

Years of Demystifying Complexities

TAX EDGE

Monthly Tax & Regulatory Updates









June 2022

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Union Health Minister chairs high level meeting to review status of COVID-19 in the country, directs officials to focus on surveillance & genome sequencing & monitor hospitalisation

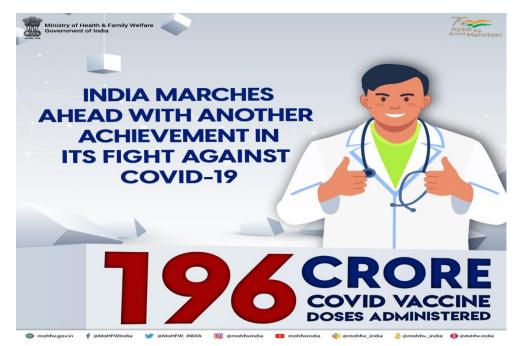
The Union Minister of Health and Family Welfare (MoHFW) on 23 June 2022 chaired a meeting with the key experts and officials in view of an upsurge of COVID-19 cases in some states. The Joint Secretary (MoHFW) made a detailed presentation on global scenario of surge in COVID cases and status of COVID in the country.

The Union Minister stressed on the need to focus on districts reporting high case positivity and undertake adequate testing (with higher proportion of RTPCR) and effective Covid-19 surveillance to assess and control the spread of infection in a timely manner. The officials were directed to continue to focus on surveillance and on Whole Genome Sequencing (WGS) to scan for any possible mutation. He also directed for monitoring hospitalizations due to COVID19, and SARI/ILI cases.

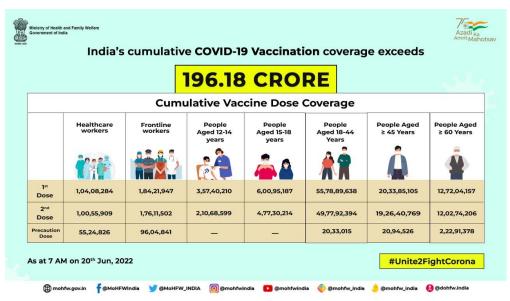
He exhorted to increase pace of vaccination including booster doses in districts reporting high cases. "As there is adequate vaccine doses available, let there be no vaccine wastage while focusing on accelerating vaccination among the eligible and vulnerable groups", he directed.

Please Click Here to read the Press Release dated 23 June 2022.

India's cumulative COVID-19 vaccination coverage exceeds 1.96 billion doses, over 35.7 million 1st dose vaccines administered for age group 12 – 14 years

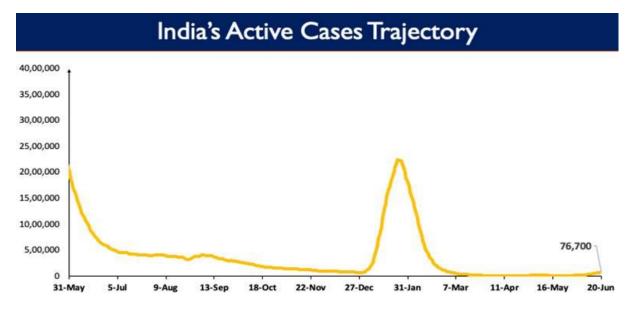


India's COVID-19 vaccination coverage has exceeded 1.96 billion doses, achieved through 2,53,18,438 sessions



COVID-19 vaccination for the age group 12-14 years was started on 16 March 2022. So far, more than 3,57,40,210 adolescents have been administered with the 1st dose of COVID-19 vaccine. Similarly, the COVID-19 precaution dose administration for age group 18-59 years also started from 10 April 2022 onwards.

India's active caseload currently stands at 76,700. Active cases now constitute 0.18% of the country's total positive cases. India's recovery rate stands at 98.61%. Weekly positivity rate stands at 2.62%, daily positivity rate stands at 4.32%.



Please <u>Click Here</u> to read the Press Release dated 20 June 2022.

Union Government has provided more than 1.93 billion vaccine doses to States / Union Territories (UTs)

The Union Government is committed to accelerating the pace and expanding the scope of COVID-19 vaccination throughout the country. The nationwide COVID 19 vaccination started on 16 January 2021. The new phase of universalization of COVID-19 vaccination commenced from 21 June 2021. The vaccination drive has been ramped up through availability of more vaccines, advance visibility of vaccine availability to States and UTs for enabling better planning by them, and streamlining the vaccine supply chain.

As part of the nationwide vaccination drive, Government of India has been supporting the States and UTs by providing them COVID Vaccines free of cost. In the new phase of the universalization of the COVID19 vaccination drive, the Union Government will procure and supply (free of cost) 75% of the vaccines being produced by the vaccine manufacturers in the country to States and UTs.

