



President Vice President
Vijay U Bhatt Jayant P Gokhale

Hon. Jt. Secretaries Hon Treasurer Imm. Past President
Mehul R Sheth | Neha R Gada Vitang N Shah Haresh P Kenia

Date: 19th October, 2024

To,

- 1. The GST Network**
Worldmark 1, Aerocity,
Indira Gandhi International Airport,
New Delhi - 110037, India
- 2. The GST Council**
Office of the GST Council Secretariat
5th Floor, Tower II, Jeevan Bharti Building, Janpath Road,
Connaught Place, New Delhi-110 001
- 3. Hon'ble Chairman, Central Board of Indirect Taxes and Customs**
Central Board of Indirect Taxes and Customs,
North Block, Central Secretariat,
New Delhi, Delhi 110001

Subject: Representation regarding Archival of GST Returns data on GST Portal

Re: Advisory dated 24.09.2024 & 29.09.2024 uploaded on the GST Portal under the News and Updates tab

Respected Madam / Sir,

The Chamber of Tax Consultants, established in 1926, is one of the oldest non-profit organizations of tax practitioners, having Advocates, Chartered Accountants and Tax Practitioners as its members spread across Pan India. The Chamber is on the cusp of its Centenary year which will be commencing from July 2025. Many senior tax professionals who regularly appear before ITAT, High Courts and the Supreme Court are its Past Presidents. The Chamber has been making regular representations before various government agencies.

The Chamber regularly takes up initiatives to act as a bridge between stakeholders and concerned regulatory bodies in order to convey and help in resolving genuine grievances or effectively implement the laws. We would like to draw your attention on the following issue being faced by our members and community at large:

Archival of GST Returns data on GST Portal

An advisory dated 24.09.2024 was issued on the GST Portal under the GST News and Updates tab.

From a perusal of the advisory dated 24.09.2024, it appears that the GSTN intends on archiving GST Returns Data on the GST Portal beyond seven (7) years. In fact, the data for the month of July 2017 and August 2017 had already been archived, which after several representations has since been restored.

The advisory is extracted as under:

“Archival of GST Returns data on GST portal

Sep 24th, 2024

1. *Section 39 (11) of the CGST Act, 2017, implemented w.e.f. 01-10-2023 vide Notification No. 28/2023 – Central Tax dated 31th July, 2023, provides that the taxpayers shall not be allowed file their GST returns after the expiry of a period of three years from the due date of furnishing the said return.*
2. *Further, as per GST portal data policy, data for view of taxpayer to be retained for seven years only. Therefore, the same data policy is being implemented on the GST portal. Thus, return data will not be available to view beyond 7 years for taxpayers.*
3. *Accordingly, on 01st August 2024 return filed for July 2017 has been archived and on 01st September 2024, data for August 2017 has been archived. Further, this data archival is going to be a monthly activity hence on 01st October, 2024 data of September 2017 shall be taken down from the GST portal and so on so forth.*
4. *Hence, hereby the taxpayers are advised to download their relevant data from the GST portal for any future reference, if required.*

*Thanks,
Team GSTN”*

Following the announcement of the plan for archival of return data, another advisory was issued on September 29th, 2024, whereby GST return data on the portal has been restored for the months of July 2017 and August 2017. The relevant extract of the advisory is reproduced below:

“Restoration of GST Returns data on Portal

Sep 29th, 2024

Please refer to the advisory issued on 24th September, 2024 regarding the archival of return data from the Common Portal after seven years. This data was archived in line

with data archival policy. Data archival process was implemented on a monthly basis. Consequently, the return data for July, 2017 and August, 2017 was archived on 01st August and on 01st September respectively.

However, in view of the requests received from the trade due to the difficulties faced, data has been restored back on the portal. We recommend you to download and save the data if needed, as the archival policy shall be implemented again after giving advance information.

Thank you for your cooperation.

