

Chapter– VIII

Accounts and Records

Statutory Provisions

35. Accounts and other records

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

Provided that where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business shall be kept at such places of business:

Provided further that the registered person may keep and maintain such accounts and other particulars in electronic form in such manner as may be prescribed.

- (2) Every owner or operator of warehouse or godown or any other place used for storage of goods and every transporter, irrespective of whether he is a registered person or not, shall maintain records of the consigner, consignee and other relevant details of the goods in such manner as may be prescribed.
- (3) The Commissioner may notify a class of taxable persons to maintain additional accounts or documents for such purpose as may be specified therein.
- (4) Where the Commissioner considers that any class of taxable person is not in a position to keep and maintain accounts in accordance with the provisions of this section, he may, for reasons to be recorded in writing, permit such class of taxable persons to maintain accounts in such manner as may be prescribed.
- (5) Every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant Accounts and other records and shall submit a copy of the audited annual accounts, the reconciliation statement under sub-section (2) of section 44 and such other documents in such form and manner as may be prescribed.
- (6) Subject to the provisions of clause (h) of sub-section (5) of section 17, where the registered person fails to account for the goods or services or both in accordance with the provisions of sub-section (1), the proper officer shall determine the amount of tax

payable on the goods or services or both that are not accounted for, as if such goods or services or both had been supplied by such person and the provisions of section 73 or section 74, as the case may be, shall, mutatis mutandis, apply for determination of such tax.

35.1 Introduction

1. This Section mandates the upkeep and maintenance of records, at the place(s) of business in electronic or other forms.
2. Power is vested with the Commissioner for relaxation as well as for prescribing additional records for certain classes of taxable persons.
3. Furnishing of an audited statement of accounts and reconciliation statement is also contemplated for persons having turnover exceeding prescribed limit.
4. Failure to maintain records or accounts may entail payment of tax as determined by a proper officer in respect of unaccounted transactions.
5. Every owner or operator, of a place of storage, or every transporter whether such owner or operator or transporter is registered or not, shall maintain records and other relevant details as may be prescribed.

Place of business - Section 2 (85) of The CGST Bill, 2017 defines “place of business” to include -

- (a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, provides or receives goods services or both; or
- (b) a place where a taxable person maintains his books of account; or
- (c) a place where a taxable person is engaged in business through an agent, by whatever name called;

‘Principal place of business’ - Section 2(89) of defines to mean the place of business specified as the principal place of business in the certificate of registration.

35.2 Analysis

- (i) Every registered person shall keep and maintain, at his principal place of business (as mentioned in the certificate of registration), a true and correct account of the following: -
 - Production or manufacture of goods;
 - Inward supply of goods or services or both;
 - Outward supply of goods and/or services or both
 - Stock of goods;
 - Input tax credit availed;
 - Output tax payable and paid; and
 - Such other particulars as may be prescribed in this behalf.

- (ii) In case of multiple places of business (as specified in the certificate of registration), the accounts relating to each place of business shall be kept at the respective places of business concerned. Hence, all records are to be maintained at each place of business.
- (iii) Registered assessee may keep and maintain such accounts and other particulars in the electronic form in such manner as may be prescribed.
- (iv) The Commissioner is vested with powers to notify a class of taxable persons to maintain additional accounts or documents for specified purpose.
- (v) In case the Commissioner considers that any class of taxable persons are not in a position to keep and maintain accounts in accordance with this section, he can, for reasons to be recorded in writing, permit such class of taxable persons to maintain accounts in any other manner.
- (vi) Every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant and shall submit to the proper officer a copy of the audited statement of accounts together with the electronic reconciliation statement u/s 44(2).
- (vii) Specific provisions in case of requirement to reverse input tax credit availed, as Provided for under Section 17(5)(h) - Where goods are lost, stolen, destroyed, written off, or disposed of as gifts or free samples, proportionate input tax credit should be reversed. However, where the taxable persons do not account for such transactions, the amount payable would be determined based on the demand provisions (Section 73/74) as the case may be) as if such goods had been supplied.
- (viii) Persons who own/ operate any warehouse, godown, etc. for storage of goods and every transporter should maintain the records of the consigner, consignee and other relevant details of the goods, even if such persons are not registered under the Act – i.e., both registered and unregistered persons shall be required to maintain such records/ details.
- (ix) The law requires every registered person to maintain accounts and records along with relevant details at each place of business and for each place of storage failing which the proper officer shall determine the amount of tax payable on the goods or services or both that are not accounted for, as if such goods or services had been supplied by such person. Further the provisions of section 73 or 74, as the case may be, shall apply, mutatis mutandis, for determination of such tax
- (x) The provisions of Section 73 & 74 are in relation to demands and recovery of tax so determined by way of short payment or excess credit availed or utilised with or without wilful misstatement or fraudulent intention.