Vaccine doses as on 20 th June 2022		
Supplied 1,93,53,58,865		
Balance Available	12,75,03,205	

More than 1.93 billion vaccine doses have been provided to States/UTs so far through Union Government's free of cost channel and direct state procurement category. More than 12,75,03,205 balance and unutilized COVID-19 Vaccine doses are still available with the States / UTs to be administered.

Please <u>Click Here</u> to read the Press Release dated 20 June 2022.

Cabinet approves Memorandum of Understanding signed between India & USA in the field of health sector

The Union Cabinet, chaired by Prime Minister Shri Narendra Modi, has approved signing of Memorandum of Understanding among the Department of Biotechnology, Government of the Republic of India (DBT) and the Indian Council of Medical Research (ICMR) and International AIDS Vaccine Initiative (IAVI), USA to contribute towards the development of new, improved and innovative biomedical tools and technologies to prevent and treat HIV, TB, Covid-19 and other emerging infectious and neglected diseases. This Memorandum of Understanding will further strengthen relations between India and the USA within the framework of international scientific and technological cooperation in fields of mutual interest.

Please <u>Click Here</u> to read the Press Release dated 8 June 2022.

2-months long door-to-door campaign commenced on 1st June 2022 to expedite vaccination coverage

'Har Ghar Dastak campaign 2.0' to accelerate the pace and coverage of COVID19 vaccination across States and UTs has commenced across the country. Incorporating the experience and learning from the 1st drive launched in November 2021, the 2nd drive has been implemented from 1 June 2022 to 31 July 2022. The objective of the drive is to vaccinate and cover the eligible population groups for 1st, 2nd and precaution doses through door-to-door campaigns. Major focus will also remain on improving sub-optimal coverage of persons aged \geq 60 years with precaution dose, along with considerably slower speed of coverage in the 12-14 years cohort by focussed campaigns for old age.

Please <u>Click Here</u> to read the Press Release dated 1 June 2022.



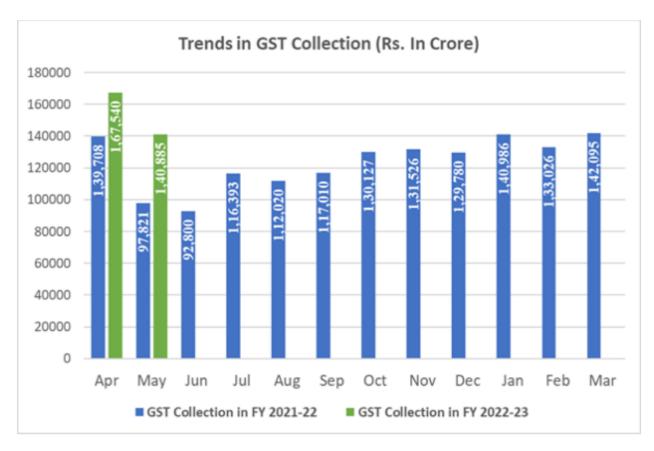
Goods & Services Tax ('GST')

GST revenue collection for May 2022 Rs.140,885 Crore (44% higher than GST revenue collection in May 2021)

The gross GST revenue collected in the month of May 2022 is Rs. 140,885 Crore as below.

IGST (Integrated Goods and Services Tax)	Rs. 73,346 Crore
CGST (Central Goods and Services Tax)	Rs. 25,036 Crore
SGST (State Goods and Services Tax)	Rs. 32,001 Crore
Compensation cess	Rs. 10,502 Crore
Total	Rs. 1,40,885 Crore

This is the 4th time the monthly GST collection crossed Rs.1.40 lakh crore mark since inception of GST. The revenues for the month of May 2022 are 44% higher than the GST revenues in May 2021. During the month, revenues from import of goods were 43% higher and the revenues from domestic transaction (including import of services) are 44% higher than the revenues from these sources during the same month last year.



Please <u>Click Here</u> to read Press Release dated 1 May 2022.

Central Board of Indirect Taxes & Customs (CBIC) issues procedures relating to sanction, post-audit & review of refund claims to increase transparency in the matter of GST refunds

Background

At present, some of the refund applications for GST are rejected by the GST department without providing detailed reasoning for such rejection. This leads not only to lack of transparency in the matter of granting refunds but also encourages malpractices within the industry. To address this issue, CBIC has issued detailed guidelines pertaining to sanction, post audit and review of GST refund claims vide Instruction no. 3 dated 14 June 2022. The primary objective of these guidelines is to bind the GST department to pass a speaking order especially in case of rejection of a refund.

Earlier guidelines on the matter

Earlier, in 2017 and 2019, CBIC had issued detailed guidelines for processing of refund claims. It had been clarified that pre-audit of refund orders is not required, however post-audit of the refund orders may be done based on guidelines. Subsequently, CBIC received reports of different practices followed by field officers regarding sanction, post-audit and review of refund claims. To bring uniformity and transparency in the process for grant of refunds, CBIC has now issued detailed guidelines covering the below.

