

Chapter-II
Taxes/VAT on Sales and Trade

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TAXES/VAT ON SALES AND TRADE

2.1 Tax administration

Sales Tax/Value Added Tax is administered at the Government level by the Additional Chief Secretary (Excise). The Excise & Taxation Commissioner (ETC) is the Head of the Excise and Taxation Department and he is assisted by two Additional ETCs, one Joint ETC, six Deputy ETCs, 12 Assistant ETCs and 69 Excise & Taxation Officers (ETOs). In addition, there are Excise and Taxation Inspectors and other allied staff for administering the relevant Tax Laws and Rules.

2.2 Results of Audit

During 2016-17, test check of the records of 34 units relating to VAT/Sales tax assessments Entertainment Tax, Multipurpose Barriers, Luxury Tax and other records revealed under-assessment of tax and other irregularities involving ₹63.48 crore in 290 cases which fall under the following categories as depicted below.

Table-2.1 Results of Audit

Sr. No.	Categories	₹ in crore	
		Number of cases	Amount
1.	Under-assessment of tax	19	18.87
2.	Acceptance of defective statutory C&F forms	26	3.69
3.	Evasion of tax due to suppression of sales/purchases	41	15.34
4.	Irregular/incorrect/excess allowance of ITC	59	5.16
5.	Application of incorrect rate of tax	26	8.36
6.	Other irregularities	72	2.03
Total		243	53.45
Others Tax and Non-Tax			
1.	Entertainment Tax	19	9.20
2.	Multipurpose Barriers	20	0.83
3.	Luxury Tax	8	
Total		47	10.03
Grand Total		290	63.48

During the year 2016-17, the Department accepted under-assessment and other deficiencies of ₹1.42 crore in 74 cases out of which an amount of ₹63.49 lakh was realised in 59 cases related to earlier years.

Significant cases involving ₹27.37 crore are discussed in the following paragraphs.

2.3 Audit on 'Implementation of HPVAT-IT Project (HIMTAS)'

Excise and Taxation Department took up the computerisation of VAT and allied processes to improve the compliance of tax laws, automate the allied tax administration and interface with the TINXSYS in June 2010 involving financial outlay of ₹20.19 crore. The Department rolled out 23 modules including Web Portal between August 2011 and January 2015. However, the usage of backend modules was low in view of the long pendency of VAT assessments and processes were still undertaken in manual form. Besides, Go-Live, signing of SRS, URS, SDD, Legacy data conversion and Final Acceptance Test were also pending. In view of Department's option to utilise 'Implementation Model-2' developed by GSTN on the introduction of GST from 1st July 2017, the expenditure of ₹20.19 crore on the setting up of the project remained unproductive failing to meet the project objectives.

2.3.1 Introduction

Sales tax/VAT on sales and trade is a major source of revenue for the State, which is collected by the Excise and Taxation Department (ETD). The Government of Himachal Pradesh implemented the Himachal Pradesh Value Added Tax Act, 2005 with effect from April 1st, 2005. Principal Secretary (Excise and Taxation) is the administrative head of the Department at the Government Level. The Excise and Taxation Commissioner (ETC) is the head of the Department (HOD) who is empowered with the work of superintendence and administration and is assisted by the two additional ETCs. The revenue collected under Revenue Head 'Taxes/VAT on Sales and Trade-0040' during the period 2013-14 to 2015-16 is as follows:

Table-2.2 Details of VAT and Total Tax Receipts

Year	VAT Receipt	Total Tax Receipt	₹ in crore
			VAT percentage of total tax receipts
2013-14	3,141.10	5,120.91	61
2014-15	3,660.57	5,940.16	62
2015-16	3,992.99	6,695.81	60

The Government of India through Empowered Committee (EC) of State Finance Ministers started (June 2010) the computerisation of VAT and allied processes with the aim to improve compliance of tax laws in the State, implementation of a comprehensive IT System to automate the allied tax administration processes, interface with TINXSYS, migration of legacy electronic data, digitisation, porting of paper documents to the new system and building robust MIS tools etc. Himachal Pradesh Tax Administration System (HIMTAS) is a web based internet application as detailed in **Annexure-II**.

The Department opted (December 2014) for 'Implementation Model 2' i.e. GSTN will be undertaking development of backend module for using backend

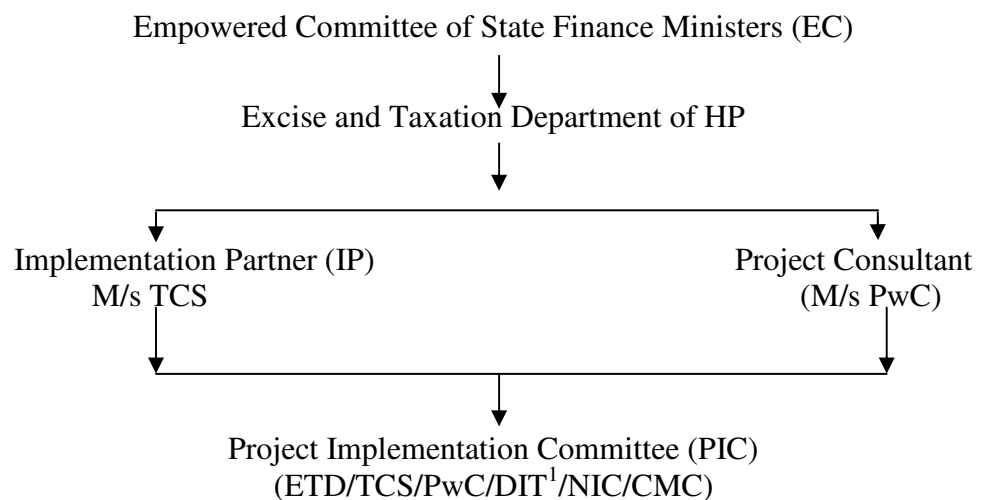
Services (assessment, audit, refund, recovery etc.) of GSTN consequent upon the rolling out of Goods and Service Tax (GST). Further, VAT has been subsumed in GST implemented with effect from July 1st 2017.

2.3.2 Initiation of HPVAT-IT Project

M/s PricewaterhouseCoopers (PwC) was selected (June 2006) by the EC as the project management consultants for defining infrastructure requirements, selection of implementation Partner (IP), monitor installation and commissioning of the hardware and software, review of application developed and monitoring of services of IP. The Project Consultant was also responsible for report of testing of modules and Web Portal for complete functionality, quarterly Service Level Agreement (SLA) monitoring as per the identified measurable parameters for a period of twenty-four months after project rollout.

