

Extension of due dates for filing GSTR 9, 9A & 9C - what lies beneath!

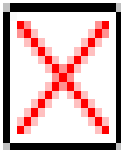
Â

SEPTEMBER 04, 2019

By Shailesh Sheth, Advocate

"I am inevitable!"

[A quote from Thanos from 'The Avengers: Endgame']



STRANGE

as it may sound but this famous quote from Thanos, a fictional supervillain appearing in the popular Marvel Comics, springs to mind when I contemplate over the Extensions being granted to the taxpayers in respect of the due dates for filing the various GST Returns! The latest in this unending saga of extensions is the extension of due date for filing the Annual Returns in Forms 9 or 9A and the Reconciliation Statement in Form 9C in terms of Section 35(5) read with Section 44(1) and (2) of the [CGST Act, 2017](#)

(the Act). The 'Compliance Universe' of GST has been so chaotic that it seems to have no semblance of balance. Obviously, just as was believed by Thanos that he was an inevitable outcome of the chaotic universe, equally, the 'extension of due dates' has also been the inevitable fallout of the chaotic GST universe! Thanos believed that he is inevitable and willing to force a universe that suffers from and cannot see its own critical flaws, into a true order, true balance. Well. Notwithstanding his belief in his 'inevitability', Thanos was dusted 45 seconds later! Alas! It may not be possible to wipe out the phenomenon of 'Extension' from the GST regime and it may survive for far too long than one may wish or care to admit, as an 'inevitable' part of the regime! The question, however, remains whether such 'Extensions' - inevitable as they may be - provide or can be expected to provide the stability and order to the chaotic GST Compliance Universe that suffers from myriad critical flaws.

Extension of due date for filing Forms 9, 9A & 9C - A messy affair!indeed!

Netizens are aware that as provided in S. 44(1) of the Act read with Rule 80(1) of the Rules, every registered person (other than those excluded under sub-section (1) of S. 44) is required to furnish an annual return for every financial year electronically in the prescribed form GSTR-9 or 9A, as the case may be, on or before the '31st day of December' following the end of such financial year.

Section 35(5) read with Section 44(2) of the Act read with Rule 80(3) of the Rules, inter alia, require every registered person [other than those excluded under the proviso to S.35(5)], having an aggregate turnover exceeding Rs. 2.00 crore during a financial year, to-

- get his accounts audited by a Chartered Accountant or a Cost Accountant;
- furnish, electronically, the annual return in Form GSTR-9 along with a reconciliation statement in Form GSTR-9C and the audited annual accounts; and
- such other particulars as may be prescribed.

It is significant to note that though sub-section (5) of S.35 of the Act provides for the registered person having the turnover during the financial year exceeding the prescribed limit [i.e. Rs. 2.00 crore] to get his accounts audited as prescribed, neither any Form nor the manner nor any parameters are specified in respect of such 'audit' to be conducted in terms of the said provision. [This aspect is not being discussed in detail here].

So far as the time limit for furnishing the reconciliation statement in Form GSTR-9C is concerned, neither S.35(5) nor S. 44(1) & (2) of the Act nor Rule 80 (3) of the Rules prescribe any specific time limit for the same. Sub-section (2) of S.44, inter alia, requires the registered person requiring his accounts audited in terms of S.35(5), to furnish, electronically, the annual return (in Form GSTR-9) under sub-section(1) of S.44, along with the copy of reconciliation statement (in Form GSTR-9C) and audited annual accounts for the financial year. Since the due date for filing the annual return as prescribed under sub-section (1) of S.44 is '31st December' following the end of the financial year to which such return relates, it necessarily follows that the same will also constitute 'due date' for furnishing the reconciliation statement for the relevant financial year.

From a conjoint reading of the aforesaid statutory provisions, it will be observed that the due date for furnishing the annual return in Form GSTR-9 or Form GSTR-9A, as the case may be, and the reconciliation statement in Form GSTR-9C, wherever applicable, for F. Y. 2017-18 originally stood at '31st December, 2018' in terms of S.35(5) read with S. 44(1) and (2) of the Act read with Rule 80(1) and (3) of the Rules.