(A) Sanction of Refund

As per principle of natural justice, a detailed speaking order needs to be issued providing a basis for sanction / rejection of refund. A speaking order means an order which is full of reasons or a reasoned order. A taxpayer has the right to know why his claim for refund has been rejected. Therefore, while passing the refund sanction / rejection order in GST RFD-06, the GST officer *must* upload a detailed speaking order covering the following aspects. This is important so that a taxpayer can properly and timely understand and respond to a refund rejection order.

- · Details for all categories of refund claims
- · Additional details in case of refund on account of zero-rated supplies or inverted tax structure
- · Additional details in case of refund on account of deemed export
- · Additional details in case of refund of excess balance in cash ledger
- · Additional details in case of refund under the other categories

(B) Post Audit & Review

As per existing practice, all refund orders are required to be reviewed for examination of legality and correctness. Considering the large number of refund claims filed, it has been decided that post-audit may going forward be conducted only for refund claims amounting to Rs. 1 lakh or more. This is likely to facilitate ease of compliance especially for small taxpayers.

The process for post-audit and review has also been explained in the Instruction. The post-audit should be concluded within 3 months from the date of issue of refund order and the findings should be communicated to the review branch. The review of refund order shall be completed at least 30 days before the expiry of the time period allowed for filing appeal.

Please Click Here to read the detailed Instruction no.3/2022 dated 14 June 2022.

Waiver of late fee for May & June 2022 for delay in furnishing Form GSTR-4 (Annual Return for Composition Taxpayers) for Financial Year (FY) 2021-22

What is Form GSTR-4 & due date for filing the same?

Form GSTR-4 is an annual return to be filed for each FY by taxpayers who have opted for composition scheme during the relevant FY. For FY 2021-22, the due date for filing Form GSTR-4 was 30 April 2022. In case of delay, a late fee of Rs.50 per day is chargeable subject to maximum of Rs.2000.

Waiver of late fee for 2 months

The CBIC vide Notification no. 7/2022 – Central Tax dated 26 May 2022 has waived the late fees till 30 June 2022 for delay in filing of form GSTR-4 for FY 2021-22.

Please Click Here to read Notification No. 7/2022 – Central Tax dated 26 May 2022.

GST Investigation Wing warns of disciplinary action against GST officers using force / coercion to 'recover' taxes during search / inspection / investigation

Background

Reportedly, instances have come to the notice of GST Investigation Wing wherein tax officers are using force / coercion to compel taxpayers deposit GST liability during search, inspection or investigation. Such action of field officers has been condemned by the GST Investigation Wing who has laid down the following method for lawful recovery of taxes in such cases:

- A taxpayer has an option to voluntarily deposit tax through Form DRC-03 before issuance of show cause notice in order to avoid penal implications. The recovery of taxes not paid or short paid can be made by the department only after following due legal process of issue of show cause notice and subsequent confirmation of demand by adjudication order
- There may not be any circumstance necessitating 'recovery' of tax dues during the search or inspection or investigation proceedings. On the contrary, field officers should inform the taxpayers regarding the taxpayers' right to voluntarily pay tax through Form DRC-03.
- In case any complaint is received from a taxpayer regarding use of force or coercion by an officer for getting the amount deposited during search, inspection or investigation, the same should be enquired. In case of any wrongdoing on the part of any tax officer, strict disciplinary action as per law should be taken against such officer.

Please <u>Click Here</u> to read the detailed Instruction no. 1/2022 (GST – Investigation) dated 25 May 2022.

GST

New Functionalities for taxpayers on GST Portal in May 2022

Relating To	Form / Functionality	Details
Registration	Bank Account validation of Taxpayers	 To establish correctness of the bank account and to verify whether it matches with the Permanent Account No. (PAN) of the business, validation of the bank account details provided at the time of GST Registration/ Creation of Temp ID by the taxpayers is being done with Central Board of Direct Taxes (CBDT) database
		 The status based on validation result is displayed to the registered taxpayers and Temp ID holders on their dashboard
		 Taxpayers and Temp ID holders can verify their Bank account status in their profile by clicking on the Bank Account Status link under Quick Links
Returns	Improvements made in filing process of annual	 Taxpayers who have opted for Composition Scheme are required to file an Annual Return in form GSTR-4
Form GSTR-4	 Earlier, several taxpayers were filing GSTR-4 without filling up the required details in Table-6 of the said form with the result that amount paid through Form CMP-08 (Statement for payment of self-assessed tax) became excess tax paid and got credited to Negative Liability Statement 	
		• To prevent taxpayers from making this mistake, they are now shown a warning message, 'Table 4A to 4D and Table 6 outward supplies are required to be filled by taxpayer' and a reconciliation statement is also shown if difference occurs in table 5 and 6
		 In addition, for taxpayer who have already filed Form GSTR-4 wrongly for the FY2019-20 and/ or FY2020-21, a code was deployed to update the Ledger Tables for correcting the negative liability, in the backend