*Thanks,
Team GSTN”*

The advisory of September 29th, 2024 temporarily halts the archival. However, the policy **“shall be implemented again after giving advance intimation”**. Meaning thereby, the archival policy shall be implemented again after giving due intimation in advance to taxpayers but there will be no consultation with the stakeholders. Essentially, the implementation of the archival policy vide advisory dated 24.09.2024 is only postponed for the time being and it shall be implemented again and it is for the said reason the taxpayers are advised to **“download and save the data if needed”**.

The effect of the archival policy is that the entire GST Returns data on the GST Portal for any tax period beyond seven (7) years would be inaccessible to the taxpayers. The GST returns data shall be deleted month-by-month as and when the period of seven years elapses, if the present policy is continued. The advisory dated 29th September 2024 temporarily restores GST returns data for months of July and August 2017 but raises significant concerns about the broader policy and its long-term implications. The unavailability of GST returns data beyond seven years could severely impact compliance, audits, litigations, especially in cases where legal proceedings or assessments extend beyond this period.

We believe that this archival process should be halted till the end of the litigations for the period 2017 – 18 before the GST Tribunal. Since GST Tribunals are yet to be constituted, we urge you to not archive the return data as proposed vide advisory dated 24.09.2024. In addition, we seek to highlight some of the important issues:

I. Taxpayers are required to maintain and retain records for financial years beyond the previous seven years as per Section 36 of the CGST Act, 2017.

Reference may be drawn to Section 36 of the CGST Act, 2017 as extracted hereunder:

“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.**”

[Emphasis supplied]

From a perusal of Section 36, it is evident that a registered person is required to maintain and retain books of accounts and other records as under:

- a. Until the expiry of seventy-two months/ six years from the due date of furnishing of annual return, or
- b. For a period of one year after final disposal of any appeal or revision or proceedings or investigation, whichever is later.

It has been mandated by the proviso to Section 36 that the taxpayer is required to maintain and retain records for a period of one year after final disposal of any appeal or revision or proceedings or investigation, if that occurs after the expiry of six years from the due date of furnishing of annual return. Hence, the taxpayer who is subject to the outcome of any appeals, revision, other proceedings or investigation, are obligated to maintain and retain records for the said financial year, even for more than seven years. The archival of GST returns data beyond seven years, as stated in the advisory dated 24.09.2024, appears to conflict with the provisions of Section 36 of the CGST Act, 2017. The retention requirement under Section 36 of the CGST Act, 2017 serves to ensure that taxpayers have access to essential data and records for compliance, audits, appeals, and legal proceedings. By archiving the data on the GST Portal after seven years, the advisory creates a scenario where taxpayers might be deprived of access to records that they are statutorily required to maintain, especially when they are involved in long-standing litigations or investigations. Therefore, this advisory contradicts the statutory requirements under Section 36 and may lead to undue hardship for taxpayers in fulfilling their legal obligations.

II. Non availability of “GST Portal data policy” or any other policy that requires the GST Network to delete the data beyond seven years from the GST Portal.

Upon a perusal of the GST Portal’s “Website Policy” tab, the following policies are listed out. It is to be noted that none of the aforesaid policies deal with archiving of old data as enumerated hereunder:

- a. Content Archival Policy (CAP) pertains to News and Updates, Contact Details, User Manuals & About Us. The said content was to be displayed on the GST Portal as specified thereunder and shall not be displayed after the said validity date unless such a request has been raised by the GST Network.
- b. Content Moderation and Approval Policy (CMAP) intends to maintain uniformity and to bring in standardization of the content to be published on the website as per the requirements of viewers and to retrieve the relevant content efficiently. The content is contributed to the website through a Content Management System which would be web-based having user-friendly interface. Once the content is contributed it is approved and moderated prior to being published on the Portal. The moderation could be multilevel and is role based. If the content is rejected at any level, it is reverted back to the originator of the content for modification.
- c. Copyright Policy gives the disclaimers pertaining to the intellectual property of the GSTN and its governing law.
- d. Content Review Policy (CRP) defines the roles and responsibilities of the website content review and the manner in which it need to be carried out.
- e. Privacy Policy states the policy of GSTN regarding personal information and other data such as Internet Protocol address etc.