The Request for Proposal (RFP) for computerization of VAT was floated in 2006. However, the contract agreements *viz.* Master Services Agreement (MSA) and Service Level Agreement (SLA) were signed between the Authorised representatives of the EC, ETD and Implementation Partner (M/s TCS), on 7th June 2010. The IP is responsible for delivery and installation of requisite hardware at all office locations, development and customization of VAT application and web portal according to the needs of the Department, legacy data digitisation and operations and maintenance of Data Centre for a period of five years. The Project Implementation Committee (PIC) comprising of members from the Department, Project Consultant, Implementation Partner, Department of Information Technology (DIT), NIC and CMC was set up for review of progress of the Project from time to time, whose minutes of meetings held during March 2011 to November 2016 were scrutinised in audit.

Structure for Implementation of HP VAT IT Project



¹ Department of Information Technology, Government of Himachal Pradesh

2.3.3 Modules under HIMTAS application

The HP VAT-IT Project was meant for computerisation of VAT Act and allied processes with a view to improve the compliance of tax law in the State but additional modules in respect of different revenue heads operated by the Department were also rolled out as part of the Project. The Department rolled out 23 modules including Web Portal under the Project between August 2011 and January 2015. Out of 23 modules, 14 modules pertained to taxes subsumed in GST. Only nine modules, which pertain to taxes not subsumed in GST, are usable as depicted below:

Table-2.3 Details of Modules under HIMTAS

Taxes Subsumed under GST			Taxes not subsumed under GST		Miscs.
VAT/CST	PGT	Luxury Tax	Excise	M&TP ²	Other Modules
1	2	3	4	5	6
<ul style="list-style-type: none"> • Registration • Returns & Payment • Assessment • Refund • Recovery • Appeals & Revision • Enforcement • Penalty 	<ul style="list-style-type: none"> • Registration • Returns & Payment • CGCR³ registration • CGCR Returns & Payments 	<ul style="list-style-type: none"> • Registration • Returns & Payments 	<ul style="list-style-type: none"> • Licenses • Removal of goods • Excise Statement 	<ul style="list-style-type: none"> • M&TP License • M&TP removal of goods • M&TP Return & Payments 	<ul style="list-style-type: none"> • Check post • TINXSYS • SFSC
8 modules	4 modules	2 modules	3 modules	3 modules	3 modules

2.3.3.1 VAT/CST/PGT/Luxury tax modules

The Department rolled out eight modules of VAT/CST out of which except for Registration and Returns/Payment modules remaining modules involving assessment and other processes thereafter were not in use and operations were carried out in offline mode due to non-clearance of arrears of assessments of pre-computerisation period. Similarly, processes of PGT and Luxury tax modules were also being carried out manually.

On this being pointed out, the Department replied (October 2017) that application of back office was low due to old pendency of assessments. Further assessment work was slow due to shortage of staff. The reply is not acceptable as Department did not take initiative to streamline the assessments so as to achieve benefits of automation and most of the backend operations were still being undertaken manually. Moreover, as these taxes are being subsumed in GST with effect from July 1st 2017, these modules have lost their relevance almost without being put to any use.

² Medical and Toilet Preparation
³ Certain Goods carried by Roads

2.3.3.2 Excise Modules

Excise Module was, made live in pilot site of Shimla on application as well as Portal in October 2013. The Department while acknowledging the slow progress made under Excise Module, asked the IP to roll out the same to Baddi and Kangra. PIC observed (November 2016) that retailer's data of Kangra District was incomplete. It was decided to have a comprehensive data of total licensees of retailers in the system. The Department also admitted that all Excise Modules are ready but not fully utilised. PIC directed that all licenses will be applied online through Web Portal from 1st December 2016 and suitable directions be issued to field authorities.

Audit observed that excise activities like application for vend licenses, renewal of licenses of distilleries/bottling plants, issue of permits against minimum guaranteed quota (MGQ) and monitoring of lifting against MGQ were undertaken on manual mode so far.

2.3.3.3 Other modules

Similarly, modules in respect of Passenger and Goods Tax, Medicinal and Toilet Preparations Act, 1955, Luxury Tax, Check Post, TINXSYS and SFSC were also not in use and operations/data base were maintained in offline mode. The master data of registration under different Acts was not available in respective modules and assessments were made on offline mode. Incidentally, most of these modules are not relevant now in view of submergence of these taxes under GST since 1st July 2017. Besides, the leads/mismatch generated from TINXSYS module or other VAT modules were not being probed as pointed out in under the compliance irregularities.

2.3.3.4 Complaint Module

The Complaints Module did not figure in the list of modules rolled out under the project, but the PIC meeting observed (August 2015) that usage of Complaints module was low. The Department directed for apprising the monitoring of the complaints by the concerned officer. It was also observed by PIC that performance of SMS gateway used for sending and receiving the messages was not good and dealers were losing confidence in the feature. The Department neither took steps to improve the performance of SMS Gateway nor put in designated officer/staff for popularization/monitoring of complaints thereby neglecting an important area for the successful implementation of the Project. Audit further observed that complain module/its linkage with other modules was not available on Departmental website and as such, an important ingredient for seeking inputs from stakeholders was missing in project.

2.3.4 Financial Status of VAT-IT Project

The total cost of Project inclusive of O&M cost of five years up to 31 March 2018 as per MSA was ₹20.19 crore as per details given below. The various components of Scope of Work under MSA are detailed in **Annexure-III**.

Table-2.4 Summary of Costs

Payment Head Description	Amount in ₹
One time cost of VAT Application	2,22,22,098
Web Portal Development Cost	19,79,796
Total Hardware Cost	7,64,36,409
Site Preparation Cost	1,40,47,255
Operation & Maintenance Cost	8,52,83,001
Cost of data digitisation	19,20,790
Total	20,18,89,349

On being asked about the status of funds released to the IP and Project Consultant, the Department informed that the EC of State Finance Ministers has been making payments directly and as such the same was not provided to audit.