New Functionalities for taxpayers on GST Portal in May 2022

Relating To	Form / Functionality	Details
Returns	Changes in Table 12 of Form GSTR1 for enabling HSN validation	 The taxpayers are required to furnish HSN wise summary of outward supplies in Table 12 of Form GSTR-1 on the basis of their AATO as per the following scheme:
	for taxpayers with Annual Aggregate Turnover (AATO) more than Rs. 5 Crore	✓ Taxpayers with AATO of up-to Rs. 5 crore have to report their supplies at minimum 4 digit and maximum 8 digit HSN/SAC code for their B2B supplies
		✓ Taxpayers with AATO of more than 5 Crore have to report their supplies at minimum 6 digit and maximum 8 digit HSN/SAC code for B2B and B2C supplies
		 Accordingly, a phase wise AATO based validation has been built into the system to ensure that taxpayers with AATO of up-to Rs 5 crore have to report minimum 2 digit HSN and more than Rs 5 crore have to report minimum 4 digit HSN in table 12 of GSTR-1 in the phase 1 of HSN validation at the portal.
GSTR-11 (to be furnished by every registered person Unique Identity Nu to get tax refund u GST)	furnished by every registered person having Unique Identity Number, to get tax refund under GST)	 The placement of 'Initiate Pre-fill of GSTR-11' button has now been changed to right side corner of the screen As and when a user clicks on this button, a warning message, 'You are about to initiate the auto population of filed GSTR-1/5 records in your Form GSTR-11. You may view/Edit/Delete the auto populated records in the respective GSTR-11 tables. Do you want to proceed?' would be displayed.
Refund	Facility to apply for Refund Temporary User ID by an unregistered persons for claiming refund on GST Portal	 The un-registered persons will now be able to apply for Temp User ID on GST Portal by selecting the reason for registration as, 'To claim Refund'
		 They will be able to add their bank account details at the time of applying for Temp ID and subsequently edit their profile in respect of Authorized Signatory, Address and Bank Account details, if required
		 They can subsequently file for refund under the appropriate category on the Portal using their Temp ID credentials

Please <u>Click Here</u> to read the detailed advisory.

Tax withholding (TDS) on transfer of Virtual Digital Assets (VDA) / Cryptocurrency - Central Board of Direct Taxes (CBDT) prescribes withholding tax return (Form 26QE) & TDS certificate (Form 16E) effective from 1 July 2022 onwards

Background

Finance Act, 2022 has introduced taxation on transfer of VDA. Correspondingly, a new provision (section 194S) has been inserted in the Income-tax Act, 1961, to introduce withholding tax @ 1% with effect from 1 July 2022 onwards on payment for transfer of VDA to a resident in India, subject to certain threshold limit of course.

Notification no. 67 issued by CBDT

The details regarding time-limit to deposit the above withholding tax, form and manner of filing withholding tax return and issue of tax deducted at source (TDS) certificate to deductee has now been prescribed by CBDT as below:

By when is TDS u/s 194S required to be deposited with the Government of India?	Within 30 days from the end of the month in which tax is deducted
How to report the above / TDS return format	Challan-cum-statement in Form 26Q (prescribed in the Notification)
By when is TDS certificate required to be issued to deductee and in which format?	TDS certificate in Form 16E (prescribed in the Notification) to be issued to deductee within 15 days from due date of filing Form 26QE

Please Click Here to read Notification no. 67 / 2022 dated 21 June 2022.

CBDT issues guidelines for withholding tax on benefit or perquisite in respect of business or profession (section 194R of the Income-tax Act, 1961)

Background

The Finance Act, 2022 inserted a new section 194R in the Income-tax Act, 1961 (the Act) with
effect from 1 July 2022, as per which any person responsible for providing any benefit or
perquisite to a resident, is required to deduct / withhold tax at source @ 10% of the value of such
benefit or perquisite, before providing such benefit or perquisite. The benefit or perquisite may or
may not be convertible into money but should arise either from carrying out of a business, or
from exercise of profession, by such a resident

- · The provision is not applicable in following cases
 - ✓ If the aggregate value of benefit or perquisite to the resident during the FY ≤ Rs.20,000, or
 - ✓ If the deductor is an individual / Hindu Undivided Family (HUF), whose receipts from business ≤ Rs. 1 crore or receipts from profession ≤ Rs.50 lakh during the previous FY

