

GST Trends

September 2018

www.skpgroup.com

The month of September witnessed certain crucial announcements under the GST regime. The government notified formats of the much-awaited GSTR-9 - Annual Return and GSTR-9C - Reconciliation Statement. The suspended provisions relating to Tax Deduction at Source (TDS) and Tax Collection at Source (TCS) have also been made applicable with effect from 1 October 2018.

Top Trends

- The **30th GST Council meeting** was held on 28 September 2018. The Council has formed a Group of Ministers (GoM) to look into the possibility of levying a special cess to provide financial assistance to the State of Kerala, in undertaking relief and rehabilitation projects in consequence of the devastating floods, which had hit the state in August this year.
- **IGST and compensation cess exemption under FTP extended**
The Directorate General of Foreign Trade (DGFT) vide Notification No. 35/2015-20 dated 26 September 2018 has extended exemption of IGST and compensation cess available under the following schemes till 31 March 2019:
 - Advance Authorization (AA) under Para 4.14 of Foreign Trade Policy 2015-20 (FTP 2015-20)
 - Export Promotion Capital Goods (EPCG) Scheme under Para 5.01(a) of FTP 2015-20
 - Export Oriented Unit (EOU) Scheme under Para 6.01(d)(ii) of FTP 2015-20.
- **Increase in Customs Duty**
The government has notified an increase in the rate of Customs Duty on import of certain goods with effect from 27 September 2018.

Product	Old rate	Revised rate
Footwear	20%	25%
Air conditioner	10%	20%
Refrigerator	10%	20%
Washing machine (capacity of up to 10 kg)	10%	20%
- **One year time limit for availing input tax credit under Section 140(3) struck down as unconstitutional** - The Honorable Gujarat High Court in Filco Trade Centre Pvt Ltd vs Union of India has struck down Clause (iv) of subsection (3) of Section 140 of the CGST Act, 2017 as unconstitutional. The court has held that the said provision takes away the vested right of the first stage dealers to avail the benefit of credit of eligible duties in accordance with the CENVAT credit rules in relation to goods, which were purchased prior to one year from 1 July 2017. However, the judgment has been stayed till 31 October 2018 on the request of the government.
- **GSTR-9 - Annual return** - Key features of GSTR-9 are as follows:
 - **Input Tax Credit** - To be trifurcated into Input Tax Credit (ITC) on inputs, capital goods and input services.
 - **ITC of IGST availed on imported goods** - To be reported along with IGST paid on imports.
 - **HSN wise summary of inward supplies** - Although GSTR 2 remains suspended, this needs to be disclosed separately in annual return.
 - **Adjustments of any errors** - Contrary to industry expectations, the annual return does not provide an option to adjust/amend any errors made at the time of filing the periodical returns. Hence, it should be ensured that any pending adjustments/amendments, on account of such mistakes, are made in the return filing for September 2018, especially taking credit for the amounts remaining unavailed.
 - **Credit notes** - Only the credit notes declared (where GST is adjusted) through Table 9B of GSTR-1 have to be disclosed in the annual return.
 - **Transactions related to previous financial year (i.e., July 2017 to March 2018 in this case) disclosed in return for the period of April 2018 to September 2018** - This would have to be disclosed separately along with the differential tax paid on account of such disclosures.

- **GSTR-9C - Reconciliation Statement** - The form requires taxpayers to provide a reconciliation between the audited financial statements and GSTR-9, i.e., the annual return in respect of certain key items such as:
 - Gross turnover
 - Taxable turnover
 - Tax paid and rate wise liability
 - Net input tax credit
- **TCS provisions** - With the implementation of TCS provisions from 1 October 2018, e-Commerce operators should ensure that they collect GST at the rate of 1% of the value of taxable supplies made through them where the consideration with respect to such supplies is to be collected by such operator. Vendors making taxable sales through E-Commerce operators should ensure that the credit of such TCS is reflected in their GSTR-2A.
- **TDS provisions** - In view of the implementation of the TDS provisions from 1 October 2018, businesses providing taxable supplies to government departments, local authorities, public sector undertakings and other specified agencies should ensure that they obtain TDS certificates for the tax deducted by such specified agencies. Vendors making taxable sales to such government departments must ensure that the credit of such TDS is reflected in their GSTR-2A.