However, the Forms GSTR-9 and GSTR-9A for 'Annual Returns' and GSTR-9C for 'Reconciliation statement' themselves were prescribed as late as in September, 2018, by Notifications Nos. [39/2018-CT](#) dated 04.09.2018 and [49/2018-CT](#)

dated 13.09.2018 respectively. Thus, the very issue of the Forms came nearly 15 months after the introduction of the GST regime in the country on July 1, 2017! As if this delayed action was not enough, the GSTN Portal was not equipped nor made ready for enabling the furnishing of these Returns and/or Statement. On the other hand, the taxpayers and tax professionals also slowly and gradually woke up to the complexities in the forms prescribed. However, call it 'undying hopes' or 'sheer indifference', no immediate steps whatsoever were taken to address the situation and the 'status quo' was maintained.

It was only on the fast-approaching due date of '31st December, 2018' that the realisation dawned upon the Board i.e. CBIC that the situation was hopeless and needed to be addressed urgently! Thus, barely 20 days before the due date of '31st December, 2018', the announcement of the first extension came! By issue of CGST (Removal of Difficulties) Order No. [01/2018-CT](#) dated 11.12.2018, the said due date was extended to '31st March 2019'.

The significant aspects of this Order were:

- it was issued by the Central Government, on the recommendation of the Council, under S.172 of the Act so as to remove the difficulties in giving effect to the provisions of S.44(1) with regard to the filing of the annual returns;
- the Order categorically conceded that for the purpose of furnishing the annual return under S. 44(1) of the Act, the electronic system was not ready and its development was at the advanced stage and was likely to be made operational by 31st January, 2019;
- the extension, through on face of it was for 'three months', was effectively for 'two months' only since the GSTN Portal was expected to be made operational by 31st January, 2019 only in so far as the furnishing of these forms was concerned.

Even while these 'candid confessions' and 'gracious extensions' were being made, the Formats of GSTR-9, 9A and 9CÂ were also being reconsidered, acknowledging the complexities therein.Â The saidÂ Forms were substituted by the revised Forms and notified by notification No. [74/2018-CT](#)

dated 31.12.2018. The irony of the whole exercise will not be lost on the netizens since the revised Forms came to be notified on the original due date i.e. 31st December, 2018 prescribed for filing these Forms for F. Y. 2017-18!

It was alsoÂ obvious that the extended due date of '31st March, 2019' would also be illusory and the taxpayers would be unable to adhere to the extended due date. Therefore, simultaneously,Â with the issue of the revised Forms, an Order No.[3/2018-CT](#)

dated 31.12.2018 was also issued by the Central Government, on the recommendation of the Council, under S.172 of the Act, extending the revised due date of '31st March, 2019' to '30th June, 2019' for furnishing these Forms. The all-too-frank reason cited in the Order for the grant of extension was that though the electronic system to be developed was at the advanced stage, it was likely to take some more time for being made operational! There was no whisper in the Order that the revised Forms were issued only on the same day!

However, it was on cards that even the further extension of '3 months' was not going to solve the problem nor would be adequate. If anything, it was merely wishful thinking! Whereas, on the one hand, the taxpayers and the tax professionals were all at sea in deciphering and understanding the intricacies of the revised Forms, the 'almighty' GSTN Portal continued to play truant making the filing of the Forms almost impossible! Unfortunately, like a 'die-hard optimist', the Government allowed this state of affairs to continue, fervently hoping that things would improve! Alas! It was not to be! As the extended due date of '30th June, 2019' was on the verge of expiring, the Government had no option but to grant yet another extension. An Order No. [6/2019-CT](#)

dated 28.06.2019 was issued by the Central Government once again under S.172 of the Act, extending the revised due date of '30th June, 2019' by two months to '31st August, 2019'. The reason cited in the Order for the extension was that certain technical problems were being faced by the taxpayers due to which the taxpayers were unable to furnish the annual returns.