Guidelines / Frequently Asked Questions (FAQs) issued by CBDT on 16 June 2022

Srl no.	Question	Answer
1	Is it necessary that the person providing benefit or perquisite (deductor) needs to check if the amount is taxable u/s 28(iv) of the Income-tax Act, before deducting tax u/s 194R?	No. Where the legislature required so, it was specifically mentioned in the Income-tax Act (such as section 195)
2	Is it necessary that the benefit or perquisite must be in kind for section 194R to operate?	No. The benefit or perquisite may be in cash or kind or partly in cash and partly in kind
3	Is there any requirement to deduct tax u/s 194R, when the benefit or perquisite is in the form of capital asset?	Yes. As stated earlier, the deductor is not required to check if the benefit or perquisite is taxable in the hands of recipient
4	Whether sales discount, cash discount and rebates are benefit or perquisite for the purpose of section 194R?	 No. However, withholding of tax u/s 194R will be required in following situations: Distribution of free samples When a person gives incentives (other than discount, rebate) in the form of cash or kind such as car, TV, computers, gold coin, mobile phone etc. When a person sponsors a trip for the recipient and his/her relatives upon achieving certain targets When a person provides free ticket for an event When a person gives medicine samples free to medical practitioners The benefits/perquisites may be used by owner / director / employee of the recipient entity or their relatives who in their individual capacity may not be carrying on business or exercising a profession. However, tax is required to be deducted in the name of recipient entity since the usage by owner / director employee / relative is by virtue of their relation with the recipient entity and in substance the benefit / perquisite has been provided by the person to the recipient entity. Section 194R shall not apply if the benefit or perquisite, is being provided to a Government entity, like Government hospital, not carrying on business or profession

Srl no.	Question	Answer
5	How is the valuation of benefit / perquisite required to be carried out?	 The valuation would be based on fair market value of the benefit or perquisite except in following cases: The benefit / perquisite provider has purchased the benefit / perquisite before providing it further. In such case, the purchase price shall be the value for such benefit / perquisite The benefit / perquisite provider manufactures such items given as benefit / perquisite, then the price that it charges to its customers for such items shall be the value for such benefit / perquisite GST will not be included for the purposes of valuation of benefit / perquisite
6	use that product and make audio / video to speak about that product in social media.	In case of benefit or perquisite being a product like car, mobile, outfit, cosmetics etc. and if the product is returned to the manufacturing company after usage, then it will not be treated as a benefit / perquisite. However, if the product is retained, then it will be in the nature of benefit / perquisite and tax is required to be deducted u/s 194R
7	Whether reimbursement of out of pocket expense (OPE) incurred by service provider in the course of rendering service is benefit / perquisite?	Let us assume that a consultant is rendering service to a person 'X' for which he is receiving consultancy fee. If the invoice for OPE is obtained in the name of 'X' and paid by the consultant and reimbursed by 'X', then the reimbursement made by 'X' being the service recipient will not be considered as benefit / perquisite for the purpose of section 194R. If the invoice is not in the name of 'X' and the payment is made by 'X' directly or reimbursed, it is the benefit / perquisite provided by 'X' to the consultant for which deduction is required to be made u/s 194R.

Srl no.	Question	Answer
8	If there is a dealer conference to educate the dealers about the products of the company - Is it benefit / perquisite?	No, provided the conference is held with the prime object to educate dealers / customers about any of the following / similar aspects:
		New product being launched
		Discussion as to how the product is better than others
		Obtaining orders from dealers / customers
		 Teaching sales techniques to dealers / customers
		 Addressing queries of the dealers / customers
		 Reconciliation of accounts with dealers / customers The conference must not be in the nature of incentives / benefits to select dealers / customers who have achieved particular targets.
		In the following cases, section 194R would be applicable:
		 Expense attributable to leisure trip or leisure component, even if it is incidental to the dealer / business conference
		 Expenditure incurred for family members accompanying the person attending dealer / business conference
		 Expenditure on participants of dealer / business conference for days which are prior stay or overstay beyond the dates of such conference
9	Section 194R provides that if the benefit/perquisite is in kind or partly in kind (and cash is not sufficient to meet withholding tax requirement) then the person responsible for providing such benefit or perquisite is required to ensure that tax required to be deducted has been paid in respect of the benefit or perquisite,	The deductor may rely on a declaration along with a copy of the advance tax payment challan provided by the recipient confirming that the tax required to be deducted on the benefit/perquisite has been deposited. This would be then required to be reported in TDS return along with challan number.
	before releasing the benefit or perquisite. How can such person be satisfied that tax has been deposited?	Alternatively, the benefit provider may deduct tax u/s 194R and pay to the Government. The tax should be deducted after taking into account the fact the tax paid by him as TDS is also a benefit u/s 194R
10	Section 194R comes into effect from 1 st July 2022 onwards. It is not clear how the threshold limit of Rs.20,000 is to be computed for the FY 2022-23?	The period for calculating threshold limit shall start from 1 st April 2022. Hence, if the aggregate value of benefit or perquisite provided or likely to be provided to a resident exceeds Rs. 20,000 during FY 2022-23 (including the period up to 30 June 2022), section 194R shall apply on any benefit or perquisite provided on or after 1 July 2022. Benefit or perquisite provided on or before 30 June 2022, would not be subjected to tax deduction u/s 194R

Please <u>Click Here</u> to read Circular no. 12 / 2022 dated 16 June 2022.