Judicial Pronouncements

Issue	Ruling	SKP Comments
<p>Whether a company that is registered in one state (Gujarat) and supplying works contract service (construction of cold storage) in another state (Rajasthan), needs to get GST registration in the latter state, i.e., Rajasthan? M/s Jaimin Engineering Private Limited - Authority for Advance Ruling (AAR), Rajasthan</p>	<p>The AAR observed that in accordance with Section 22(1) of the CGST Act, 2017, the liability for registration for a supplier is from where he makes a taxable supply of goods or services or both.</p> <p>In view of this, the AAR ruled that if the applicant, being a supplier of works contract service registered in Gujarat, has any place of business/office in Rajasthan, i.e., has a fixed establishment for operation in Rajasthan, then it is required to obtain registration in Rajasthan.</p>	<p>A 'fixed establishment' is defined under Section 2(50) of the CGST Act, 2017 as 'a place (other than the registered place of business), which is characterized by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs.'</p> <p>The AAR in its ruling has not analyzed whether a construction site/site office can be said to have a 'sufficient degree of permanence' and thereby result in a fixed establishment from where the taxable supply is being provided. In view of this, a divergent ruling is possible based on facts and circumstances of the case.</p>

Issue	Ruling	SKP Comments
<p>Whether supply of turnkey Engineering, Procurement and Construction (EPC) contract for construction of a solar power plant, wherein both goods and services are supplied, can be construed to be a composite supply under CGST Act?</p> <p>If yes, whether the principal supply in such case can be said to be Solar Power Generating System (SPGS), which is taxable under GST at the rate of 5%?</p> <p>Giriraj Renewables Private Limited - Appellate Authority for Advance Ruling (AAAR), Maharashtra</p>	<p>The AAR in view of the principles laid down by the Supreme Court for various cases, and in light of the facts of the case ruled that there is an inherent element of permanency to the solar power plant. Hence it is classifiable as a works contract in relation to an immovable property.</p> <p>The appellant, aggrieved by the ruling pronounced by the AAR, reiterated its contentions and submitted that:</p> <ul style="list-style-type: none"> • The proposed transaction is for the composite supply of SPGS as a whole, and hence the rate of GST should be 5%; • SPGS cannot be said to be an immovable property, and therefore the contract does not constitute as 'works contract'; <p>The AAAR differing with the view of the AAR held that the EPC contract, which provides for the design, procurement, supply, development, testing and commissioning of a plant which includes the supply of both goods and services is a composite supply as the supply of goods and services is naturally bundled.</p> <p>However, the AAAR affirmed the ruling of the AAR that the SPGS is an immovable property in view of principles laid down by various Supreme Court rulings, as it is embedded with no visible intention to dismantle it and intended to be used for a fairly long time. Therefore, the transaction is a composite supply and a works contract and therefore taxable as a supply of services.</p>	<p>The AAAR differed from the ruling by the AAR insofar as it held the transaction to be a composite supply. However, by affirming the AAR's view that the contract leads to the formation of an immovable property, the AAAR has not provided any relief to the solar power industry by making the transaction taxable at the rate of 18% as against the beneficial rate of 5% available to SPGS.</p>

