

GST Trends

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In view of the various representations received from the industry for simpler GST procedures and rationalization of rates, several crucial decisions were announced in the 31st and the 32nd GST Council Meetings to bring relief to the taxpayers. The key announcements included the further extension of the due date of filing of the GST annual return (GSTR-9) and reconciliation statement (GSTR-9C), rationalization of rates, higher registration thresholds and clarifications regarding refund related issues that are being faced by the taxpayers.

Top Trends

- **Extension of GSTR-9 (Annual Return) and GSTR-9C (Reconciliation Statement)** of the financial year 2017-18 to 30 June 2019.
- **Simplified GST returns** will be rolled out on a trial basis from 1 April 2019 and mandatorily from 1 July 2019.
- The GSTN to provide the facility to **electronically upload the supporting documents** in relation to a claim for refund in GST RFD-01A, thereby eliminating the need for physical submission at the jurisdictional offices.
- **Taxpayers who have not furnished the GST returns for two consecutive tax periods** would not be allowed to generate E-way bills.
- **The time limit for availing Input Tax Credit (ITC) for invoices pertaining to the FY 2017-18 has been extended** to the due date of filing GSTR-3B of March 2019.
- States have the **option to implement a higher GST registration threshold limit of INR 4 million** for a supplier of goods.

Judicial Pronouncements

| Issue | Ruling | SKP Comments |
|---|---|---|
| <p>Whether the supply of photography services by a company registered in India to its holding company that is situated outside India qualify as 'export of services' under the IGST Act, 2017</p> <p>Segoma Imaging Technologies India Private Limited - Authority for Advance Ruling (AAR), Maharashtra</p> | <p>Segoma Ltd., based in Israel, was the holding company of the applicant. Segoma Ltd., in turn, was a subsidiary of R2Net based in the United States of America. The applicant had entered into an agreement with its holding company, i.e., Segoma Ltd., for providing photography services in relation to diamonds. These diamonds belonged to the Indian customers of R2Net. As per the agreement between R2Net and its customers, they were required to get these diamonds photographed with R2Net's proprietary Diamond Display Technology before listing it on R2Net's website for sale. R2Net appointed Segoma Ltd., which in turn appointed the applicant for providing photography services to these customers.</p> | <p>On a plain reading of the CGST Act, it appears that the AAR does not have the jurisdiction to decide on the issues involving determination of the place of supply. In view of this, it would be interesting to see whether the applicant can be bound by this ruling.</p> <p>Furthermore, the AAR, on the issue of whether the Indian subsidiary company can be termed as a representational office of the foreign holding company, has disregarded the legal fiction of a company being a distinct person and emphasized on the contractual terms of the agreement between the parties. Such a position by the Revenue authorities may impact businesses functioning under similar models and claiming benefit of the zero-rated exports.</p> |

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| | <p>The issue, in this case, was rooted primarily in the following two questions of law related to the qualification of service as an export:</p> <ul style="list-style-type: none"> • What will be the place of supply of photography services provided in India to the foreign entity (Segoma Ltd.)? • Whether the applicant can be treated as a representational office of Segoma Ltd? <p>The AAR held that to qualify under Section 13(3) (a) of the IGST Act, recipient of service has to make diamonds physically available on direct or indirect directions to the service provider and it does not matter who owned the goods. Thus, the place of supply in accordance with the said section would be the location where the services are actually performed, i.e., India.</p> <p>Furthermore, the AAR held that the applicant did not have the liberty to photograph and upload images except those that were finalized by its holding company. Therefore, the applicant will be construed as a representational office of the foreign holding company.</p> <p>The fact that the applicant was a separate legal entity would in no way alter the status or relationship between the parties.</p> <p>In view of the above, the photography services do not qualify as export of services.</p> | |
| <p>Whether toll taxes reimbursed by the client are chargeable to GST?</p> <p>Premier Vigilance & Security Pvt. Ltd. – AAR, West Bengal</p> | <p>The Applicant was a provider of security services to the bank where it would transport cash/coins/bullions in specially built vehicles or customized cash vans. In the course of rendering services, it would incur toll charges, which were later reimbursed by the clients.</p> <p>The applicant contended that the toll charges were incurred by the supplier as a pure agent and was excluded from the value of supplies as per Rule 33 of the CGST Rules.</p> <p>The AAR held that the reimbursement of such costs was merely the recovery of a portion of the value of supply made to the banks. The applicant was</p> | <p>One of the conditions in Rule 33 is that the pure agent should not use the services in its interest. The AAR held that the toll was charged for providing the service by way of access to a road or bridge and the applicant enjoyed these services. The decision of the AAR appears to be in line with the general understanding in the industry and the conditions to qualify as pure agent mentioned in the valuation rules.</p> |

