciliation statements prepared		
121	Review of disclosure letters filed with the department		
122	Review of litigations and related documents		
123	Review of various reports generated for compliance such as sales register, credit register, fixed asset register		
124	Broad review of various reports generated through ERP to report on systems		
125	Review of registration certificates and places added		
126	Review of documentation at branches or additional places		
127	Review of export and import documents		
128	Review of registration certificate display compliance		

Sl. No.	Particulars	Reviewed by	Remarks, If Any
129	Review of E-way bills issued		
130	Review of refund documentation (sample check)		
131	Review documentation for exemption / concessions claimed		
132	Review of electronic documentation compliance		
I.	REVIEW OF AGREEMENTS / CONTRACTS		
133	Review of agreements / contracts / orders to identify important clauses with customers or vendors which could have major impact under GST		
134	Review of agreements to ascertain type of supplies being made		
135	Review of agreements to understand the discount policy		
136	Review of agreements to understand various sale schemes		
137	Review of agreements to understand the time of supply		
138	Review of agreements to understand payment terms		
J.	TAX CREDITS		
139	Review nature of expenses incurred to assess GST credits		
140	Review if there are transactions of personal nature where credits could be disallowed		
141	Review of credit availment mechanism and suggest on improvement required		
142	Review of goods issued free of cost or as samples and GST credit impact		
143	Review of purchases for credit optimization		
144	Review of credit apportionment in case of supply of taxable and exempted supplies		
145	Review of credit availment in case of assets put partially for non-business /non-taxable use		

Sl. No.	Particulars	Reviewed by	Remarks, If Any
146	Review of documents based on which credits claimed		
147	Review of credit register and contents		
148	Review of conditions fulfilled for credit claim A new condition has been inserted under section 16, which requires matching of the details of outward supplies furnished by the supplier in his GSTR 1 (GSTR 2A)		
149	Review the reconciliation of the ITC prepared.		
150	Review if proper tax planning undertaken considering ITC eligibility / ineligibility / restrictions if any		
<p>Signature of Team leader:</p> <p>Date:</p>			

Customs Review Program

A periodical review of customs provisions compliance could help the businessmen to avoid / mitigate big surprises from the department in form of big tax demands. A brief customs review programme which can cover important areas as suggestions for review of implications of imports, exports or related activities is given below which could be customised based on nature of business of the auditee. Few check points added to check on FTP benefits as well which could add value to clients during GST audit though impact is not much for certification.

CUSTOMS REVIEW PROGRAMME	
Name of the concern	
Address	
Contact persons	
Phone numbers	

E-mail Id	
Nature of Business	
Audit team	
Date of commencement of review	
Date of conclusion of review	
Review period	

Sl no.	Particulars	Reviewed by	Remarks, if any
1.	Review of various reports		
A	Review of previous audit report if any, to ensure compliance of the issues raised/found.		
B	Review of statutory audit report to ascertain the position on statutory dues related to Customs and to ascertain the existence of related party transactions which could have impact on valuation of goods.		
C	Review of the annual stock reports/statements to ascertain whether differences exist between book stock and actual stock figures as the same could have customs duty implications. [Especially in the case of warehouses and Customs Freight Stations (CFS)]		
D	Review of internal audit reports to ascertain the issues pertaining to Customs noted by internal auditors and compliance of the same.		
E	Review of audit notes/reports issued by the tax authorities and compliance of the same.		
F	Review of SOP established by the organization with respect to Customs procedures and comments thereon by management, if any deviation is noticed.		
2.	Registration under DGFT/ As Authorised Economic Operator (AEO) under Customs.		