Audit observed that in the PIC it was mentioned (November 2011) that ₹1.77 crore was released to the IP in March 2011 for delivery and installation of hardware and it was directed that the Department release up to 65 per cent of payment for hardware delivered and installed. In the meanwhile, the IP agreed to provide a credit Note of ₹1.50 crore due to changes in the tax rates as well as the quantities of hardware. As a result, balance amount of ₹5.63 crore was payable for hardware. The PIC approved release of ₹3.04 crore to IP in November 2011. Thus, Department's stance was contradictory, as PIC/EC had directed the Department to consider release of the payments to IP. PIC also approved the Department's proposal for audit of previous payments released to IP. In case the Department was not releasing the payments to IP, then the proposal for audit of payments released defies logic. However, no reference was found on records regarding conduct of audit and name of the agency from whom audit was got conducted. Further the status of audit of payments, even though called for was not provided to audit. The status of credit note of ₹1.50 crore given by the IP and mode of its adjustment in the account of the Department/EC was neither found on records nor apprised to audit. In the absence of availability of complete information of amount spent on the project, achievement of milestones/deliverables etc. could not be verified.

2.3.5 Incomplete work by Project Consultant

The IP apprised (August 2015) that User Requirements Specification (URS), System Requirements Specification (SRS) and Software Design Document (SDD) are not signed off and requested the Department to sign off the documents. The Department informed that it was a lengthy exercise for which a Committee had been formulated which will verify the same by October 2015. It was observed in audit that the PIC approved (December 2015) the final payment of Project Consultant (M/s PwC) for last quarter (April-June 2015) even though

documents like SRS, SDD and URS sign off and proper exit plan are still pending with M/s PwC as on November 2016. In the absence of these documents, the probability of meeting the operational requirements of the Department remained doubtful.

On this being pointed out, the Department replied (October 2017) that sign off of these documents was approved by PIC in June 2017. The reply is not acceptable as IP was supposed to submit hard copies of URS, SDD and ATS documents, which were yet awaited (December 2017).

2.3.6 Legacy data Conversion

As per provisions of MSA, IP was to digitize the legacy data for the period 2005 to 2010 as per **Annexure-IV**. However, the Department later on held that digitised data for the period 2005-08 was not required as the period of assessment of these returns was over because of late signing of Contract. Thus, the PIC approved the period of data digitisation from 2005-10 to 2008-13 on the request of the Department. However, the decision to change the legacy data period was arbitrary as period of assessment was not exhausted in case of issue of notices issued to the dealers under Section 21(4) of HP VAT Act, 2005.

The PIC was apprised (May 2015) that IP had done data digitisation of 1.32 lakh return forms but there were some discrepancies in the legacy data digitised. The PIC had even constituted a Sub-Committee of Department, Project Consultant and IP to verify the legacy data, which made following observations:

Table-2.5 Details of deficiencies in legacy data

Issue	Observations of Sub-Committee
Out of 15,141 annual returns digitised, only 7 have been digitised in Form XV-A while 15,134 have been wrongly digitised in Form XV.	TCS to correct these records.
TCS captured the tax payable but has not captured the amount of actual tax paid by the dealer.	TCS to verify and correct such records.
In some records, the tax payable is too high or too low e.g. ₹45,000 crore or (-) ₹6,000 crore.	TCS to verify and correct such records.
There are approximate 72 duplicate records.	TCS to verify and correct such records.
For four records, the tax period is shown as 2019/2010.	TCS to verify and correct such records.

The compliance to the observations of the Sub-Committee was asked for in audit but not made available by ETD. No evidence was available on record to show the digitization of all records as per MSA and its approval by PIC. The period of Annual returns digitised was also not mentioned. The PIC had directed (March 2013) that data digitisation and verification to be completed within next six months. Thus, the work of legacy data digitisation required to be completed by September 2013 was still incomplete till November 2016. The successful implementation of the HIMTAS Application was doubtful in view of non-completion of data digitisation.

On this being pointed out, the Department replied (October 2017) that issue of data digitisation was closed by PIC in meeting held in August 2015. The reply is incomplete as digitisation of data as per provisions of MSA was neither brought on records nor apprised to audit and legacy data conversion was still incomplete.

2.3.7 Updation of PAN database of the dealers

The RFP of the Project inter alia provided that in view of reference to Goods and Service Tax in 2009-10 budget, the IP should consider various aspects and likely changes so that transition from VAT to GST is done seamlessly. The Department stated (June 2013) that after verification of the dealers with the NSDL database, it was found that majority of the dealers have provided wrong PAN numbers. Accordingly, Department planned (March 2015) to integrate with NSDL for online verification of PAN to increase the accurate collection of PAN of all dealers, which is a major requirement for migration to GST. The Department had sent (May 2015) data to NSDL for verification and after verification, the percentage of correct PANs was expected to increase to *75 per cent*. The Department wrote to field officials to collect PAN from remaining dealers for being sent to NSDL for verification and fixed 25 August 2015 for correcting all PAN after which their TINs will be cancelled. It was also directed to share updated report with the EC and the GSTN after necessary updation in the Department's database. The status of updation of PAN/cancellation of TIN was not known and as such it was difficult to assess the readiness of the State for seamless transition from VAT to GST.

On this being pointed out, the Department replied (October 2017) that *97 per cent* of dealers had migrated to GST till 15th June 2017. The reply is not relevant as the same is silent about correction of PAN database of its dealers as Department itself brought on records that most of the dealers had provided wrong PAN numbers.

2.3.8 Final Testing and Certification of VAT-IT Project

The project shall be governed by the mechanism of final acceptance, testing and certification to be put into place by the EC:

- i. from a technically competent agency for conducting final acceptance testing and certification.
- ii. The Final testing and Certification Agency will be involved with the Project from the development stage to ensure that the guidelines are being followed and to avoid large scale modifications pursuant to testing done after the application is fully developed;
- iii. The Final Testing and Certification Agency may engage professional organizations for conducting specific tests on the software, hardware, networking, security and all other aspects;

However, the Department issued (January 2013) orders for constituting teams of officers for conducting Final Acceptance Test (FAT) of 23 Modules (approximately) rolled out under VAT-IT Project by the IP. Thus, FAT was neither got done by the technically competent agency nor was associated with the project from the development stage. It was also noticed in audit that the Department was not even sure about the number of Modules actually rolled by the IP. Incidentally, the PIC in its meeting in October 2013 took on record final testing of 23 Modules by visiting five pilot locations against requirement of 90 *per cent* of one hundred locations of the Department earmarked for networking in the State. Further, PIC approved and recommended the release of ₹1.22 crore towards completion of milestone of FAT even though FAT was done only at five pilot sites. Thus, payment was released irregularly without completion of FAT as per stipulated milestone. The compliance to the findings/observations/suggestions/modifications, if any, suggested during the course of FAT though asked for by audit were neither provided nor could be inferred from the PIC deliberations.

