

# GST Due Diligence

- CA Hitesh Batra | AMRG & Associates



With the pandemic hitting hard the economies, mergers and acquisitions have exponentially grown in order to survive in the turbulent market. In order to avoid any un-accounted liabilities, due diligence in all aspects of business including taxation is imperative. Although, there is no legal binding to carry out the due diligence but it may help in identifying any hidden liabilities and balances with respect to indirect taxes which may impact the acquiring or amalgamating company in terms of both money and reputation.

Due diligence is an investor-led inquiry into the specifics of a possible investment, including an assessment of operations and management, as well as the verification of material facts. It includes making questions in order to get timely, adequate, and correct disclosure of all significant statements/information or documents that might affect the transaction's result. It is an examination conducted before purchasing a controlling interest to ensure that the organization's conditions match with what has been provided about the target business. It entails a study of relevant and important financial and non-financial records. Simply defined, due diligence is exercising the level of caution that a normal person would exercise before engaging into a contract or transaction with another party. The impact of indirect taxes on businesses is quite substantial and thus getting the due diligence to assess the indirect tax liabilities is also vital. During the analysis, the buyer can identify any red areas, such as delayed tax obligations or ongoing government lawsuit. If the target company is found to be responsible under any of these, the acquirer may face significant future obligations in terms of both money and reputation. The acquirer must search in all directions for current, pending, and even anticipated future lawsuits.

## KEY STEPS OF GST DUE DILIGENCE AND HEALTH CHECK SERVICES:

### Understanding of Business:

It is critical to comprehend the company's operations in order to determine the applicability of GST on each transaction. Also, it is essential to look over the accounting records to see they are commensurate with GST law's obligations. It will give the acquirer a clearer picture of how GST affects each goods and service, as well as how it affects the total GST liability. It will also enable the acquirer company to identify the corresponding applicable taxes.



### GST Compliance by Business:

This involves reviewing the company's GSTR-3B filings and drawing the comparisons with GSTR-1 and recording the reasons for differences. Further, it also involves to ensure that input tax credits are treated correctly, book-to-return reconciliation, exempted/non-GST supply, delivery under warranty, matching of the input tax credit in GSTR 3B against GSTR 2A, and free samples transactions. Further, this step also involves reading/understanding various agreements, tax positions adopted thereon and compliance followed by the target company.

### Identifying the variances and seeking reasons thereon

Based on the understanding of business and review of monthly and annual returns, various agreements and other relevant records, identifying the variances in tax positions determined and that adopted by the company and discuss the same by the target company.

### Report finalization post discussion

Discuss the key points and finalise the same and draft the report for submission to acquiring company.

## KEY ISSUES THAT CAN BE IDENTIFIED DURING INDIRECT TAX DUE DILIGENCE

- Potential liability on account of wrong classification of goods or services being supplied.
- Potential liability of interest on account of delayed discharge of liability.
- Potential liability on account of short discharge of liability on some transactions like recovery from vendors, related party transactions, etc.
- Potential liability on account of non-fulfillment of conditions for availment of input tax credit under GST law.
- Potential liability on account of blocked credit claimed.
- Potential liability on account of reversal not done in compliance to relevant provisions under GST.
- Non- payment to vendors within specified period of 180 days leading to input tax credit reversal.
- Short discharge of liability under reverse charge mechanism.
- Differential values in income tax returns and GST returns.
- Open assessments and pending litigations.
- Wrong refunds claimed
- Export refunds claimed but export proceeds not realized within the specified timelines.
- Potential liability on account of any non-compliances in relation to returns filing, in appropriate or incomplete documents, etc.





Although it has been 4 years since the inception of GST law, different interpretations might result in massive liabilities and billions of dollars may be spent on addressing them. Many businesses suffer as a result of erring on the side of caution. The GST due diligence is all about the review of all the returns including annual return, reconciliations of financials with returns furnished, current status of advance ruling if any, review of past due diligence report if any, further examine the completeness and accuracy of tax filing under GST. Due diligence, in our opinion, extends beyond the compliance check and current lawsuit. In addition to these checks, one must ensure that acquiring company is informed of impact of the legislative changes specially retrospective changes if any on the target company so as to negotiate on the pricing accordingly.

Further, due diligence under GST shall involve not only checks with reference to GST law, it shall also involve checking from other taxation laws prevalent like customs act, income tax act or any local act of the state so as to safeguard the acquiring company from the future liabilities due to differential disclosures in different returns. Several tests can be performed as follows:

- Whether exporter has a current account for credit of any drawback in custom.
- Whether the goods imported/exported valued as per custom act.
- If there are any exemption then examine the same.
- Whether the documents like bill of entry is accurate and the same has been submitted to the custom officer for clearance of goods.
- Whether there is any violation of any rules/restriction given in custom act?
- Whether there is any difference in value of imports disclosed in GST returns and bill of entries so as to identify any excess input tax credit?
- Any transactions appearing in 26AS and not reported in GST returns.

Due Diligence assists in taking the correct decisions based on in depth analysis. This procedure provides for the planning of future actions and conditions. It assists the reviewer in focusing on what is relevant in the transaction and digesting the plethora of information that will direct the transaction's progress. A wrong decision based on inaccurate information can turn the profitable venture into losses. Thus, it is imperative in the today's competitive world for the businesses to consider the due diligence of indirect taxes a value additive effort.





NEW DELHI  
18A, IInd Floor,  
North Avenue Road,  
West Punjabi Bagh,  
New Delhi - 110026.

Rajat Mohan  
Senior Partner  
rajat@amrg.in

Priyanka Sachdeva  
Partner - GST  
priyanka@amrg.in



MUMBAI  
Shop No-14, Adarsh  
Nagar Building No:4,  
Kolbad, Thane West,  
Thane-400601

Madhu Mohan  
Founding Partner  
amrg@amrg.in

Kiran Awasthi Raghavendra  
Partner - Assurance and Compliance  
amrg@amrg.in



DEHRADUN  
Villa No. 12, Upper Crest Avenue,  
Jakhn, Rajpur Road, Dehradun,  
Uttarakhand, India, 248001

Swati Ghoshal  
Partner - Risk Advisory and compliance  
swati@amrg.in



CHANDIGARH,  
PUNJAB

Navdeep Sarpal  
Partner - Assurance  
and Compliance  
amrg@amrg.in



GURUGRAM,  
204, 2nd Floor, Time Center, Golf  
Course Road, Sector 54, Gurugram,  
Haryana 122002

Gaurav Mohan  
CEO  
gaurav@amrg.in



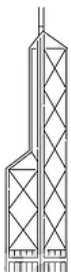
INTERNATIONAL BRANCH -  
AUSTRALIA  
Unit 9, 14-15 Junia Avenue,  
Toongabbie NSW 2146,  
Sydney, Australia

Megha Gandhi  
Director- Australia  
amrg@amrg.in



INTERNATIONAL DESK - USA  
Wiener & Garg LLC,  
6000 Executive Boulevard,  
Suite 520 | Rockville,  
MD 20852T: 301.881.4244  
D: 240.833.4002

Subhash Garg  
Wiener & Garg LLC  
amrg@amrg.in



INTERNATIONAL BRANCH  
HONG KONG  
Hong Kong Address - Flat B,  
Floor 1, Tower - 7, Yee Mei Court,  
South Horizons, ap lei chau,  
Hongkong

Divya Malhotra  
Director - Hong Kong  
amrg@amrg.in