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| | <p>therefore not acting in the capacity of a 'pure agent' of the bank while paying toll charges, and consequently, GST is chargeable on the entire value of supply, including the toll charges.</p> | |
| <p>Whether the activities performed by the employees at the corporate office (CO) in the course of or in relation to employment, such as accounting, other administrative support and IT system maintenance for the units located in the other states as well shall be treated as supply, as per Entry 2 of Schedule I of the CGST Act or it shall not be treated as supply of services as per Entry 1 of Schedule III of the CGST Act?</p> <p>Columbia Asia Hospitals Pvt. Ltd. – Appellate Authority for Advance Ruling, Karnataka</p> | <p>The applicant has its CO in Karnataka and hospitals in six different states. Some of the activities for all the units with respect to accounting, administration and maintenance of the IT system are carried out by the employees from CO, which forms part of the registered person in Karnataka.</p> <p>The AAAR held that the services provided by the employees of a distinct person (i.e., Karnataka branch) are deemed to be rendering their services only to that establishment and not to any other distinct person (i.e., branches in other states). Thus, even though all the distinct persons are of the same business entity, the employee-employer relationship is to be viewed separately for every registered unit of the business entity.</p> <p>The liability to GST on the supplies made by a distinct person is to be discharged by the said distinct person as a registered person, and the liability cannot be shifted to another distinct person on the grounds that they are a part of the same entity.</p> <p>The services of the employees at the head office in so far as they are benefiting the other registered units of the Appellant are to be considered as a 'supply of service' even if it is made without any consideration.</p> | <p>The fact that the ruling has been upheld at the appellate stage by the AAAR has imparted further importance to the question of treatment of all expenses, including employee cost incurred at the head office but benefitting all the other branches. The key aspects, which may need to be considered by the businesses, are as follows:</p> <ul style="list-style-type: none"> • Tax position to be adopted in respect of common expenses at the head office and employee cost. • If yes, what is the methodology/computation/valuation to be adopted? • Working capital blockage. • The possibility of utilizing ITC of IGST charged by HO at the branch level. • Increased compliance costs. |

It should be noted that an Advance Ruling is binding only on the applicant who had sought it and the concerned jurisdictional authority, i.e., an Advance Ruling is specific to an applicant and shall not be applicable to other taxpayers facing similar issues. However, the above-mentioned Advance Rulings provide clarity about the issues being faced and have persuasive value in matters before the tax authorities.