But then, the GSTN Portal was simply not in any accommodating or cooperative mood! The technical glitches continued to mar the functioning of the system and the furnishing of these forms became a 'nightmarish exercise' for the majority of the taxpayers and tax professionals! The inevitable fallout of this was yet another extension which has been granted by Order No. [07/2019-CT](#) dated 26.08.2019 issued in a similar manner as previous Orders, by the Central Government under S.172 of the Act. The revised due date now stands at 30th November, 2019. The reason cited for the extension is the same as earlier and that is, certain technical problems being faced by the taxpayers due to which they were unable to file the Annual Returns.

On a careful perusal of the aforesaid 4 (four) Orders granting extension of due date for furnishing the said Forms, the gradual climbdown in the matter of the reasons cited for extension will become apparent as explained below:

Sl. No.	Order No. & Date	Reasons for extension	Author's comments
1.	01/2018-CT dt. 1.12.2018	Development of Electronic Systems at advanced stage and likely to be made operational by 31st January, 2019	Too optimistic an outlook.
2.	03/2018-CT dt. 1.12.2018	Development of the electronic system, though at the advanced stage, likely to take some more time before being made operational	Optimistic outlook
3.	06/2019-CT dt. 8.06.2018	Technical problems being faced by the taxpayers	As a matter of fact, no more than an optimistic guess!
4.	07/2019-CT t.26.08.2019	Same reason as above	A sense of resignation!

Extension of due date - nothing to rejoice about!

While the taxpayers and the tax professionals heaved a great sigh of relief at the extension of due date granted from time to time, one shouldn't go 'gung-ho' over this relief as it has some unintentional but inevitably serious implications!

Sections 73 and 74 of the CGST Act prescribe the limitation period for issue of show cause notice under the respective provisions depending upon whether the non-payment or short payment of tax or refund was erroneously granted or wrong availment or utilization of ITC was occasioned due to a reason other than fraud or willful misstatement or suppression of facts to evade tax or due to any of these reasons, as the case may be.

However, the time limit for issue of the show cause notice under both the provisions is prescribed in a very unique manner. In the erstwhile central excise / service tax regime, such time limit was to be computed from the 'relevant date', an expression that was exhaustively defined in the relevant Act i.e. CEA or FA, 1994 itself.

Interestingly, under S.73 and S.74 of the [CGST Act, 2017](#)

, the time limit is linked to the last date for issuance of the order in both cases and which, in turn, is based on the due date for furnishing annual return or the date of erroneous refund, as the case may be.Â

This is further explained below:

Normal period of limitation:

S.73(2) provides for the issue of Notice at least 3 months prior to the time limit specified in S.73(10) for issuance of the Order.

S.73(10) provides for the issuance of the Order by the proper officer under sub-section (9) within 3 years from the due date for furnishing of annual return for the financial year to which tax not paid or short paid or ITC wrongly availed or utilized relates or within 3 years from the date of erroneous refund.

Extended period of limitation:

S.74(2) provides for the issue of Notice at least 6 months prior to the time limit specified in S.74(10) for issuance of the Order.

S.74(10) provides for the issuance of the Order by the proper officer within 5 years from the due date for furnishing of annual return for the financial year to which tax not paid or short paid or ITC wrongly availed or utilized relatesÂ or within 5 years from the date of erroneous refund.

Thus, the proper officer has, at his disposal, 33 months or 54 months, as the case may be, from the due date as prescribed for issue of the notice, depending upon whether the case involves allegations of evasion of tax, etc. or not.

Now, the following position would emerge due to the extension of due date to '30th November, 2019' for filing the Annual Return for F.Y.2017-18 in light of the above statutory provisions:-

- In normal cases, the proper officer shall have time up to August 31, 2022 to issue the notice to a taxpayer.
- In evasion cases, the proper officer shall have time up to May 31, 2024 to issue the notice.

