

GST Trends

November 2018

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In a big relief to taxpayers, the government has extended the due date of filing GST annual return (GSTR-9) and reconciliation statement (GSTR-9C) to 31 March 2019. The government has also announced that the online utilities would be made available shortly. Extension of the due dates, along with the release of the online utilities, should help the businesses to better prepare for filing GSTR-9 and GSTR-9C by collating the relevant information from its financial statements, and the GST returns filed during the year. The additional time should enable the government to clarify certain issues in GSTR-9 and GSTR-9C, which have led to the confusion in the industry.

Top Trends

- **Supply of goods and services between two public sector undertakings application** have been exempted from the provisions of Tax Deducted at Source.
- **E-commerce operators have been exempted** from the collection of Tax Collected at Source (TCS) in respect of supplies of services made through their portal by persons having an aggregate turnover not exceeding INR 2 million in a financial year.
- **Clarifications issued on the scope of principal-agent relationship in the context of a del-credere agent (DCA)**

Scenario 1 - DCA is not an agent under Para 3 of Schedule I of the CGST Act, i.e., invoice for the supply of goods is issued by the supplier on the buyer

Short-term transaction based loan provided by DCA to the buyer would be an independent supply, separate from the supply of goods by the supplier to the buyer. Therefore, the interest charged by the DCA would not form a part of the value of supply of goods.

Scenario 2 - DCA is an agent under Para 3 of Schedule I of the CGST Act, i.e., invoice for supply of goods is issued by the DCA in his name on the buyer.

In this case, the short-term transaction based loan, being provided by the DCA to the buyer, no longer retains its character of an independent supply, and is subsumed in the supply of goods by the DCA to the buyer. Value of interest charged for such credit would be required to be included in the value of supply.

- **Status of GST refunds**

The government has announced that it has cleared the GST refunds amounting to INR 0.91 trillion, which is almost 94% of the total refund claims.

Judicial Pronouncements

Issue	Ruling	SKP Comments
<p>1. Is GST applicable on the supply of food to employees of an entity located in an SEZ?; or</p> <p>2. Whether such a company can claim that it is running a canteen in the SEZ area and hence no GST is applicable?; or</p> <p>3. Whether such a company can claim that it is running a restaurant in an SEZ and hence GST is applicable at the rate of 5%?</p> <p>Merit Hospitality Services Pvt. Ltd. - Appellate Authority for Advance Rulings (AAAR), Maharashtra</p>	<p>Question 1 and 2</p> <p>The AAAR has held that the supply by the appellant to employees of the unit located in SEZ cannot be construed as zero-rated supply, as the employees can neither be treated as an SEZ developer nor an SEZ unit. Accordingly, GST will be applicable as per the classification of services.</p> <p>Question 3</p> <p>A restaurant is not defined under the GST law. As per the Cambridge dictionary, a restaurant is a place where meals are prepared and served to the customer. In view of this, the AAAR observed that the applicant is registered as “outdoor caterers” and is engaged in providing corporate catering services. Reliance was also placed on submissions of the applicant, wherein it was submitted that the applicant prepares the food in its kitchen and then distributes it to various companies located at different locations. Thus, the services being provided by the applicant are not covered within the meaning of restaurant service.</p>	<p>As per Section 2(93) (a) of the CGST Act, 2017, a recipient of the supply of goods or services means – <i>“where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration.”</i></p> <p>In the given case, the applicant had submitted that even though the contract for the supply of food was between the applicant and the entity located in SEZ, the consideration for supply was paid by employees of such entity. Consequently, the AAAR held that the recipient of services being employees of the SEZ unit, the supply cannot be treated as a zero-rated supply under the GST law.</p>
<p>Whether the amortized cost of the tool is to be added to arrive at the value of the goods supplied for the purpose of GST?</p> <p>M/s. Nash Industries (I) Pvt. Ltd. - Authority for Advance Rulings (AAR), Karnataka</p>	<p>The applicant is in the business of manufacturing sheet metal pressed components. The components were manufactured based on drawings of the customer. For this purpose, tools were designed and manufactured by the applicant. Such manufactured tools were billed to the customer, even though the tools are retained by the applicant. The customers were of the view that the amortization cost of these tools is not includible to arrive at the value of supply for GST. Hence, the applicant preferred the advance ruling to resolve this issue.</p> <p>The AAR observed that the cost of the tool is an essential element to be included in the cost of the component, finally supplied by the applicant, as the component cannot be manufactured without the tools. In this case, the cost of the tools is being borne by the</p>	<p>It is interesting to note that in the present case, even the applicant’s view was that the amortized cost of the tool should be subjected to GST. However, since the customers of the applicant had refused to pay GST on the amortized cost of the tools, the applicant approached the AAR to obtain a ruling in this regard.</p>