In the absence of a credible FAT, it was not feasible to determine the extent of completion of the project and its ability to meet the program objectives.

On this being pointed out, the Department replied (October 2017) that roll out of system was carried out in five pilot locations. Thus, Department recommended release of ₹1.22 crore towards compliance of milestone of FAT without carrying out FAT at 90 *per cent* of one hundred locations earmarked for networking.

2.3.9 Go Live Certificate for IT Project

The IP while apprising the financials of the IT Project highlighted (November 2016) the delay in issuance of Go Live Certificate of the Project causing huge financial burden and requested PIC to look into the matter and suggest a solution.

Audit observed that the Department did not formally issue any 'Go Live' certificate of Project and simply started the O&M phase for five years with effect from 1st April 2013. The Department did not apprise the exact status of issuance of Go Live Certificate in spite of PIC directions. Thus, the IT Project was yet to get Go Live Certificate. In the absence of Go Live Certificate, efficacy of successful implementation of Project could not be ensured.

On this being pointed out the Department replied that Go live was given to IP w.e.f. 1st April 2013. The reply is not acceptable as PIC had allowed start of O&M phase of project from 1st April 2013 and as such no formal approval of Go live certificate was accorded.

2.3.10 Appointment of new Project Consultant

The actual level of performance of the services should be same as specified in the SLA. As per terms and conditions of SLA, penalty was leviable on the IP from

the payments of O&M cost for deficiency in Service Level as per measurement Matrix provided in SLA. In view of the completion of contract period of PwC, decision on the penalties could not be taken by the PIC. In the meanwhile, EC informed that payments would not be released without clearance from newly appointed consultant. However, the approval for hiring the project consultant was pending with the State Government.

On this being pointed out, the Department replied that consultant had been appointed through NIC-SI. However, the consultant was yet to be nominated in spite of State Government approval for hiring Sr. Consultant and Consultant from NIC-SI in August 2016 involving financial outlay of ₹14.84 lakh. Further, the tenure of appointment and basis of fixation of financial package was not appraised by the Department.

2.3.11 Penalty for deficient service by Implementation Partner

In view of pending clearance of proposal for appointment of Consultant from the State Government, PIC decided to recommend the release of payment after withholding maximum amount of penalty leviable under SLA. Further, the payments recommended were subject to review by the consultant as and when appointed and actual penalty recommended will then be deducted. It was seen that Department had deducted penalty of ₹11.00 lakh (at the maximum level) in view of deficiency in service/deliverables under the Project as per measurement matrix of SLA for the quarters viz. Q3 and Q4 of 2015-16 and Q1 and Q2 of 2016-17.

2.3.12 Non-extension of hardware warranties

The IP informed (December 2015) that warranties for critical DC hardware and Oracle ATS were renewed for one year but warranties of some hardware were pending for renewal which was required for the successful execution of the Project. The IP sought additional cost for extension of warranties as these renewals were outside the scope of work in view of completion of five years in the project. The PIC asked the IP to apprise the overall cost liability. Further, Department was of the view that World Bank will be assisting for up-gradation of hardware for GST readiness, which may be commissioned in Financial Year 2016 and extension of warranties may not be required beyond 2016. Thus, Department's approach towards the maintenance of the Project hardware was not comprehensive.

2.3.13 Inadequate UPS and Power Issue

The IP apprised (November 2016) that UPS were installed to take load of defined number of nodes and sought additional UPS in view of increase in number of nodes with the passage of time and more load due to advent of GST. The PIC asked the IP to handle the system as per defined scope. The IP apprised that certain additional nodes were set up as per the guidelines of the Department on

chargeable basis, for which payment was not released. Thus, availability of the system in case of power disruption was not ensured and it may result in disruption/loss of data.

On this being pointed, out the Department replied (October 2017) that entire hardware was to be replaced as per advisory received from GSTN. Thus, Department failed to synchronize the project paraphernalia with those of GSTN at the time of planning/execution of project.

2.3.14 Non-conduct of third party Security Audit of Project

In terms of clause 6.4 of MSA, Security audit and implementation audit of the system shall be done once each year at the cost of IP by EC or its nominated agency. The minutes of PIC mentioned (August 2015) that IP had been conducting Security Audit internally every year and for the ongoing year in June 2015. However, the Department asked the IP to share the audit findings. The Department also asked the DIT to get the third party Security Audit of the servers and Data Centre conducted. The DIT asked the IP to share the IP addresses of the servers and test user's credentials of application and Web portal. However, the status of internal audit findings as well as third party security audit though asked for was not provided to audit. Subsequent minutes of PIC meetings did not reveal any evidence of the findings of the internal/third party audit and details of remedial action.

It was observed in audit that project consultant in its report of 'Functionalities Compliance' stated that although the portal is SSL certified and an audit was conducted in 2010 only against requirement of Annual Audit and a fresh audit was suggested. Moreover, compliance of the observations, if any, could also not be observed from the records of the Department.

The project consultant directed (March 2013) to conduct a Standardization Testing and Quality Certification (STQC) of the application and Web Portal to ensure security compliance as per GOI standards, whose compliance was also not brought on records.

2.3.15 Archival and Recovery

There should be an effective backup solution for the data generated by the system. The VAT application should include facilities at all the locations for archival of static data, transaction data with timestamps. In case of any system failure, there should be checking of proper restoration during the backup and restarting the data backup. Although the project ensured this aspect and backup was created but the same was stored at same location.

2.3.16 Deficiencies in Web Portal and Application

The project Consultant submitted (May 2013) a report on Functionalities Compliance of the Project by mapping the requirements defined in the RFP with the application developed by IP, which brought out the functional requirements not implemented as detailed in **Annexure-V and VI**, viz. Web Portal of the Project did not contain all relevant Acts and Rules, important Judgments relevant to the Department, search on tax rates on the basis of commodities, list of major tax payers and defaulters with the amount of tax paid and defaulted etc. Audit observed that most of the Acts and Rules including CST Act, 1956 and Rules 1957 were still not updated on real time basis, while HP Excise Act, 1911, HP Liquor License Rules, 1986 were not updated at all. Toll Announcements under HP Toll ACT, 1975 were uploaded for 2008-09, 2009-10 and 2011-12 alone. Similarly, important Judgments were uploaded from August 2014 onwards alone. Facility of search on tax rates on the basis of commodities was still not uploaded. List of major tax payers and defaulters with the amount of tax paid and defaulted etc. were not uploaded on the Portal etc.