This may appear to be strange and absurd but this is the grim reality! It should also be noted that irrespective of the actual date of filing of annual return, the time limit for the purpose of issuing show cause notice under S.73 or S.74 is required to be computed based on the 'due date for furnishing the annual return'. This is also a clear departure from the erstwhile provisions of S.11A of CEA or S.73 of FA, 1994 wherein the 'actual date of filing return' took precedence over 'due date for filing return' for the purpose of ascertaining the 'relevant date' for computing the time limit for issue of show cause notice thereunder.

Filing of Form GSTR 9, 9A and 9C - Scrap it and save the taxpayers' souls!

The above discussion brings us finally to the moot question and that is, why can't the GST Council waive the requirements of filing the Annual Return in Form GSTR 9 or 9A and the reconciliation statement in Form GSTR-9C, at least, for the first two financial years and provide the taxpayers and the GSTN Portal breathing space to stabilise their set up and operations so far as the implementation aspects of GST are concerned?

As is now universally acknowledged, these Forms are riddled with so many ambiguities, inconsistencies and complexities that the taxpayers and the tax professionals are simply at a loss to address the issues confronting them while preparing the said Returns/Statements. As if this is not enough, the majority of the tax professionals appear to be unsure about their role and responsibility while executing the assignment of so-called 'GST Audit' [A common buzzword these days!] and while preparing and filing the Annual Return and Reconciliation Statement for their clients.

But more than anything else, the GSTN Portal has been the 'biggest let down' and is likely to remain so in the foreseeable future! If the system could not be made ready or geared up in one year (not to count two years) so as to smoothen the process of furnishing these forms, where is the cause for certainty that it will be ready in another 3 months? Why should the taxpayers continue to suffer for this ineptitude and

technological incompetence? Has anyone ever thought of the colossal and criminal waste of time, energy and money of the taxpayers and the tax professionals across the country over the last at least one year in complying with this seemingly impossible requirement? If these countless manhours (not to speak of actual money spent) wasted are valued in monetary terms, will it not be running into billions of rupees?

Let us also not forget that while for F. Y. 2017-18, the revised due date for filing these Forms stands at '30th November, 2019', the statutorily prescribed due date for the same purpose for the F.Y. 2018-19 stands, as of now, at '31st December, 2019'. Thus, the taxpayers and the tax professionals are expected to file these Forms for the two consecutive financial years 2017-18 and 2018-19 within a gap of only a month! Will this be really practical and possible considering the present dismal state of affairs? The extremely low percentage of filing of Annual returns in Forms GSTR 9 or 9A and the Reconciliation Statement in Form GSTR-9C till date itself is a telling comment over the hopelessness of the situation. Let us also bear in mind that during the intervening period of about 4 (four) months, the taxpayers and the tax professionals will also have to prepare themselves for understanding and adapting to the changes like E-invoicing and new return filing system which are on the anvil. Aside from this, the Damocles' Sword of adhering to the various deadlines under other legislations, notably the Income Tax Act, 1961 is also hanging over the heads of the taxpayers and cannot be ignored!

It is, therefore, a crying need of the hour that the GST Council takes a very serious look at this imbroglio and takes an open, pragmatic and bold decision to waive the requirement of filing of these Annual Returns/Reconciliation Statement in Form GSTR 9 or 9A and 9C, as the case may be, for F. Y. 2017-18 and 2018-19 or at least, make the filing thereof optional.

Waiver of filing Forms GSTR 9, 9A or 9C for the small taxpayers - Let 'small be beautiful'!