The reason given for archiving/ deleting the old data from the GST Portal as per para 2 of the advisory dated 24.09.2024 is that the same is as per the “GST portal data policy”. However, as is enumerated in the previous paragraph, none of the said policies pertain to archival of GST returns data on the GST Portal. In view whereof, it is unclear what is the “GST Portal data policy” referred to in the advisory.

It is evident that the policies currently listed on the GST Portal, including the Content Archival Policy (CAP), do not address or clarify the archival of GST returns data. The advisory dated 24.09.2024 references a "GST portal data policy" as the basis for archiving old returns data, yet no such specific policy exists or is made available for public reference. This lack of transparency raises significant concerns regarding the rationale and legitimacy behind the decision to archive critical data, leaving taxpayers and stakeholders in uncertainty about the policy's legal basis and implementation. Clear guidelines must be provided to ensure that the archiving process is aligned with the legal and procedural framework governing the GST Portal.

III. No Deliberation with the GST Council

The decision to archive GST returns data, as announced in the advisory dated 24.09.2024, appears to have been just placed before the GST Council by the GSTN and Law Committee merely **for its information** (Refer pg 423 Agenda item 8(4) of the 48th GST Council Meeting’s Agenda booklet issued prior to the meeting) which was finally

carried and passed in the 49th GST Council meeting without any discussion/ deliberation with respect to the Data Archival Policy. (Refer pg 34 Agenda item 9 para 10 of Minutes Book of 49th GST Council Meeting)

Thus it appears that the decision to archive data is taken unilaterally without the involvement or deliberation in the GST Council. This violates the statutory mandate of Article 279A of the Constitution of India. The GST Council is responsible for making recommendations to the Union and the States on key GST-related policies. The archival of taxpayer data, which could directly affect the rights of taxpayers and their ability to respond to ongoing litigation or investigations, falls squarely within the Council's remit. Non consultation with GST council raises concerns about whether this policy aligns with the broader objectives of GST governance. This oversight calls for a reconsideration of the decision to archive the return data, with inputs from the GST Council and stakeholders.

IV. Pending Litigations

As enumerated earlier in this reply, the taxpayers are required to maintain and retain records for a period of one year after final disposal of any appeal or revision or proceedings or investigation, if that occurs after the expiry of six years from the due date of furnishing of annual return. With this context, it is pertinent to note that due to the non-constitution of the GST Appellate Tribunal, taxpayers have not been able to exercise their right of a second appeal u/s 112 of the CGST/ SGST Act, 2017 before the tribunals.

It is pertinent to note that, taking note of the non-constitution of the GST Appellate Tribunal, the Central Government passed the Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 had extended the limitation for filing an appeal before the tribunal. It was stated that an appeal can be filed within three months (six months in case of appeals by the Government) from the date of communication of order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later. It was clarified vide Circular No. 132/2/2020 – GST dated 18.03.2020 that the prescribed time limit to make application to appellate tribunal will be counted from the date on which President or the State President enters office.

On the basis of the above, it is submitted that the limitation for preferring appeal u/s 112 has not expired. To fulfil the requirement of the proviso to Section 36 of the CGST Act, 2017 requiring all taxpayers with pending litigation to maintain records during the pendency of the litigation and for a period of one year thereafter, the taxpayer will have to maintain records for even beyond seven years.

It is also pertinent to note that last date for the passing of order under Section 73(10) for the year 2017 – 18 was December 2023 (as extended vide Notification No. 09/2023 – Central Tax dated 28.03.2023) whereas the last date for passing of order under Section 73(10) for the year 2018 – 19 is 31.08.2024. The first appeals against these orders are

yet to be filed. Only when the orders are pronounced in the first appeals and GST Tribunals are constituted can the litigation at the GST Tribunals even start. In this background, it would be unwarranted to archive the GST data which the taxpayers are required to maintain.