Issue	Ruling	SKP Comments
<p>Whether GST is applicable on liquidated damages in view of Clause (e) of Para 5 of Schedule II to the CGST Act, 2017 (i.e., to tolerate an act or a situation)? Maharashtra State Power Generation Company Limited - AAAR, Maharashtra</p>	<p>The appellant, aggrieved by the ruling pronounced by the AAR, Maharashtra, has appealed on the following key grounds:</p> <ul style="list-style-type: none"> • Liquidation damages are not paid for any supply of service; • In case of liquidation damages, the recipient has no option but to accept the delay, i.e., it is not a voluntary act; • Acceptance of damages amount to compensate the loss and it cannot be considered as 'tolerating of an act'; • Liquidated damages reduce the value of the main supply and is mere re-determination of the consideration of the same supply; • Judgments and rulings under the Australian Goods & Services Tax Act, 1999 have clarified that award of damage by Court does not in itself constitute a supply by the person receiving such damages. <p>The AAAR refuting the contentions of the applicant has ruled that there is a supply of service of 'tolerance of an act,' and hence GST is applicable on liquidated damages. The AAAR observed that:</p> <ul style="list-style-type: none"> • The appellant is in a contractual agreement with the contractor to impose liquidated damages; • Deduction of liquidated damages is a mere method of recovering the money, although the fact remains that there is a separate agreement for payment of liquidated damages; • When both parties voluntarily agree that once the delay occurs, the damages become due, the said act becomes nothing but voluntary. 	<p>Supply of service of tolerance of non-performance of a contract by the government has been exempted from levy of GST. The specific exemption provided to the government implies that the government intends to tax the liquidated damages, if a person other than the government is performing the act of tolerating a non-performance of the contract.</p> <p>However, in the absence of clarity on whether liquidated damages in a contract can be said to be a consideration for 'tolerance of an act,' it is bound to be a litigation-prone area.</p>

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	Taxpayers with an annual aggregate turnover of more than INR 15 million	July 2017 to September 2018 (monthly)	31 October 2018
	Taxpayers with an annual aggregate turnover of up to INR 15 million	July 2017 to September 2018* (quarterly)	
GSTR-3B	All registered taxpayers	September 2018	20 October 2018
GST ITC-04 (quarterly)	Taxpayers dispatching goods to a job-worker	July 2018 to September 2018	25 October 2018
GSTR-5	Non-resident taxable persons	September 2018	20 October 2018
GSTR 5A	Persons providing Online Information and Database Access or Retrieval (OIDAR) services	September 2018	20 October 2018
GSTR 6 (monthly)	Input service distributors	September 2018	13 October 2018

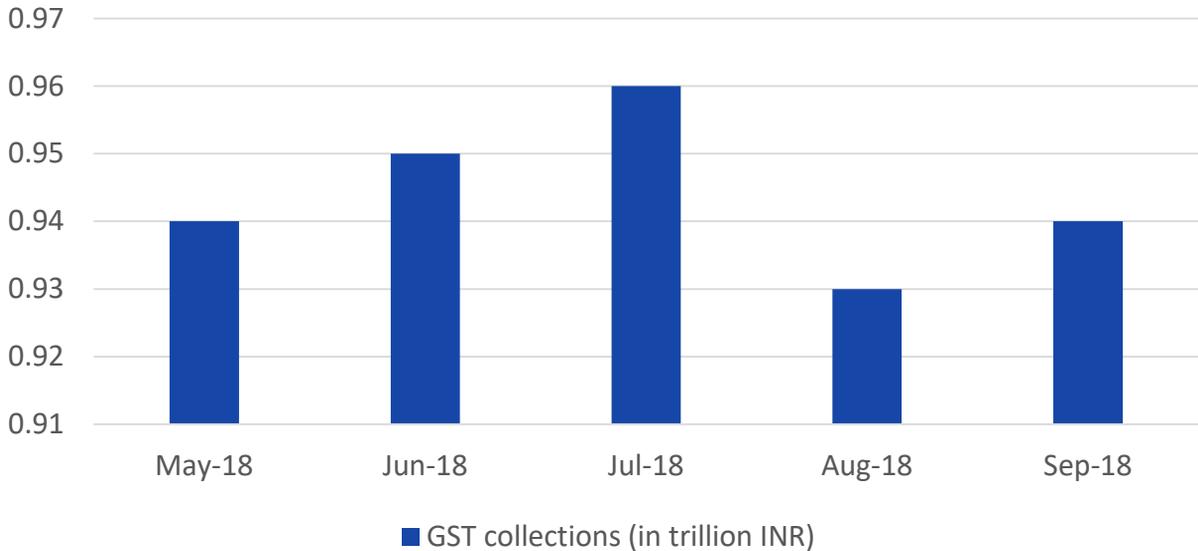
*The due date of GSTR-1 of the quarter July 2018-September 2018 for taxpayers from flood-hit Kerala and specified districts of Karnataka as well as areas of Puducherry has been extended till 15 November 2018.