On this being pointed, out the Department replied that in view of implementation of GST w.e.f. 1st July 2017 there is no need to improve the project software. Thus, Department failed to make use of Project in-spite of incurring expenditure on its setting up as well as O&M thereof since 1st April 2013.

2.3.17 Compliance Irregularities

2.3.17.1 Economic Intelligence Unit

The Excise and Taxation Department set up Economic Intelligence Unit (EIU) on 18 July 2013 on the basis of Government of H.P. notification. EIU headed by Deputy Excise and Taxation Commissioner, started functioning in September 2013 for performing the functions like Registration Data Analysis, Return Analysis, Audit Data Analysis, 360 Degree Analysis, Commodity Analysis, Dealer Profiling (Star Rating), Data Management Feedback Analysis, Business Intelligence and Data Warehouse, Cyber Forensics etc. Thus, the EIU was established for the analysis of online data uploaded by the various dealers of H.P, various kinds of mismatches which were observed online are sent to the District offices or flying squads for further investigation. No specific target in quantitative terms had been fixed for the unit. It was observed in audit that:

- i.* test check of the records of Sirmour, Baddi and Solan Revenue Districts revealed irregularities of excess claim of input tax credit (ITC) intrastate purchases/sales not matching, and circular trading of ₹441.10 crore by 189 dealers with following dealers involving significant amounts:

Table-2.6 Details of ITC mismatch

			₹ in crore
Sr. No.	TIN	Year	Amount
1.	02020500703/704/705	2014-15	232.26
2.	02040201053	2012-13	204.00
3.	02040200799	2012-13/13-14/14-15	1.21
4.	02040400186	2013-14	1.06
5.	02030101569	2013-14	1.04
6.	02030100143	2013-14	1.53
Total			441.10

Audit observed that one case of ITC mismatch involving ₹232.26 crore in Solan Revenue District, suspected of circular trading was forwarded to the concerned AETC way back in November 2014 but the same was not yet probed. Similarly, disposal of other cases of excess ITC claim could not be inferred from the records of the concerned Districts as well as Department. Thus, serious instances having possibility of fictitious claim of ITC were not probed to the logical conclusion which may result in loss of revenue to the State Government.

- ii. Similarly, test check of records revealed cases of purchase and sales suppression of ₹1,588.66 crore were also not finally disposed of or their status could not be inferred from the records of the Department. The tax implication of cases involving higher amounts is as follows:

Table-2.7 Details of Purchase/Sales suppression

				₹ in crore
Sr. No.	TIN	Year	Purchase/Sale Suppression	Amount of VAT due
1.	02020200416	2011-12 to 2013-14	1,248.10	62.41
2.	02040400310	2012-13/13-14/14-15	127.05	6.35
3.	02040400180	2013-14	59.42	2.97
4.	02040400219	2012-13/13-14	25.52	3.51
5.	02030201238	-	4.47	0.22
6.	02030300460	2011-12 to 2013-14	36.25	1.81
7.	02020500613	2012-13 to 2014-15	87.85	4.39
Total			1,588.66	81.66

- iii. Test check of 120 dealers out of 12,890 dealers in Sirmour, Baddi and Solan Districts revealed that these dealers had made payment of VAT lower than previous year aggregating to ₹231.03 crore during 2013-14/2014-15 with instances of substantive variation detailed below:

Table-2.8 Details of cases of reduced payment of VAT

				₹ in crore
Sr. No.	TIN	Year	Amount	
1	02030200804	2014-15	69.54	
2	02040200757	2014-15	7.82	
3	02030100669	2013-14	14.87	
4	02030200908	2013-14	9.92	
5	02030300618	2014-15	13.37	
6	02060600235	2013-14	6.37	
7	02020100439	2014-15	2.86	
Total			124.75	

- iv. There were abnormal differences in GTO, ITC and amount of tax payable *vis-a-vis* figures of the previous years during the years 2012-13, 2013-14 and 2014-15 as per details given below:

Table-2.9 Details of variation in GTO/ITC/Tax payable

Name of District	No. of cases		GTO	ITC	Tax Payable
	Total	Test check			
	Sirmour	6,186			
Solan	16,385	50	112.61	1.07	5.96
Baddi	9,499	60	281.56	6.04	3.30

- v. The Baddi Revenue District raised additional tax demand of ₹26.51 crore in 256 cases during the period 2009-10 to 2013-14. However, the status of tax deposited against the additional tax demand though asked for in audit was neither available on the HIMTAS Application nor was apprised to audit.
- vi. A significant number of registered dealers in Sirmour had even not filed their Returns on the HIMTAS Application as per details given below:

Table-2.10 Details of late/non-filers of returns

Year	No. of Registered dealers	Late Filers	Non-Filers
2012-13	3,246	492	1,984
2013-14	3,649	263	1,173
2014-15	3,954	345	1,665

- vii. Seven dealers in Sirmour district had claimed input tax credit of ₹11.18 lakh from cancelled/suspended dealers during the years 2013-14 and 2014-15.

On this being pointed out the Department replied that Sirmour District had been asked to inquire into the matter. As regards other compliance irregularities Department replied that it was practically impossible to look into each and every mismatch. Thus, Department failed to utilize the leads generating from the Project to plug the leakage of revenue.

2.3.18 Utilization of back office automation

The PIC observed from time to time that usage statistics of Web Portal by dealers was increasing while usage of back office application was not only low but also decreasing. In order to increase the usage of Web Portal Departmentally, instructions were being issued from time to time.

- i. Assistant Excise and Taxation Commissioners and Assessing Authorities were directed for using secondary modules like assessment, refunds etc.
- ii. The field staff was also asked to make use of the software and put more and more cases under Deemed Assessment.

- iii. All Assessing Authorities were asked to complete 25 per cent of return scrutiny mandatorily, all assessment should be done on the module and parameters should be incorporated in their ACRs.

Audit observed that as on 31 March 2016, different AAs finalized 129 e-assessments whereas 13,42,264 dealers had filed e-returns. The Department replied that pre-computerization assessments cases are pending for finalization.

On being asked about the follow up action taken on the output reports (leads) generated under the system, the Department replied that the field authorities were taking appropriate action on these reports as warranted under the Law. However, there was no evidence of any policy directive/perusal at the Hqrs. level on the leads generated by the system.

There was no improvement in the usage of back office automation by the Department. The PIC asked (November 2016) IP, to display the usage of different modules by Department officials. The Department replied that most of the back office application modules are to be used after the assessment. Due to shortage of staff, the assessment work was slow and reason for low usage of back office modules.