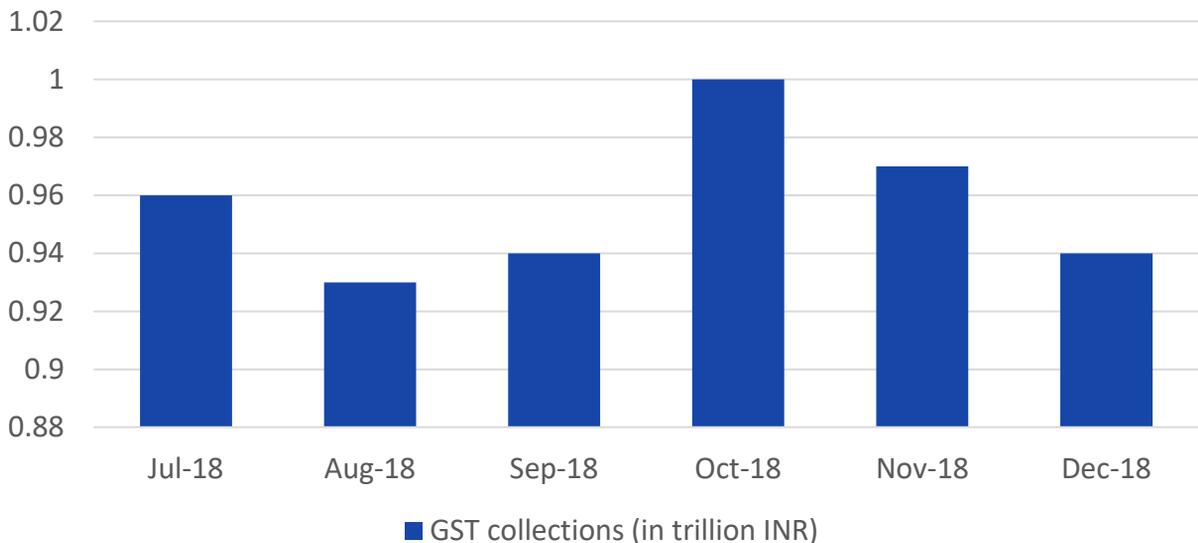
Compliance Chart for Upcoming GST Due Dates

| Form | Applicable to | Period | Due date |
|---------|--|--------------------------|-----------------|
| GSTR-1 | Registered taxpayers with an annual aggregate turnover of more than INR 15 million | December 2018 | 11 January 2019 |
| GSTR-1 | Registered taxpayers with an annual aggregate turnover of less than INR 15 million | October to December 2018 | 31 January 2019 |
| GSTR-4 | Taxpayers registered under the composition scheme | October to December 2018 | 18 January 2019 |
| GSTR-3B | All registered taxpayers | December 2018 | 20 January 2019 |
| GSTR-5 | Non-resident taxable persons | December 2018 | 20 January 2019 |
| GSTR 5A | Persons providing Online Information and Database Access or Retrieval (OIDAR) services | December 2018 | 20 January 2019 |
| GSTR 6 | Input service distributors | December 2018 | 13 January 2019 |
| GSTR-7 | Persons who are required to deduct TDS under GST | October to December 2018 | 31 January 2019 |
| GSTR-8 | E-Commerce operators required to deduct TCS under GST | October to December 2018 | 31 January 2019 |

Other Key Aspects

Revenue collections

The government's gross GST collections in the month of December 2018 stood at INR 0.94 trillion. The government's monthly target of GST revenue collection of INR 1 trillion was not achieved and dropped for the second consecutive month. It would be interesting to see how the recent rationalization of GST rates impacts the revenue collections.



Other key updates under the GST regime

- The GST council has approved to charge 1% cess on the intra-state supply of goods and services within Kerala for a period not exceeding two years.
- The amendments to the GST law passed by the Parliament in August 2018 would be notified with effect from 1 February 2019.
- It has been made mandatory to file all GSTR-1 and GSTR-3B for the financial year 2017-18 before filing the annual return.
- Composition dealers would be required to file one annual return and pay taxes quarterly along with a simple declaration from 1 April 2019.
- Security services provided by non-corporates are liable to GST under reverse charge mechanism from 1 January 2019.
- The supplier or his authorized representative would not be required to provide his physical signature or digital signature in case of issuance of the invoice and related documents in accordance with the provisions of Information Technology Act 2000.

GST in the news

- The GST Council may soon decide to provide a mechanism to amend forms TRAN-1 and TRAN-2 to enable taxpayers to rectify any errors made in availing transitional credit.
- The mining industry has appealed to the government to introduce a single GST rate for the sector to replace the existing system of a multiplicity of taxes.

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