Sl no.	Particulars	Reviewed by	Remarks, if any
A	<p>Review of Import Export Code certificate obtained (IEC) for importing or exporting activity including inclusion of all branches in the IEC</p> <p>A 'Common Customs Electronic Portal' shall be notified by the Govt., which shall facilitate registration, filing of bills of entry, shipping bills and any other document prescribed under the Act.</p>		
B	Review of registration certificate obtained under GST provisions for trading activity (as importer dealer).		
C.	Review of quality of accounts and records and also to see whether accounts are maintained as per Ind AS/IFRS (Indian accounting standards or International Financial Reporting system in case the auditee is an AEO and review of fulfillment of obligations cast on the AEO.		
3.	Classification, Rate of tax, claims for exemption and tax paid		
A.	Review of the classification of all the products imported/exported by the auditee		
B.	<p>Review of rate of tax, claims for exemption and tax paid. Auditor has to check and see whether other exemptions, if any, are available for the goods imported or exported</p> <p>All the conditional exemptions under the customs shall have a sunset period of 2 years from the end of FY in which exemptions are issued. For exemptions in force as on the date of the Finance Act, 2021, the sunset period shall expire on 31st March, 2023.</p>		
4.	Review of Valuation, Taxability of Goods		
A	Review the valuation mechanism applied for the goods imported or exported to ensure that the same are in accordance with Customs Valuation provisions		
B	Review the correctness of valuation for payment of IGST		
C	Review value applied for payment of other duties like safeguard duty, anti-dumping duty, calamity cess, compensation cess etc.		

Sl no.	Particulars	Reviewed by	Remarks, if any
	<p>A new levy, namely Agriculture Infrastructure and Development Cess (AIDC) has been introduced for the purpose of financing agriculture infrastructure and other development expenditure.</p> <p>The AIDC shall be levied at the same rate as the rate of BCD provided in the First Schedule to the Customs Tariff Act, 1975.</p> <p>The value for the purpose of AIDC shall be calculated in the same manner as is done for the purpose of BCD under Section 14 of the Customs Act i.e., the CIF value along with necessary inclusions under the Customs Valuation Rules.</p>		
D	Review of various agreements entered with major customers/suppliers/parent company/subsidiary and study the implication thereof. Check whether there are any conditions relating to post import activities which can be considered as condition of sale of any imported goods.		
E	Review the SVB documents if there are transactions with related persons referred to SVB and check whether submissions reflect the correct facts and legal provisions have been applied correctly to facts.		
F.	Check whether IGST on ocean freight for imported goods has been paid.		
G.	If there are imports by air, check whether freight has been calculated correctly.		
H.	If the imports have been made for charitable purpose, examine the valuation process adopted and its correctness.		
I.	Check whether the importer has accepted the value enhanced by Customs and whether it is justified and if not whether any remedial action is possible.		
J.	Check whether all the documents relating to imports have been maintained properly.		
5.	Review of Exports and Deemed exports		

Sl no.	Particulars	Reviewed by	Remarks, if any
A	Review if proper documents are maintained in case of export of goods outside India while clearing under LUT or under Bond without payment of duty		
B	Review if proper documents are maintained in case of deemed export of goods.		
C	Review of payment of export duty, if any, including impact on refund claimed under GST		
D	Review the process and the procedure followed for exports after the goods leave the premises to ensure that actual exports take place within the period prescribed.		
E.	Review the process and the procedure followed and their correctness in respect of exports through merchant exporter, if any.		
F	Review of various benefits availed for exports under FTP including suggestions on claiming benefits, if any, eligible.		
G	Review the process of exports and see whether refund of indigenous taxes has been claimed or not where relevant.		
H	Review dutiable exports to see whether there is any change in duty payable because of verification of sample, quantity exported or revision of value.		
I	Where assessment is on the basis of tariff value, check whether correct tariff value has been applied.		
6.	Review of Imports		
A	Review if proper documents are maintained in case of import of goods.		
B	Review if proper documents are maintained in case entity has availed the benefit of Advance authorisation or EPCG authorisation and imported goods without payment of taxes.		
C	Review whether the conditions to be fulfilled in terms of advance authorisation or EPCG authorisation with regard to export obligations have been fulfilled correctly or not.		