Other Key Aspects

GST from a Macro Perspective

Revenue collections

The government's GST collections in September 2018 stood at INR 0.94 trillion. The GST collections have stagnated in the current fiscal and continue to be below the government's target of an average monthly collection of INR 1 trillion.



E-Way Bill

The state governments of Punjab and Gujarat have exempted generation of the e-Way Bill on an intrastate movement of goods under certain specific circumstances.

Punjab - Notification No. PA/ETC/2018/175 dated 13 September 2018

- Any goods of consignment value up to INR 100,000; and
- Fabric of any value being transported for a distance of up to fifty kilometers within Punjab for job work for a period of one year from the date of issuance of the notification.

Gujarat - Notification No. GSL/GST/RULE-138(14)/B.19 dated 19 September 2018

- Intra-city movement of any goods, irrespective of the consignment value; and
- Intra-state movement of hank, yarn, fabric and garments of any value for the purpose of job work from 1 October 2018

GST in the news

- The new simplified GST returns are expected to roll out in the next four to six months.
- The government may extend the time limit of return filing by E-Commerce operators in respect of tax collected at source by them.
- 'Committee on invoice' set up by the GST Council has proposed sweeping changes to the GST compliance structure which could do away the need of filing GST returns by businesses. The proposal includes issuance of 'distinct invoice number' through the GST server by the government to businesses which will enable businesses to raise and validate invoices on the GST server.

About SKP

SKP is a global professional services group with its principal areas of operations in business advisory, end-to-end finance and accounting solutions including attest function and taxation, business process management, and IT risk advisory. SKP's focus is to provide solutions which result in tangible business benefits and performance improvements.

Our multi-disciplinary teams serve clients from various geographies and industries ensuring global standards.

With over 80% of our client-base being international, we truly understand the needs of global companies and their expectations and our customized global solutions are designed to factor in local nuances. Our commitment is rooted in a passion for solutions, empowering our people and clients to achieve more.

Contact Us

India - Mumbai

Urmi Axis, 7th Floor
Famous Studio Lane, Dr. E. Moses Road
Mahalaxmi, Mumbai 400 011
India

T: +91 22 6730 9000

E: IndiaSales@skpgroup.com

USA - Chicago

2917 Oak Brook Hills Road
Oak Brook, IL 60523
USA

T: +1 630 818 1830

E: NorthAmericaSales@skpgroup.com

UAE - Dubai

Emirates Financial Towers
503-C South Tower, DIFC
PO Box 507260, Dubai
UAE

T: +971 4 2866677

E: UAESales@skpgroup.com

Canada - Toronto

269 The East Mall
Toronto, ON M9B 3Z1
Canada

T: +1 647 707 5066

E: NorthAmericaSales@skpgroup.com

www.skpgroup.com



[linkedin.com/company/skp-group](https://www.linkedin.com/company/skp-group)



twitter.com/SKPGroup



facebook.com/SKPGroupIndia



youtube.com/c/SKPGroup



plus.google.com/+SKPGroup

This alert contains general information which is provided on an "as is" basis without warranties of any kind, express or implied and is not intended to address any particular situation. The information contained herein may not be comprehensive and should not be construed as specific advice or opinion. This alert should not be substituted for any professional advice or service, and it should not be acted or relied upon or used as a basis for any decision or action that may affect you or your business. It is also expressly clarified that this alert is not intended to be a form of solicitation or invitation or advertisement to create any adviser-client relationship.

Whilst every effort has been made to ensure the accuracy of the information contained in this alert, the same cannot be guaranteed. We accept no liability or responsibility to any person for any loss or damage incurred by relying on the information contained in this alert.

© 2018 SKP Business Consulting LLP. All rights reserved.