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	<p>recipient and therefore the facts, and the circumstances of the transaction attract the said Section and therefore, the amortized cost of tools shall be added to the value of supply for the purpose of computing GST.</p>	
<p>1. Whether the 'commission' received by the applicant, in convertible foreign exchange for rendering services as an 'intermediary' between an exporter abroad receiving such services and an Indian importer of equipment, is an 'export of services as per IGST Act, 2017 (the Act)'; and</p> <p>2. If the answer to Q. (1) is in the negative, whether the impugned supply of service forming an integral part of the cross-border sale/purchase of goods, will be treated as an 'intra-state supply' under section 8 (1) of the Act?</p> <p>M/s. Micro Instruments - AAR, Maharashtra</p>	<p>Question 1</p> <p>The applicant contended that the phrase 'intermediary services' as used in Section 13(8)(b) of the Act, which determines the place of supply of such services is not synonymous with the term 'intermediary'.</p> <p>The AAR rejected the contention of the applicant and ruled that the applicant is "very clearly covered under the definition of intermediary and the services being provided by them are clearly the services as given in the definition of 'Intermediary'" and hence its services cannot be treated as 'zero-rated'.</p> <p>Question 2</p> <p>In regards to whether such taxable supply would be an intra-state supply or an inter-state supply, the AAR observed as under:</p> <ul style="list-style-type: none"> • As per intra-state provisions contained in Section 8(2) of the Act, the said provisions are subject to the provisions of section 12. • Section 12 would be applicable only for determining the place of supply of service where the location of the supplier of services and the location of the recipient of the services is in India. In case the recipient is located outside India, this provision will be inapplicable, and since provisions of section 8(2) are inter-linked with the provisions of section 12, the same cannot be made applicable in case the recipient of the service is located outside India. • As a result, in case the intermediary services are provided to the recipient located outside India, the inter-state provisions as contained under Section 7(5)(c) of the Act shall be applicable, i.e. shall be treated as an inter-state supply and hence, IGST is payable under such transaction. 	<p>The ruling by the AAR in relation to taxability of intermediary services is in line with the general understanding in the industry that services of an 'intermediary' to a foreign client cannot qualify as an 'export of services' under GST because the place of supply of 'intermediary services' is the location of the supplier of services, i.e., within India.</p> <p>However, whether the supply of intermediary services to a foreign client should be treated as an 'intra-state' supply or an 'inter-state' supply is a bone of contention in view of different possible interpretations of the provisions of place of supply.</p>