The reply is not accepted as non-finalisation of any definite time frame for completion of pre-computerization assessments and not making the usage of the Application mandatory reduced its actual usage and also resulted in expenditure of ₹20.19 crore on the Project un-productive.

2.3.19 Conclusion

In view of materiality of issues mentioned in Functionality Compliance Report of the Project Consultant, it is evident that system had not been conceived and designed as per the best practices and serious gaps had been left while implementing the project. Moreover, due to non/partial implementation of functional requirements, the implementation of the project was still far away from completion. Apparently, it had failed to achieve the project objectives and it was not possible to quantify its impact on the efficiency of revenue collection and improvement in the working of the Department, if any.

Further, in view of implementation of GST from 1st July 2017 and Departments option for 'Implementation Model-2' under GST, as well as inability of Department to utilize the various modules set up under the project, the expenditure of ₹20.19 crore incurred on project remained unproductive.

The matter was reported to the Government in July 2017; its reply was awaited (December 2017).

2.4 Short levy of entry tax

The entry tax of ₹1.38 crore was levied against the leviable entry tax of ₹2.41 crore resulting in short levy of entry tax by ₹1.03 crore.

Himachal Pradesh Tax on Entry of Goods into Local Area Act, 2010 (TEGLA) under Schedule-II provides that goods used in the works contract including Hydropower and Thermal power projects, Generation, Transmission and distributions projects, telecommunications and all other turnkey projects being executed by private as well as Government Departments/Corporations/Board etc. in the State will attract entry tax at the rate of five *per cent*. This is applicable to dealers registered outside the State and supplying goods in Himachal Pradesh.

The HPSEB Ltd. purchased 6,16,966 electronic energy meters from four dealers registered outside the State valuing ₹48.24 crore during the period 2011-12 and 2012-13. The entry tax was leviable at the rate of five *per cent* amounting to ₹2.41 crore while Multipurpose Barriers of the Excise Department had charged entry tax at the rate of 3 *per cent* amounting to ₹1.38 crore on the energy meters. This resulted in short levy of entry tax of ₹1.03 crore.

The matter was reported to the Department and the Government in (June 2017); the Department replied (September 2017) that entry tax was charged at the rate of three *per cent* on the cost of electronic meters supplied. The reply is not acceptable as entry tax at the rate of five *per cent* was leviable under Entry No. 5 of Schedule-II of HP TEGLA, 2010 as the electronic meters supplied by a private contractor/vendor were to be used in distribution of energy by HPSEB Limited. Further, the Department had also levied and recovered entry tax at the rate of five *per cent* from HPSEB Ltd. in respect of purchase periods pertaining to the years 2010-11 and 2011-12 in another assessment of entry tax made in November 2015.

2.5 Incorrect determination of Gross Turnover

The Assessing Authority during assessment of a dealer for the years 2008-09 and 2009-10 excluded income of ₹6.39 crore from the Gross Turnover resulting in loss of revenue of ₹25.52 lakh. Besides, interest was also leviable.

Under Section 2(v) (zd) of the HPVAT Act, 2005 turnover means the aggregate amount of sales, purchases or any part of sales and purchases made by any dealer and includes any sum charged on account of freight, storage, demurrage, insurance and for anything done by the dealer in respect of the goods at the time of or before delivery thereof. Further, under Section 19(1) of the Act *ibid* if any dealer fails to pay the amount of tax due from him, the interest is leviable at the prescribed rates till the default continues.

Scrutiny of the records of the AETC, Mandi between June and July 2016 revealed that Assessing Authority (AA) had finalized the assessment of a dealer in June and July 2015 for the assessment years 2008-09 and 2009-10 on GTO of ₹72.62 crore and ₹90.42 crore respectively. The taxable turnover of the dealer for the years 2008-09 and 2009-10 did not include income of ₹3.10 crore and ₹3.29 crore respectively. The AA in its assessment order did not furnish any reasons for not including the income to the GTO of these assessment years. Thus, short assessment of GTO by ₹6.38 crore resulted in short levy of tax of ₹25.52 lakh. In addition, interest was also leviable on short payment of tax up to 31 March 2017.

The matter was reported to the Department and the Government in June 2017; the Department replied (August 2017) that income represented incentives on fulfillment of sale norms and had been duly accounted for in Profit and Loss Account. The reply is not acceptable as 'sales and operational income' of ₹564.98 crore for 2008-09 and ₹633.58 crore for 2009-10 already included incentives earned by the dealer and as such Department's contention regarding 'other income' representing incentive was not correct. Further the 'other income' forming part of Consolidated Annual Accounts of ₹1.30 crore and ₹97.00 lakh was even less than the income depicted by the dealer in respect of its showroom in Mandi District. Further under Rule 17, a registered dealer is allowed deduction from his gross turnover 'an amount allowed as cash discount provided such discount is in accordance with regular trade practice' and it did not provide for any deduction towards incentives. Thus, exclusion of income of ₹6.39 crore from GTO resulted in short levy of VAT amounting to ₹25.52 lakh. The reply of Government was awaited (December 2017).

2.6 Incorrect determination of Gross Turnover

Loss of revenue of ₹7.68 crore to State Government due to under assessment/exclusion of income of ₹61.42 crore from Gross Turnover.

Under Section 2(v) (zd) of the HPVAT Act, 2005 turnover means the aggregate amount of sales, purchases or any part of sales and purchases made by any dealer and includes any sum charged on account of freight, storage, demurrage, insurance and for anything done by the dealer in respect of the goods at the time of or before delivery thereof. Further, under Section 19(1) of the Act *ibid* if any dealer fails to pay the amount of tax due from him, interest is leviable at the prescribed rates till the default continues.

Scrutiny of the records of the AETC, Bilaspur revealed that AA had finalized the assessment of a dealer in June 2015 for the assessment years 2006-07 and 2007-08 on Gross Turnover (GTO) of ₹95.19 crore and ₹103.09 crore respectively. However, the Trading and Profit and Loss Account depicted GTO of ₹139.60 crore and ₹161.13 crore during the years 2006-07 and 2007-08

respectively. The AA during assessment excluded GTO of ₹25.51 crore and ₹35.91 crore on account of unbilled amount pertaining to Delhi Office. However, the exclusion of GTO amounting to ₹61.42 crore was not admissible as ITD Public Company Ltd. had been incorporated under the Laws of Thailand and the Company gave an intimation on February 6, 2004 to the Reserve Bank of India for opening a project office in India to execute a construction contract awarded by NTPC Ltd. for dam, spillway and power intake in respect of *Kol* dam Hydro Electric Project in Himachal Pradesh and financial statements reflected the results of the activities undertaken by the Company. Thus, the Trading and Profit and Loss account reflected the working results of *Kol* dam Hydro Electric Power project alone and exclusion of income of ₹61.42 crore from GTO was not admissible. The exclusion of income of ₹61.42 crore from GTO resulted in short levy of tax by ₹7.68 crore (tax rate of 12.50 *per cent*).