35.3 Comparative Review

Maintenance of records has been prescribed under the central excise, service tax and State VAT laws. The provisions are briefly discussed below:

Service tax records

- Rule 5(1) of Service Tax Rules, 1994 provides that the records including computerised

data as maintained by the assessee in accordance with the various laws in force from time to time shall be acceptable.

- Rule 5(2) provides that every assessee, at the time of filing of his first return shall furnish to the department, a list in duplicate of
 - (i) All the records maintained by the assessee for accounting of transactions in regard to: -
 - (a) Providing of any service;
 - (b) Receipt or procurement of input service and payment of such input service;
 - (c) Receipt, purchase, manufacture, storage, sale, or delivery, as the case may be in regard to input or capital goods; and
 - (d) Other activities such as manufacture and sale of goods if any.
 - (ii) All other financial records maintained by him in the normal course of business.
- Rules 5(4) and (5) provide for preservation of records in electronic form.

Central Excise Records

- Rule 10 of the Central Excise Rules, 2002 obligates the maintenance of maintenance of "Daily Stock Account" indicating the particulars regarding description of the goods produced or manufactured, opening balance, quantity produced or manufactured, inventory of goods, quantity removed, assessable value, the amount of duty payable and particulars regarding amount of duty paid.
- Chapter 6 of the Central Excise Manual obligates every assessee to furnish to the Range Officer, a list in duplicate, of all the records prepared or maintained by him for accounting of transactions in regard to receipt, purchase, manufacture, storage, sales or delivery of the goods including inputs and capital goods

Cenvat Records

Rule 9 of Cenvat Credit Rules, 2004 provides for maintenance of various records for availment and utilization of CENVAT credit on inputs, input services and capital goods.

VAT Records

VAT laws of most States obligate every assessee to keep and maintain an up-to-date, true and correct account showing full and complete particulars of his business and such other records as may be prescribed. There is an option to maintain those records at other place or places as he may notify to the registering authority in advance.

Audit of Accounts and Reconciliation Statement

At present, under the Central excise and service tax laws, there is no requirement for audit of accounts and furnishing reconciliation statement by a Chartered Accountant and Cost accountant. Many State VAT laws stipulate audit of records by a Chartered Accountant and filing of VAT audit reports. Threshold limits are prescribed for such audits.

Reconciliations between the tax records and audited statement of accounts is generally sought for at the time of assessment, audit or investigation by the Revenue authorities. There

is no statutory requirement to furnish such reconciliation statements under the present laws although it is carried out during audit / Certification of records.

35.4 Related provisions

Section or Rule	Description
Section 2(107)	Taxable Person
Section 2(85)	Place of business
Section 2(89)	Principal place of business
Section 44(1)	Annual return

35.5 FAQ

Q1. Where should the books and other records u/s 35 be maintained?

Ans. Such records shall be maintained at his principal place of business, as mentioned in the certificate of registration. If more than one place of business is specified in the certificate, records relating to each place of business should be maintained at that place.

Q2. What are the records that are to be maintained u/s 35?

Ans. The following records are to be maintained u/s 35: -

- (i) Production or manufacture of goods;
- (ii) Inward or outward supply of goods or services or both;
- (iii) Stock of goods;
- (iv) Input tax credit availed;
- (v) Output tax payable and paid; and
- (vi) Such other particulars as may be prescribed.

Q3. In case, more than one place of business is specified in the certificate of registration, can the assessee choose to maintain records at a single place for all the places within that State?

Ans. No, in such cases, the accounts and records relating to each place of business shall be kept at such places of business concerned.

Q4. Whether the records are to be maintained physically or in electronic form?

Ans. The records need to be maintained physically. In case they are maintained in electronic form, then they must conform to such procedures as may be prescribed.

Q5. Apart from the records maintained above are there any additional document to be submitted/maintained?

Ans. Section 35(5) obligates an assessee who is required to get his accounts audited to file an electronic reconciliation statement and assessee is obliged to submit such a statement in addition to the audited statement of accounts and other documents and records prescribed.

35.6 MCQ

Q1. The books and other records u/s 35 53 are to be maintained at ____

- (a) Place where the books of account are maintained.
- (b) Principal place of business mentioned in the Registration Certificate.
- (c) Place of address of the Proprietor/ Partner / Director / Principal Officer, etc.
- (d) Any of the above.

Ans. (b) Principal place of business mentioned in the Registration Certificate

Q2. In case, more than one place of business situated within a State are specified in the Registration Certificate, books and other records shall be maintained at ____

Each place of business

- (a) At the principal place of business covered mentioned in the Registration Certificate for all places of business in each State.
- (b) Place where the books of account are maintained for all places situated within a State.
- (c) Any place of business in a State pertaining to all places situated within that State.

Ans. (a) At the principal place of business covered mentioned in the Registration Certificate for all places of business in each State.

Q3. Which of the following is true?