However, if for any reason, the complete waiver of the requirement of filing the Forms GSTR 9 or 9A and/or 9C for all taxpayers is not considered feasible or advisable, the GST Council can certainly extend this concession to the small taxpayers in the following manner:

Composite taxpayers:

This class of taxpayers pay tax at the specified rate under S.10 of the Act and can neither avail the benefit of ITC nor can pass on this benefit to its buyers. The turnover limit prescribed under S.10 was initially a meager 'Rs. 75 lakhs' that prevailed till 13.10.2017. Thereafter it stood enhanced to 'Rs. 1.00 crore' and which prevailed during the remainder of F. Y. 2017-18 and the entire F. Y. 2018-19. Such Composition Taxpayers are already filing quarterly Return in Form GSTR CMP-08 and are also required to file a sort of annual return in Form GSTR-04 for every financial year. There is absolutely no reason or justification for subjecting such Composition Taxpayers to the requirement of filing Annual Return in Form GSTR-9A which is a simply a duplication and placing unjustified compliance burden and subjecting them to unnecessary compliance cost. Let us not forget that the very objective of providing the option of Composition Levy is to relieve the small taxpayers from the compliance burden and attendant cost.

The GST Council, therefore, must completely waive the requirements of filing of Annual Return in Form GSTR-9A for F.Y. 2017-18 and F. Y. 2018-19 in case of the Composition Taxpayers, although, they may be asked to file the Return in Form GSTR-04 in terms of Rule 62 of the Rules.

Other Small Taxpayers:

The Council can and must seriously look at the option of enhancing the present turnover limit of Rs.2.00 crores to Rs. 5.00 crores (if not Rs. 10.00 crores) for the purposes of the stipulation of 'GST Audit' and the filing of Reconciliation Statement in Form GSTR-9C for F. Y. 2017-18 and F. Y. 2018-19. Needless to say, the requirement of furnishing the Annual Return in Form GSTR-9 shall also be waived for such eligible taxpayers who come within the scope of the enhanced limit.

However, if this proposition is not considered feasible for any reason, then the small taxpayers with aggregate turnover not exceeding Rs. 2.00 crore in the relevant financial year must be granted the waiver of furnishing the Annual Return in Form GSTR 9 for F. Y. 2017-18 and F. Y. 2018-19. This will also be in tandem with the limit prescribed for GST Audit and filing of the Reconciliation Statement in Form GSTR-9C.

Extension of due Date for filing GSTR 9 and/or GSTR 9C for F. Y. 2018-19:

Last, but not the least, the Council must seriously consider, at this stage itself, the grant of extension of due date for filing the Annual Return and/or Reconciliation Statements for F.Y. 2018-19 which, as of now, stands on '31st December, 2019' and extend it to '31st March, 2020'. The announcement of such an extension now or at the earliest will provide a great relief to the taxpayers and the tax professionals as it would enable them to plan or schedule their commitments and overflowing 'compliance calendar'! Besides providing breathing space to the taxpayers and the tax professionals, it will also ease the burden on the GSTN Portal as the entire return filing process for F. Y. 2017-18 and F. Y. 2018-19 will stand spread over 7 (seven) months.

To sum upâ€¦

GST is always claimed to be a 'Win-Win-Win' proposition for all the stakeholders, that is, the Centre, the States and the taxpayers. However, unfortunately, as the things stand today, the Centre and the States, if not bleeding due to massive GST-frauds, are not gaining much. On the other hand, the taxpayers, particularly the small taxpayers, are certainly at the receiving end and are bearing the brunt of the increased compliance burden and the compliance cost. The situation is further worsened by the ailing GSTN portal. Thus, for the taxpayers, it is all confusion, complexities and chaos in the 'GST Compliance Universe'!

Obviously, the 'Extensions', like Thanos, is an inevitable outcome of this chaotic GST world. Fortunately, Thanos survived for barely a few seconds, whereas, the 'menace of extensions' may continue to rule the GST regime far too long for one's comfort unless the Council takes some radical, proactive, aggressive and bold steps to control this menace!

"We can fight over what the taxation levels should be, but the tax system should be very, very simple and not distortionary."
Adam Davidson

(The author is Founder, M/s SPS Legal and the views expressed are strictly personal.)

(DISCLAIMER : The views expressed are strictly of the author and Taxindiaonline.com doesn't necessarily subscribe to the same. Taxindiaonline.com Pvt. Ltd. is not responsible or liable for any loss or damage caused to anyone due to any interpretation, error, omission in the articles being hosted on the site)