The matter was reported to the Department and the Government in June 2017, its reply was awaited (December 2017).

2.7 Short deduction of Works Contract tax

Loss of revenue of ₹3.17 crore due to non-deduction of works contract tax on Sub contract payments.

Rule 38(i) of the Himachal Pradesh VAT Rules provide for every person entering into a contract with a works contractor or a works contractor entering into contract with a sub-contractor for transfer of property in goods in execution of a works contract shall furnish to the appropriate Assessing Authority, particulars of such contract in Form VAT-XII within a period of thirty days of such contracts. Further Rule 38(4) provides that the deduction under sub-rule (1) shall be made from all payments made in respect of all works contract executed, whether in part or in full. The provisions of Section 17 of HPVAT Act and Rule 38(3) provided that every person in a Department of any Government/Corporation/Government Undertaking, Co-operative Societies, Local Bodies, Trust or Private or Public Limited Company or any other concern, responsible for making any payment on discharge of any liability on account of valuable consideration payable in the execution of works contract shall deduct an amount equal to two *per cent* of such sum towards the tax deduction from all works contracts.

2.7.1 Audit noticed from the assessment records of AETC Bilaspur that AA, while finalizing the assessment of a dealer for the years 2006-07, 2007-08, 2008-09 and 2009-10 in June 2015 had deducted labour charges included sub contract deduction of ₹140.79 crore. However, the dealer deducted WCT⁴ of ₹46.76 lakh at the rate of two *per cent* on sub contract payment of ₹23.38 crore only instead of total subcontract charges of ₹140.79 crore. Thus, deduction of

⁴ Works contract tax

sub contract payment of ₹117.41 crore was allowed as labour charges without deduction of WCT of ₹2.35 crore (at the rate of 2 per cent on ₹117.41 crore) by the dealer. This resulted in short deduction of WCT of ₹2.35 crore.

2.7.2 Scrutiny of assessment order of a dealer of AETC Mandi for the year 2009-10 revealed that the dealer had claimed Sub-contractor expenses of ₹48.62 crore and labour charges of ₹40.93 crore out of GTO of ₹140.18 crore. Audit observed that though dealer had deducted WCT at the rate of two per cent from the sub-contractor against the payment of ₹48.62 crore towards the transfer of material. WCT was not deducted on the labour charges of ₹40.93 crore. This resulted in short recovery of tax of ₹81.85 lakh.

The AA did not point out this irregularity in its assessment order, which resulted in short deposit of tax by ₹3.17 crore.

The matter was reported to the Department and the Government in June 2017. The Department in its reply (August 2017) stated that dealer of Mandi District had claimed labour charges of ₹40.93 crore but labour charges of ₹35.04 crore were allowed at the rate of 25 per cent of GTO by the AA and it cannot be termed as sub contract labour as the same were actual labour expenses made by the dealer. The reply is not acceptable as the dealer had admitted sub contractors work bills aggregating to ₹89.55 crore as per Schedule appended to Annual Accounts for the period of assessment. Rule 38(4) provides that tax deduction was applicable from all payments made in respect of all works contract executed and as such WCT was deductible on Sub-Contractor bills aggregating to ₹89.55 crore. The reply of Government was awaited (December 2017).

2.8 Inadmissible deduction of hire charges and non-levy of Entry tax

Inadmissible deduction of consumable purchases for works contract and non-levy of entry tax on interstate purchases, resulted in loss of revenue of ₹77.58 lakh.

2.8.1 Rule 17(4) (a) of the Himachal Pradesh VAT Rules stipulates that the value of the goods involved in execution of a works contract shall be determined by taking into account the value of the entire works contract and deducting there from the components of payment made towards labour and services, including charges for obtaining for hire, machinery and tools used for the execution of works contract and cost of consumables, such as, water, electricity and fuel, used in the execution of works contract, the property in which is not transferred in the course of execution of a works contract.

Scrutiny of records of AETC Mandi brought out that the AA while assessing a dealer for the year 2011-12 determined the GTO as ₹14.58 crore after allowing admissible deductions as per the provisions of the HPVAT Act/ Rules, 2005. The AA allowed deduction of ₹4.11 crore towards hire charges of machinery and

Tipper which were infact 'consumable purchases'. Further, hire charges of machinery were already included in deduction of ₹91.28 lakh allowed by the AA. Further, AA had also allowed deduction of ₹77.78 lakh towards fuels and lubricants being items of consumable purchases. Thus, inadmissible deduction of ₹4.11 crore resulted in short levy of tax by ₹20.55 lakh on minimum applicable rate of five *per cent*.

The matter was reported to the Department and the Government in June 2017. The Department replied (August 2017) that deductions of other consumables goods worth ₹4.11 crore was allowed as per provision of HPVAT Rules, 2005. The reply is not acceptable as deduction of ₹4.11 crore was allowed on account of hire charges of machinery and tipper which were already allowed in deduction of ₹91.28 lakh allowed by the AA and as such further deduction of consumable purchases was not admissible under HPVAT Rules, 2005.

2.8.2 Section 3(1) of Himachal Pradesh Tax on Entry of Goods into Local Area Act, 2010 (TEGLA) provides that there shall be levied and paid to the State Government a tax on the entry in the course of business of a dealer, of the goods specified in Schedule-II into each local area for consumption, use or sale therein.

Audit observed that AA allowed deduction of ₹77.78 lakh on account of fuel and lubricants to machineries used for the execution of works contract. The fuel and lubricants were reported to be purchased within the State and not through interstate. Scrutiny of details of local purchase did not reflect purchase of fuel/lubricants with applicable tax rates i.e. 9.60 *per cent*. Thus, purchase of fuel and lubricants was made through interstate liable to imposition of entry tax of ₹9.33 lakh. Audit further, observed that the dealer had made interstate purchase of bitumen for ₹9.54 crore which was also liable to imposition of entry tax of ₹47.70 lakh. Thus, non-levy of entry tax on interstate purchase of fuel, lubricants and bitumen aggregating to ₹10.32 crore resulted in loss of revenue of ₹57.03 lakh.