Exemption from requirement to withhold tax u/s 194I on payment of lease rent to a Unit located in International Financial Services Center ('IFSC') for lease of aircraft

Section 194-I of the Income-tax Act provides for deduction of tax at source on payment of rent to a resident for use of plant, machinery, equipment (2%) or real estate, furniture, fittings (10%).

CBDT vide Notification no.65 dated 16 June 2022 has exempted / waived the above requirement to withhold tax on payment of lease rent to a to a Unit located in IFSC for lease of aircraft. The 1st IFSC in India is the Gujarat International Finance Tec-City (GIFT City).

The exemption / waiver is applicable *provided* the lessor furnishes a statement-cumdeclaration in Form no. 1 to the lessee giving details of those 10 assessment years for which the lessor has opted for claiming deduction u/s 80LA(2) read with section 80LA(1A) of the Income-tax Act. On receiving the same, the lessee shall not deduct tax at source for those 10 years and make the disclosure accordingly in the withholding tax returns to be filed by the lessee (for other years, lessee shall continue to withhold tax at source). The format of Form 1 has been prescribed in the Notification.

Please <u>Click Here</u> to read the Notification no. 65 dated 16th June 2022.

Tax exemption in respect of specified funds u/s 10(4D) of Income-tax Act – CBDT prescribes additional conditions to be fulfilled by such funds

Background

Section 10(4D) of the Income-tax Act provides tax exemption in respect of certain incomes of a 'specified fund' as below defined in clause (c) to the Explanation:

- A Category-III Alternative Investment Fund (AIF) located in any IFSC; or
- An investment division of an offshore banking unit which has been granted a certificate of registration as a Category-I foreign portfolio investor (FPI)

A Category-III AIF located in IFSC is allowed exemption u/s 10(4D) *provided* all its units (other than unit held by a sponsor or manager) are held by non-residents.

Amendment by Finance Act 2022

The Finance Act 2022 with effect from Assessment Year 2023-24 has inserted a proviso to the above definition, saying that if a non-resident unit holder(s) becomes resident in any year subsequent to the year in which units were issued to him, the tax exemption shall continue to be available to specified fund provided such unitholders do not hold more than 5% of the total units issued by the specified fund.

The proviso also says that such shall be required to fulfil 'other conditions' to be prescribed by CBDT. Now, the CBDT vide Notification no. 64 dated 16 June 2022 has notified a new Rule 21AIA in the Income-tax Rules, 1962, prescribing such 'other conditions'

Conditions required to be fulfilled by the specified funds

Rule 21AIA stipulates the following conditions:

- Unit holder of the specified fund (other than sponsor or manager of the fund), who becomes a resident during any year subsequent to the year in which such unit(s) were issued, shall cease to be a unit holder of the fund within 3 months from the end of the year in which he becomes a resident
- Specified fund shall maintain the following documents in respect of its unit holders:
 - ✓ Name of the unit holder
 - ✓ Tax identification number of the unit holder in the country of residence when units were issued
 - ✓ Permanent account number, if available
 - ✓ Total number of units held
 - ✓ Total value of units held
 - ✓ Whether unit holder is a sponsor or a manager
 - \checkmark The year in which the unit holder became resident, and
 - ✓ Date of exit from specified fund
- The specified fund shall furnish information in respect of units held by residents in the annual statement of exempt income in Form 10-IG, otherwise the income shall not be tax-exempt

CBDT has also amended the existing Rules 21AI, 21AJ, 21AJA, and 21AJAA providing mandatory furnishing of Forms 10-IH, 10-IK, 10-IL, and 10-IK to become eligible to claim an exemption u/s 115AD and 10(4D).

Please <u>Click Here</u> to read the Notification no. 64 dated 16 June 2022.

Long term Capital Gains - CBDT notifies '331' as Cost Inflation Index (CII) for FY 2022-23

CBDT vide Notification no. 62 dated 14 June 2022 has notified 331 as CII for FY 2022-23. If a long-term capital asset is transferred, the capital gains is computed after deducting the *indexed* cost of acquisition (instead of just cost of acquisition) to give the benefit of inflation to a taxpayer. Such indexation of cost of acquisition is done on the basis of CII. The base year for which CII is 100 is FY 2001-02.

Please Click Here to read the Notification no. 62 / 2022 dated 14 June 2022.