Sl no.	Particulars	Reviewed by	Remarks, if any
D	Review whether completion of formalities such as obtaining EODC from DGFT and closure of bonds executed have been completed properly.		
E	Review imports made under exemption notifications which requires the importer to follow the procedure under Customs (Import of goods at concessional rate of duty for manufacture of excisable goods) Rules, 2017 to check whether conditions have been fulfilled.		
F	Review of payment of import duties, credits, exemptions claimed etc. Check whether alternate exemption notifications are available but missed.		
G	Review the customs correspondence file to evaluate issues that can arise or have arisen in the past.		
H	Review ongoing litigation files to understand the issues and make suggestions.		
I	Review Warehousing procedures (Private bonded warehouse as per Customs Act)		
J	Review process and procedures in Container Freight Stations in relation to obligations to customs		
K	Review whether entity is eligible under MOOWR scheme and conditions therein are being satisfied		
L	Perform a cost benefit analysis to verify benefits arising under MOOWR scheme		
M	Review in cases where goods imported attract specific rates of duty- check for correctness of quantity received from the custodian; correctness of the quantity on which duty was levied		
7.	Samples		
A.	If sample has been drawn in the case of any import, review the effect of report on the sample in respect of the transaction		

Sl no.	Particulars	Reviewed by	Remarks, if any
B.	If the report is adverse, review action taken by the importer and whether it is appropriate		
8.	Customs Broker		
A	Review whether KYC norms for customers has been followed		
B.	Review the system of maintenance of accounts and records by the Broker		
C.	Review the operations of the Broker to see whether broker is fulfilling his obligations under the licensing regulations.		
D	Review the steps taken by the Broker to ensure that his staff have the up-to-date knowledge and are capable of advising the clients		
E	Review some of the documents filed relating to import/export to see the correctness of classification, exemption claimed, valuation etc.		
F	Review the quality of advice given to the clients by the broker		
9.	Assessment Process		
A	Review and see whether any self-assessment was not accepted and examine the correctness of the procedure and process.		
B	Check whether declarations in bills of entry/shipping bills have been made correctly.		
10.	Payment of duties		
A.	Review the import/export management as regards payment of duties. Is the auditee paying interest on duties which could have been avoided?		
B	Review if the auditee has a system of monitoring movement/processing bills of entry/shipping bills filed to ensure that queries are promptly answered, and		

Sl no.	Particulars	Reviewed by	Remarks, if any
	documents called for are submitted without delay and transaction costs are reduced?		
11.	Review of financial statements		
A	<p>Review of Balance sheet to -</p> <ul style="list-style-type: none"> ● Identify the assets purchased and ascertain the eligibility of IGST refund ● Identify investments made in associates/group companies if any. If any investments are made, then ascertain the impact of Customs valuation for imports or exports clearances made to such associates or group companies. Examination of SVB (Special Valuation Branch) valuation requirement ● Identify the major customers/clients to trace the realizations and the pattern of charging them to study the implications under Customs law. 		
B	<p>Review of Profit & Loss account -</p> <ul style="list-style-type: none"> ● Ascertain the nature of revenue - Sales (Exporting goods) and other incomes. ● Review for existence of any export of goods and the satisfaction of conditions for availing such exemption of duty for exporting ● Review for impact of insurance claims made and received on damaged goods. ● Review the remission of duty on lost/destroyed abandoned goods ● Review the abatement of duty on damaged/deteriorated goods. ● Review the refund of export or import duty if any. 		
C	<p>Review the debit notes -</p> <ul style="list-style-type: none"> ● Ascertain additional consideration/amounts debited to customers to study the impact under Customs law. ● Review for purchase returns to study impact under Customs law. 		