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	<ul style="list-style-type: none"> As a result, in case the intermediary services are provided to the recipient located outside India, the inter-state provisions as contained under Section 7(5)(c) of the Act shall be applicable, i.e. shall be treated as an inter-state supply and hence, IGST is payable under such transaction. 	
<p>Whether back office support services to foreign clients qualify as zero-rated supply in terms of Section 16 of the IGST Act, 2017?</p> <p>Vserv Global Private Limited - AAR, Maharashtra</p>	<p>The applicant provided, <i>inter alia</i>, following services to its foreign clients:</p> <ul style="list-style-type: none"> Back-office administrative and accounting support; Liaison with buyers, sellers and other necessary parties for execution of purchase and sale contracts entered into by its clients; Generate order numbers in the software provided by the client; and Create a purchase order, send and process payment request, troubleshooting, etc. <p>The applicant contended that it comes into the picture only after the clients have finalized the purchase/sales deal and hence cannot be termed as an 'intermediary'.</p> <p>The AAR held that the sum of activities mentioned above indicate that an applicant is a person who arranges or facilitates the supply of goods or services or both between the foreign client and customers of the foreign client. Therefore, the applicant is covered by the definition of an intermediary. Consequently, the place of provision of services, provided by the applicant, would be within India in accordance with Section 13(8) (b) of the IGST Act, 2017. Since the place of provision of service falls within India, the transaction would not qualify as export of service, and consequently cannot be treated as a zero-rated supply.</p>	<p>India has developed as a hub of back-office support services for companies around the globe. The understanding in the industry was that such services would qualify as export of services under GST and therefore would be zero-rated. The ruling by AAR may result into the GST authorities sending notices to such service providers for recovering GST on support services that are being provided to the foreign clients.</p> <p>It would be advisable for companies operating a similar business model to revisit their tax positions and formulate robust agreements to minimize the possibility of any adverse action by the revenue authorities.</p>

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<p>Whether the penal interest charged by an NBFC to its customers is to be treated as 'interest' for the purpose of exemption under Sl. No. 27 of Notification No. 12/2017-Central Tax (Rate) dated June 28, 2017?</p>	<p>The applicant contended as follows:</p> <ul style="list-style-type: none"> • Penal interest is an additional interest on the overdue loan instalment, which requires to be given similar treatment as that of the principal interest, and therefore, would be exempt from GST under the mentioned notification. • The amount of overdue loan installment is virtually a new loan transaction, the consideration for which is the 'penal interest' charged thereon, and hence should be exempt from GST. • There is no obligation on the applicant to tolerate the act of delay in payment of loan installment by the customer/borrower, and accordingly, penal interest cannot be construed as 'consideration' towards 'deemed supply' envisaged under clause (e), Entry 5 of Schedule II to CGST Act. <p>The AAR answering the question in the negative, observed as follows:</p> <ul style="list-style-type: none"> • Penal charges' have been defined in the loan agreements as 'overdue charges' for non-payment of instalment on due dates. • This demonstrates that applicant is treating such charges as 'penalty,' which is "collected by them from their customers for the reason that the said customers have delayed the payment of EMI and the applicant has tolerated the said act of their customers of delaying payment of such EMI." • The assumption of the applicant that the defaulted EMI is nothing but a new loan amount is fallacious, since the rate of interest on the loan advanced and the rate at which penal charges are collected are different. • The exemption for financial transactions under GST laws is only in respect of the interest/discount earned or paid for loans, deposits or advances. If the transaction deviates from the above or fails the test of being a "loan", "deposit" or "advance" or the consideration is not 	<p>Given the trend of advance rulings generally favoring the revenue, this decision may not be seen as an unexpected one. However, under the GST law, interest or late fee or delayed payment charges has to be specifically included in the value of supply. In view of this, an argument can be made that such penal interest should also take the color of interest and should be treated as an exempt supply. Further, even under the erstwhile service tax law, the taxability of penal interest has been a contentious issue, and it is expected that it would continue to remain so under the GST regime.</p> <p>The potential of ascribing a wide meaning to the term 'tolerance of an act' may result in authorities seeking to tax penal charges/interest, late fees etc. It is important for businesses, especially finance companies, to revisit any GST exposure on recovery of similar charges.</p>

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	an interest or discount, the exemption is not admissible. In the present case, the penal charges cannot be said to form part of the interest on “loan”, “deposit” or “advance.”	