Relaxation of conditions for investment funds whose fund manager is located in an IFSC

Background

- Section 9A of the Income-tax Act provides shield / immunity to an 'eligible investment fund' from constituting a business connection (taxable presence) in India, if its fund management activity is carried out through an 'eligible fund manager' in India
- An 'eligible investment fund' for this purpose means a fund established / incorporated / registered outside India, which collects funds from its members for investing it for their benefit and fulfils 13 specific conditions mentioned u/s 9A(3)
- An 'eligible fund manager' means any person who is engaged in the activity of fund management and fulfils 4 specific conditions mentioned u/s 9A(4)
- Section 9A(8A) gives the power to Central Government to specify exemption from certain conditions u/s 9A(3) or 9A(4), in case the eligible fund manager is located in an International Financial Services Centre (IFSC) in India and has commenced operations on or before 31 March 2024.

Relaxations issued by CBDT in case the fund manager is located in IFSC

The following conditions need not be fulfilled by an eligible investment fund to have immunity from constitution of business connection (taxable presence) in India (if the eligible fund manager is situated in IFSC):

- · Requirement to have minimum 25 members who are not connected persons
- Any member of the fund (along with connected persons) shall not have any participation interest in the fund exceeding 10%
- Aggregate participation interest of 10 or less members (along with their connected persons) in the fund, shall be less than 50%

The fund shall not carry on, or participate in, the day to day operations of any person in India (for this purpose, the monitoring mechanism to protect the investment in such person including the right to appoint directors or executive director shall not be considered as participation in day to day operations of such person in India).

Further, the fund manager must be registered as a portfolio manager or investment advisor in accordance with the IFSC regulations (currently, the requirement is to be registered as per SEBI regulations).

Please Click Here to read the Notification no. 59 / 2022 dated 6 June 2022.

Registration of Trusts & Institutions – CBDT issues clarifications on Form 10AC (order for registration / provisional registration / approval / provisional approval)

Background

The Finance Act 2022 has inserted amended provisions in the Income-tax Act allowing the Principal Commissioner or Commissioner to examine if there is any 'specified violation' by the trust or institution registered or provisionally registered. After examination, an order is required to be passed for either cancellation of the registration or refusal to cancel the registration.

Considering the amendments by Finance Act, 2022, the conditions subject to which the registration / approval / provisional registration / provisional approval was granted to trusts and institutions needed to be revised to align the same with the amendments made by the Finance Act.

CBDT's circular dated 3 June 2022

CBDT has issued a circular clarifying:

• Conditions for grant of registration u/s 12AB, 10(23C) and 80G of the Income-tax Act

CBDT has stipulated the revised conditions to be followed by a trust or institution seeking:

- ✓ Re-registration and provisional registration u/s 12AB
- ✓ Re-approval and provisional approval u/s 10(23C), and
- ✓ Re-approval and provisional approval under section 80G

The conditions contained in Form 10AC issued between 1 April 2021 till 3 June 2022 shall be read as if the said conditions had been substituted with the conditions as provided by CBDT with effect from 1 April 2022.

• Provisional registration / approval to be deemed as registration / approval

CBDT has clarified that if due to technical glitches, Form 10AC has been issued during FY 2021-22 with the heading 'Order for provisional registration' or 'Order for provisional approval' instead of 'Order for registration' or 'Order for approval', then all such Form 10ACs shall be considered as an 'Order for registration or approval'.

Please Click Here to read the detailed Circular no. 11 / 2022 dated 3 June 2022.

CBDT notifies procedure for filing appeal against ruling by Board for Advance Rulings (BAR)

According to the Income-tax Act, if an applicant or tax officer is aggrieved by a ruling pronounced by BAR, they may file an appeal before the High Court against such ruling of the BAR, within 60 days from the date of the communication of that ruling, in the prescribed form and manner.

The CBDT has now notified new rule 44FA that provides the form and manner of filing appeal to the High Court. The form and manner of filing appeal will be the same as the procedure laid down by the jurisdictional High Court for filing an appeal to the High Court.

Please <u>Click Here</u> to read the Notification no. 57 / 2022 dated 31st May 2022.