Sl no.	Particulars	Reviewed by	Remarks, if any
D	Review the credit notes - <ul style="list-style-type: none"> Review for Sales returns to study impact under customs law. Review for discounts if any allowed and impact of the same on valuation of goods 		
12.	Review of Input tax credit and Input tax setoff		
A	Review the import transactions to ensure that eligible import duties paid are availed as credit in accordance with the provisions of GST law		
B	Review the GRNs' to ensure that credits/set offs have been claimed in case of all eligible import purchases		
C	Review the raw materials ledger to find out if the goods on which input tax credit is claimed are issued towards exempted activities		
13.	Benefits		
A	Review if the entity is availing the benefit of Duty drawback and its correctness.		
B	Suggestion on choosing of rate of drawback i.e. All industry Rate or Brand Rate		
C	Review if the entity is availing any benefits under FTP (Foreign Trade Policy) such as MEIS, SEIS etc.		
14.	Miscellaneous		
A	Review of Baggage provisions, if applicable		
B	Review of procedures relating to goods imported or exported through post		
C	Review of procedures for goods sent/received for repairs to/from outside India		
D	Review the transactions to find out cases of any goods re-imported or re-exported goods and exemption if any claimed.		

Sl no.	Particulars	Reviewed by	Remarks, if any
E	Review the list of documents filed with the department, list of authorized signatories		
F	Review for transactions wherein the goods are being imported or exported as samples and the customs implications on such transactions.		
G	Review of free of cost (FOC) exports as export promotion activity.		
Audit in-charge		Audit Partner	
Signature		Signature	

Due Diligence vis-à-vis Technology

Technology due diligence has gained prominence as IT has become an ever more strategic component and growth stimulus in most businesses' mergers or acquisitions. Obtaining better quality information may lead to successful integration implementation plan. For example, for past decade or so, but more specifically since COVID-19 pandemic, AI deployment in multiple facets of business has either become reality or in the process of becoming. Evaluating such projects from the perspective of sophistication of the company's Machine Learning algorithms, Data (quantity, quality, frequency), Domain Expertise (across Data Science, Coding, Quality Assurance, Product Management etc.) will be keys in determining the success rate and Total Cost of Ownership (TCO) which ultimately influences valuation.

Three steps method: Below three steps 'GAP' model may lead to successful evaluation and draw a roadmap for integration.

- **Gather Information** - The purpose is to identify existing technical challenges in integration that would significantly impact the product roadmap, timeline and ultimately the associated commercials. Nevertheless, this process helps discovering any unique and defensible intellectual property, technology, tools, processes that might have been under-appreciated by the investors, as well as opportunities to accelerate the product roadmap. Such comprehensive information will aid identifying TCO and support valuation exercise.
- **Assess Risk** - During this phase of due diligence Legal Risk, Security Risk and Quality Risk are evaluated. Such evaluation will help integration activities across three major dimensions: (a) business impact, including regulatory compliance and risk management; (b) ease of implementation, including technical complexity, personnel demands, the interdependence of projects; and (c) expected business benefits.

- **Legal Risk** - Acquirers need to ensure that the target has the right to use the third-party code incorporated into their software. The extreme misuse of software can result in lawsuits or even loss of proprietary intellectual property. Today it is typical for half or more of a target's code to be third-party code - mostly open source. The starting point is to generate a comprehensive list of open source and other third-party code. Acquirer often requests such disclosure from the target, but few targets manage to provide anywhere near an accurate list. The complexity of software requires specialized tools as well as auditor expertise to create a comprehensive list.
- **Security Risk** - In today's virtual operating environment, the software security has become the topmost concern. Security vulnerabilities are defects in the code that can be exploited by bad actors. A comprehensive security evaluation must first identify high-level design flaws and ensure security controls are designed into the architecture. An acquirer may be able to perform some level of security analysis themselves but to examine the code for vulnerabilities will require more access, which most targets are reluctant to provide citing 'IP theft if the deal does not go through' as a reason. Hence, such due diligence on the architecture and code is ideal to be handled by an independent party.
- **Quality Risk** - Software quality risk may not seem as critical as legal or security risks, but it is more deceptive. Low quality software written in a non-modular way is hard to maintain which makes it difficult to modify features, fix bugs, and patch vulnerabilities. Poor quality imposes a burden that engages resources in performing non-value-added activities, reduces productivity and therefore, TCO of the asset, proposed to be taken over, goes up. The first step in evaluating overall software quality is to assess the quality of the design and architecture to determine whether the software is hierarchically structured, modular, and therefore scalable.
- **Prioritize and Plan Integration** - Once the integration priorities have been identified for both the IT department and the new corporate structure, the IT Team should develop an implementation roadmap that includes sub-projects, timelines, and contingency plans. A detailed implementation plan is essential since it would assist to overcome the various challenges of the unique nature of IT systems and processes evaluation.