The matter was reported to the Department and the Government in June 2017; the Department replied (August 2017) that interstate purchase of bitumen was not liable to Entry tax. The reply is not acceptable as bitumen did not figure in Schedule-I of TEGLA dealing with tax-free goods and as such entry tax was leviable on interstate purchase of bitumen (December 2017).

2.9 Excess allowance of labour charges in works contracts

Excess allowance of labour charges and deduction for petty contractors payments resulted in short levy of tax by ₹3.46 crore.

Rule 69(2) of HPVAT Rule, 2005 provides that where the labour charges are not determinable from the accounts of the works contractors or are considered unreasonably high in consideration of the nature of the contract, the deductions towards labour charges shall be allowed by the AAs according to the limits

prescribed in column (3) for the type of contract specified in column (2) of the table of the Rules *ibid*. The *ibid* Rule provides for labour charges at 25 per cent of the value of the contract of civil works like construction of building, bridges, roads, dams, barrages, canal and diversions etc.

Audit noticed from the assessment records of the AETC, Mandi that the Trading Account of a dealer revealed labour payments of ₹11.31 crore and direct expenses and consumables amounting to ₹20.08 crore aggregating to ₹31.39 crore for the year 2013-14. There were also other purchases of ₹9.50 crore. The AA in its assessment order allowed tax-free labour of ₹31.39 crore from the GTO of ₹49.17 crore. Thus, the AA allowed labour charges of ₹31.39 crore as against the admissible amount of ₹12.29 crore at the rate of 25 per cent of the value of work done as per provisions of the Rule 69(2). Incidentally, the trading account of the dealer indicated labour charges of ₹11.31 crore and as such labour charges should have been restricted to that amount. Further, the AA also allowed the deduction of ₹10.21 crore out of the GTO towards petty contractors for earth cutting work, which was not at all reflected/incurred as per the Trading Account of the dealer. Thus, excess allowance of labour charges/deduction for petty contractors to the dealer resulted in short levy of tax by ₹3.46 crore.

The matter was reported to the Department and the Government in June 2017. The Department in its reply (August 2017) forwarded reassessment order made by AA on ground of suppressed taxable sales, which was not accepted as Draft Para highlighted excess allowance of labour charges and not suppression of sale. The reply of Government was awaited (December 2017).

2.10 Short levy of tax due to calculation mistake

Assessing Authorities while finalising the assessments of the dealers assessed the taxable turnover at applicable tax rates but calculated output tax as ₹1.30 crore against the actual liability of ₹2.37 crore resulting in short levy of tax of ₹1.07 crore.

Schedule A of Section 6 of HPVAT Act, provides that tax is leviable on sales made by a dealer. Further, Section 19 of the Act *ibid* provides that if a dealer fails to pay the tax due by the prescribed date, he becomes liable to pay interest at the rate of one per cent on the tax due for a period of one month and at the rate of one and half per cent per month thereafter till the default continues.

Scrutiny of the records of three AETCs⁵ between December 2016 and April 2017 revealed that taxable turnover (TTO) of three dealers was calculated at ₹51.21 crore for the tax periods 2010-11 to 2013-14. AAs while finalising (between April and August 2015) the assessments of the dealers assessed the TTO at applicable tax rates and calculated output tax of ₹1.30 crore against the actual

⁵ Baddi, Solan and Una

output tax liability of ₹2.37 crore. This resulted in short levy of tax of ₹1.07 crore. Besides, interest on short tax was also accrued.

On this being pointed out, AETCs Solan and Una stated that after reviewing the cases action would be taken as per Act/Rules whereas AETC Baddi did not furnish any reply.

The matter was reported to the Department and the Government between February and April 2017, their reply is awaited (December 2017).

2.11 Non-realisation of Entertainment Duty

The Excise and Taxation Department did not levy entertainment duty on cable operators thereby forgoing revenue of at least ₹9.93 crore.

The Cable TV Network (Regulation) Act, 1995, provides for mandatory registration of cable operators with the registering authority namely Head Postmaster of a Head Post Office of the area within whose territorial jurisdiction the office of the concerned cable operator is situated. Section 3 of the HP Entertainment Act, 1968, provides for levy of entertainment duty at the rates to be specified by the Government that shall be collected by the proprietor and rendered to the Government treasury. The Himachal Pradesh Entertainment Duty (Amendment) Act 1999 brought in 'cable television' and 'television exhibition' as defined therein within the ambit of the HP Entertainment Act. Television exhibition includes an exhibition with the aid of any type of antenna with a cable network attached to it.

Test check of the records of five AETCs⁶ and information obtained from District Public Relation Officers (DPROs) revealed that there were 36 cable operators registered in these Districts. However, none of the cable operators were paying any entertainment duty on the entertainment services rendered to their subscribers though they were charging a fee from their customers for the entertainment supplied. The Excise and Taxation Department vide notification of May 2012 had stipulated that duty on all kinds of entertainments shall be levied at the rate of 10 per cent of the payment for admission with immediate effect. Levy of even 10 per cent on the rates charged by the cable operators from their subscribers would result in accrual of revenue of ₹9.93 crore from the cable operators as depicted below.

⁶ AETCs Baddi, Kullu, Shimla, Solan and Una

Table-2.11 Non-realisation of Entertainment Duty from cable operators

(in ₹)							
Name of District	Total no. of cable operators	No. of Cable Connections	Rate per connection	Period of Entertainment duty payable	No. of months	Amount realized from cable connections	Entertainment duty @ 10 per cent
1	2	3	4	5	6	7	8
Baddi	6	10,400	150 to 260	May 2012 to March 2016	109	2,52,97,000	25,29,700
Kullu	2	11,227	150	April 2013 to March 2016	41	2,73,55,050	27,35,505
Shimla	4	1,57,251	200 to 210	April 2014 to March 2016	96	76,87,96,800	7,68,79,680
Solan	9	14,285	200 to 270	May 2012 to March 2016	270	7,77,17,000	77,71,700
Una	15	11,995	100 to 200	May 2015 to March 2016	295	9,34,81,300	93,48,130
Total	36	2,05,158				9,926,47,150	9,92,64,715

The matter was reported to the Department and the Government between July 2016 and May 2017. The Department intimated (September 2017) that notices had been issued to all the cable network operators for recovery of the Entertainment duty by all AETCs. The reply of Government was awaited (December 2017).