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 a 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 annual aggregate turnover of more than INR 15 million	November 2018	11 December 2018
GSTR-3B	All registered taxpayers	November 2018	20 December 2018
GSTR-5	Non-resident taxable persons	November 2018	20 December 2018
GSTR-5A	Persons providing Online Information and Database Access or Retrieval (OIDAR) services	November 2018	20 December 2018
GSTR-6 (monthly)	Input Service Distributors	November 2018	13 December 2018
GSTR-8	TCS Collector	November 2018	10 December 2018
GSTR-10	Final return for persons whose registrations have been cancelled by the proper officer on or before 30 September 2018	-	31 December 2018
GST ITC-04	Taxpayers dispatching goods to a job-worker	July 2018 to September 2018	31 December 2018

Extended due dates for newly migrated taxpayers

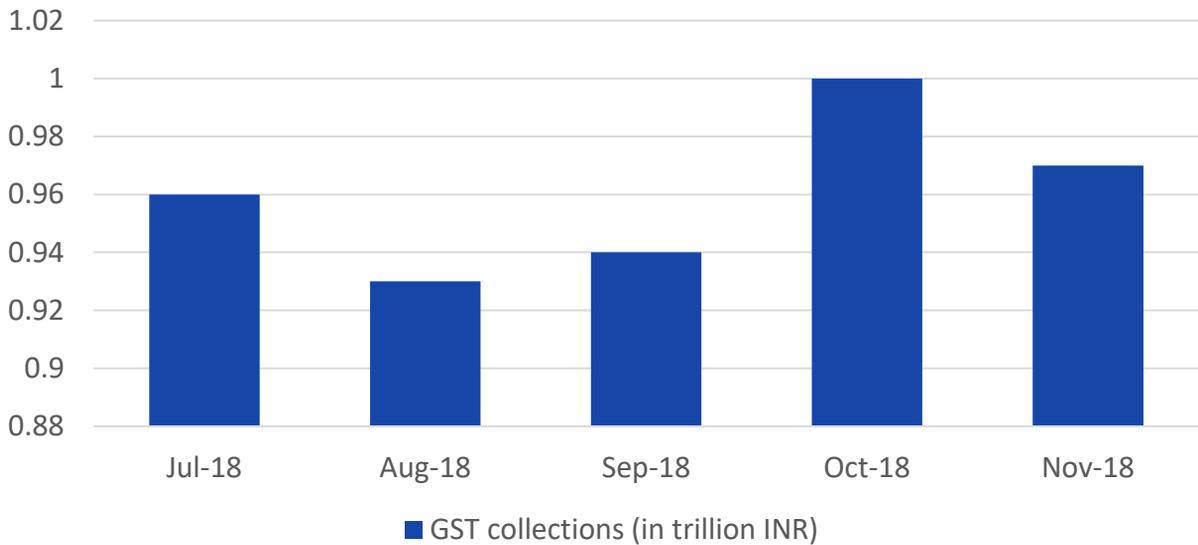
Form	Applicable to	Period	Due Date
GSTR-1	Registered taxpayers with annual aggregate turnover of more than INR 15 million – Quarterly	July 2017 - November 2018	31 December 2018
	Registered taxpayers with annual aggregate turnover of more than INR 15 million – Monthly		
GSTR-3B	All registered taxpayers	July 2017 - November 2018	31 December 2018

Other Key Aspects

GST from a Macro Perspective

Revenue collections

The government's GST collections in the month of November 2018 stood at INR 0.97 trillion. The collections had crossed the government's monthly target of INR 1 trillion in the month of October 2018, but have dropped once again in the month of November 2018.



GST in the news

- The 31st GST Council meeting has been scheduled for 22 December 2018 in New Delhi. The Council is expected to decide on rate cuts on certain electronic items currently falling under the 28% tax bracket is expected.
- The government's GST collections for the financial year 2018-19 are expected to fall short of its target by around INR 0.9 trillion.
- The simplified returns format approved by the GST Council are expected to be rolled out in April 2019.
- Faced with departmental notices for recovery of GST on 'free services' such as issuance of cheque books, additional credit cards, ATM usage etc., banks are considering passing on the cost of GST on such 'free services' to their customers.

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