- (a) The assessee can maintain some records with prior permission of the Commissioner.
- (b) The assessee is obligated to maintain such additional records as the Commissioner may notify.
- (c) The assessee can maintain only records notified thereto by the Commissioner.
- (d) The specified class of assessee are obligated to maintain such additional or other records as the Commissioner may notify.

Ans. (d) The specified class of assessee are obligated to maintain such additional or other records as the Commissioner may notify.

Statutory provision**36. Period of retention of accounts**

Every registered person required to keep and maintain books of account or other records in accordance with the provisions of sub-section (1) of section 35 shall retain them until the expiry of seventy-two months from the due date of furnishing of annual return for the year pertaining to such accounts and records:

Provided that a registered person, who is a party to an appeal or revision or any other

proceedings before any Appellate Authority or Revisional Authority or Appellate Tribunal or court, whether filed by him or by the Commissioner, or is under investigation for an offence under Chapter XIX, shall retain the books of account and other records pertaining to the subject matter of such appeal or revision or proceedings or investigation for a period of one year after final disposal of such appeal or revision or proceedings or investigation, or for the period specified above, whichever is later.

36.1. Introduction

This section provides for the period up to which records and accounts must be retained by the assessee.

36.2. Analysis

1. Every assessee shall retain the books of accounts and other records until the expiry of seventy-two months (6 years) from the due date for filing of Annual Return for the year pertaining to such accounts and records. If the annual returns for the FY 2017-18 are filed on say 30.11.2018, even then, the books of account and other records are to be maintained till 31.12.2024.

This time period is more than the time limit prescribed in section 62(1) for issuance of order of assessment i.e. 5 years from the due date for filing of annual return or date of erroneous refund (as applicable) in cases of fraud, wilful mis-statement, suppression of facts, etc.]

2. In case an appeal or revision or any other proceeding is pending before any Appellate Authority or Revisional Authority or Appellate Tribunal or Court, or in case the assessee is under investigation for an offence under Chapter XIX, the assessee shall retain the books of account and other records pertaining to the subject matter of such appeal or revision or proceeding or investigation for a period of one year after final disposal of such appeal or revision or proceeding, or for the period specified records u/s 35(1), whichever is later.

36.3. Comparative Review

- Rule 5(3) of Service Tax Rules, 1994 provides that all records shall be preserved for a period of five years immediately after the financial year to which such records pertain.
- Chapter 6 of the CBEC's Central Excise Manual obligates every assessee to maintain the records for a period of five years immediately after the financial year to which such records pertain.
- Different State VAT laws prescribe different time periods for maintenance of records. However, many States prescribed a period of five years.
- Where the proceedings are pending in appeal, revision etc., the records are generally maintained till the proceedings are finally concluded, though this is not specifically stipulated in the present laws. In fact, the books and records are required to be maintained till the time frame for revision proceedings stand open and are not barred by limitation of period.

36.4. Related provisions

Section or Rule	Description
Section 2(107)	Taxable Person
Section 35	Books of account
Section 44(1)	Annual return

36.5. FAQ

Q1. Is there any time limit for the retention of the books of account or other records u/s 36?

Ans. Yes, such records shall be normally retained until the expiry of seventy-two months from the due date for filing of Annual Return for the year pertaining to such accounts and records.

Q2. Is a separate time limit for maintenance of records specified where an assessee is involved in any litigation?

Ans. In case an assessee is a party to an appeal or revision or any other proceeding before any Appellate Authority or Revisional Authority or Appellate Tribunal or Court, (as an appellant or a respondent), or where he is under investigation for an offence under Chapter XIX, then he shall retain the books of account and other records pertaining to the subject matter of such appeal or revision or proceeding or investigation for a period of one year after final disposal of such appeal or revision or proceeding, or for the period specified records u/s 35(1), whichever is later.

36.6. MCQ

Q1. The time limit for up keep and maintenance of the books of account or other records u/s 36 is?

- seventy-two months from the date of filing of Annual Return or due date of filing the Annual Return, whichever is earlier.
- forty-Eight months from the last date of filing of Annual Return Place.
- seventy-two months from the due date of filing of Annual Return.
- None of the above.

Ans. (c) seventy-two months from the due date of filing of Annual Return

Q2. In case, the assessee is a party to an appeal or revision or any other proceeding before any Appellate Authority or Appellate Tribunal or Court, (as an appellant or a respondent), then the time limit for retaining the records shall be ____

- Upto the final disposal of such appeal or revision or proceeding.
- One year after final disposal of such appeal or revision or proceeding, or for the period specified records u/s 35(1) 53, whichever is earlier.
- Six months after final disposal of such appeal or revision or proceeding, or for the period specified records u/s 47(1), whichever is later.

- (d) One year after final disposal of such appeal or revision or proceeding, or for the period specified records u/s 35(1), whichever is later.

Ans. (d) One year after final disposal of such appeal or revision or proceeding, or for the period specified records u/s 35(1) 53, whichever is later.