The focus of the due diligence is not only to find flaws, but it is also equally important to highlight the strengths of the technology and team. Technical due diligence is an essential step to be taken by the acquirer to fulfil the fiduciary responsibility and it is worth understanding on that basis alone.

Technology Due Diligence Checklist

- ✓ Does the company really own their supposed product?
- ✓ What is the technical state of the product? Is it on initial phase of development, in progress or already tested and released?
- ✓ Is the code written properly? How well is it organised? Will it support future scale? What additional effort would it require for adding features?
- ✓ How are the third-party code and open-source codes managed?

- ✓ Is the technology integrated or constructed in the right way? Is it scalable?
- ✓ How must the software architecture and data centre evolve in order to support the traffic growth? Will it call for a major architecture overhauling?
- ✓ How must security be tightened up in order to meet the larger number of users, new features, new markets, new operating model?
- ✓ Is the technology stack modern enough to sustain a competitive development pace? Will it attract new talent?
- ✓ Is the information security framework adequate and up to date? What were the recent past outages and their impact? How was it managed?
- ✓ How sophisticated are the Data science and Machine learning algorithms? Does the technical team have right competency blend namely development, product management, quality assurance, operations, data science, AI etc.? How many key hires will be needed?
- ✓ How much effort will the tools, automations, projects require for their upgradation and finetuning?
- ✓ How efficient are the communications between the business and technology teams?
- ✓ Does the company have intellectual property that differentiates it from their kind?
- ✓ How successfully was the Business continuity plan implemented during past disasters? Does the target own or have arrangement with suppliers for Warm or Cold site? How often such sites are tested?
- ✓ How effective is the Disaster recovery plan? How are the deviations from Recovery time objective and Recovery point objective dealt with? Are data centres located in a geographically low risk area?

Conclusion

The due diligence reports would form a valuable tool for the new owners of the business in providing an overview of the business and identification of areas of weaknesses and threats which would have to be addressed. Each due diligence review is unique, but the overall aim is to provide sufficient, relevant, and timely information.

The successful performance of a due diligence investigation is dependent upon the scoping, coordination and planning of the review and the use of a highly skilled team. The cost of the preparation of a quality due diligence exercise is insignificant when compared to the cost of a bad acquisition.

Thus, the due diligence of indirect taxes could be a critical and important part of the exercise as can be envisaged after going through the above aspects.

This booklet could help serve as a useful document during the conduct of a due diligence exercise. For beginners it would provide the thought process and the mentality to conduct a due diligence review. For professionals, this updated book could serve well in form of checklists and review pointers including in the area of IDT.

We hope this book serves the intended purpose and is of assistance to the public at large!



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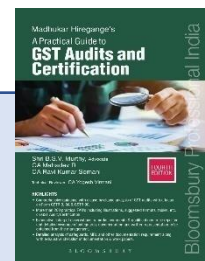
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GST Audits & Certifications

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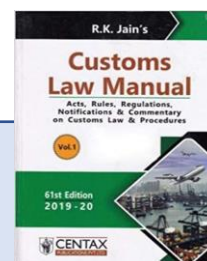
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- <http://www.caaa.in> - indirect taxes - due diligence
- www.icaai.org - generic guides

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