V. **Litigations on Data mismatch**

The archival of GST return data will pose a significant problem for taxpayers currently involved in pending litigation, particularly concerning data mismatches. A substantial number of AI-generated notices have been issued based on discrepancies between GSTR-2A and GSTR-3B, non-payment of taxes by suppliers, mismatches between outward supplies declared in GSTR-1 and GSTR-3B, and inconsistencies between annual return data and GSTR-3B. Addressing these notices often requires taxpayers not only to maintain their own records but also to rely on the data of their suppliers, especially for reconciling Input Tax Credit (ITC) claims.

Taxpayers will face severe difficulties in accessing historical records on the GST Portal if the GSTN goes ahead with its policy of archival of the GST return data as taxpayers will be deprived of critical evidence necessary for their defense. In many cases, the data mismatch arises from supplier-side errors or delays, necessitating continuous access to return data for verification and response. If the archived data is not readily accessible, taxpayers will struggle to respond to notices, potentially leading to unjust demands, tax liabilities, or denial of ITC. In the absence of proper access mechanisms post-archival, this policy could lead to significant procedural delays, financial burdens, and potential legal challenges. Therefore, halting or revising the archival policy is imperative to safeguard taxpayer rights and ensure a fair adjudication process in cases of data mismatch.

It is reiterated that if the GST return data of more than seven years is not maintained and retained on the GST Portal by the GST Network, it will cause unnecessary hardship and difficulties for the taxpayers. Further, the decision to archive the GST return data raises important questions:

- What is the full scope of the archival policy, and where exactly is this data being archived?
- What will be the process for taxpayers to retrieve their archived data once the policy is re-implemented?
- Why is this data not being retained on the GST portal itself, which would provide ease of access to stakeholders?
- Whether the GST Council has been consulted in this regard, as the implementation of such a policy could have far-reaching consequences on compliance and litigation.
- Were taxpayers and stakeholders involved in the decision-making process before the policy was enforced, considering the substantial impact this could have on ongoing disputes, audits, and appeals?

Alternatively, without prejudice to the above, the GSTN may consider moving the data to an alternate website, where such data may be accessed by taxpayers/departmental authorities without adding much load to the entire GSTN Network.

In conclusion, while the temporary restoration of archived GST return data provides short-term relief, the long-term implications of archiving without a clear retrieval process cannot be overlooked. The absence of a transparent and well-defined archival policy, coupled with the lack of clarity on the role of the GST Council in the decision-making process, raises serious concerns. Taxpayers may face unnecessary hardships, especially in ongoing litigation, audits, and appeals, where historical data is crucial for compliance. It is imperative that a comprehensive review of the policy be undertaken, with input from all stakeholders, to ensure that the archival of GST return data does not hinder the rights and obligations of taxpayers, and to maintain transparency in the GST ecosystem.

At this stage, it is apposite to mention that the archival of data and removal of data was already done and data of two months was removed and then the stakeholders were informed. This, it is humbly submitted, is uncalled for. It will be a fair process, if the stakeholders are intimated in advance before such steps are taken in a hurried manner. Sufficient time should be given to the stakeholders to arrange their affairs before losing the data.

At the same time, it is also requested that since, the data is not deleted but only archived, it would be stored somewhere. A details policy may be brought out as how and when can one access such data, if the GSTN decides to go ahead with the archival of data, contrary to the suggestions made hereinabove.

In view whereof, it is humbly requests for the GST Network to reconsider its decision of archival of GST Returns data beyond seven years from the GST Portal.

Accordingly, we request to kindly take the above under consideration.

Thanking you,

Yours Sincerely,

For **THE CHAMBER OF TAX CONSULTANTS**

Sd/-

Vijay Bhatt
President

Sd/-

Ketan Vajani
Chairman
Law and Representation Committee

Sd/-

Apurva Shah
Co-Chairman