CBDT notifies Faceless Penalty (Amendment) Scheme, 2022

Background

CBDT has notified Faceless Penalty (Amendment) Scheme, 2022 amending the Faceless Penalty Scheme 2021 with effect from 27 May 2022. The major changes introduced are:

· Regional Faceless Penalty Centres omitted

CBDT has removed the 'Regional Faceless Penalty Centres (RFPC)' from the faceless penalty scheme. RFPC was responsible to facilitate the conduct of faceless penalty proceedings and imposing penalties as per the Scheme

• Penalty Unit and Penalty Review Units shall mean Assessing Officer (AO)

CBDT has specified that the term 'Penalty Unit' or 'Penalty Review Unit', wherever used in the Faceless Penalty Scheme, shall refer to AO. Such AO has powers as assigned by CBDT

• 'Draft Order' replaced with 'Penalty Imposition Proposal'

Instead of preparing a draft order for the imposition of penalty, the penalty unit shall prepare a penalty imposition proposal for the imposition of penalty

Rectification Proceedings omitted

The Faceless Penalty Scheme 2021 had allowed the National Faceless Penalty Centre to rectify any mistake which is apparent from the record under this scheme. Application for rectification of mistake was allowed to be filed by:

- ✓ Assessee or any other person, as the case, may be; or
- ✓ Penalty unit, which prepared the order; or
- ✓ Penalty review unit, which reviewed the order; or
- ✓ Income-tax authority; or
- ✓ National Faceless Assessment Centre

The provisions for rectification of mistake under the Faceless Penalty Scheme 2021 has been omitted.

Record to be authentic by all units of the Scheme

An electronic record under this scheme shall be authenticated by all the units, i.e., penalty unit, penalty review unit, technical unit or verification unit, by affixing a digital signature. Earlier, only National Faceless Penalty Centre and the assessee or any other person were required to authenticate records.

Please <u>Click Here</u> to read the Notification no. 54 / 2022 dated 27 May 2022.

International Tax

International Tax

Transfer Pricing – Applicability of Safe Harbor Rules extended till Assessment Year (AY) 2022-23

Rule 10TD of the Income-tax Rules, 1962 prescribes a list of eligible international transactions where transfer price declared by the taxpayer shall be required to be accepted by the tax authorities (safe harbor). The Rule was valid until AY 2021-22. CBDT has now extended the validity of the Rule till AY 2022-23.

Please Click Here to read the Notification no. 66 / 2022 dated 17 June 2022.

Mutual Agreement Procedure (MAP) - CBDT releases updated guidance

What is MAP?

India has signed Double Taxation Avoidance Agreements ('DTAAs') with many countries. MAP is an alternate tax dispute resolution mechanism available to the taxpayers under the DTAAs for resolving cross-border disputes. MAP can help in relieving double taxation either fully or partially. Almost all DTAAs entered into by India have the MAP Article. It provides an additional dispute resolution mechanism to taxpayers in addition to those available under the domestic laws of India. A taxpayer can request for assistance under MAP regardless of the remedies provided under the Indian domestic law.

MAP enables the Competent Authority ('CA') of India (appointed by the Government of India) to engage with the CAs of other DTAA countries to facilitates discussions and negotiations between both countries as they endeavour to resolve international tax disputes. A request under MAP can be made by a taxpayer when it considers that the actions of the tax authorities of either or both of the DTAA countries could result in taxation not in accordance with the DTAA, especially on the following matters:

- Transfer Pricing adjustments
- Existence of a Permanent Establishment (taxable presence)
- Attribution of profits to a Permanent Establishment
- · Characterisation or re-characterisation of an income or expense

Guidance issued by CBDT in August 2020

On 7 August 2020, CBDT had published a detailed Guidance to provide key information on several aspects relating to India's MAP program. The Guidance comprised of 4 sections as below and was issued to benefit taxpayers, tax authorities, and CAs of India and respective DTAA countries

- Introduction and Basic Information, including application, process, timeline for resolving and implementing MAP cases
- Access and Denial of Access to MAP
- Technical Issues, including downward adjustment, resolution of recurring issues, interest and penalties, secondary adjustments, bilateral and multilateral advance pricing arrangements, suspension of collection of taxes during MAP pendency, adjustment of taxes paid in pursuance of demand raised by an order u/s 201 of the Income-tax Act
- · Implementation of MAP outcomes, including timelines, information to CAs

International Tax

Updated Guidance issued by CBDT in June 2022

Pursuant to the above guidance, many stakeholders raised queries on various aspects and requested clarity. Considering the inputs and suggestions from the industry, CBDT has released an updated guidance on the matter in June 2022. The news aspects to be covered in the updated guidance are mainly 2-fold:

a) Interplay between MAP & Vivad-se-Vishwas (VsV) scheme

In 2020, Government of India brought a new tax dispute resolution scheme under the 'Direct Tax VsV Act, 2020', with the objective of reducing pending litigations at various appellate forums. The details in respect of eligibility and other provisions are contained in the Direct Tax VsV Act, 2020 and allied circulars / clarifications issued by CBDT from time to time.

VsV applications are settlements and are to be considered final irrespective of any other law or agreement. India's view was that this includes MAP proceedings that arise from DTAAs; thus, access to MAP would be denied. However, the Organisation for Economic Co-operation and Development's (OECD) Base Erosion and Profit Shifting (BEPS) Action 14 Stage 2 Peer Review Report noted that India's position of denying MAP access to matters covered in VsV Act, prevents correlative relief in a DTAA partner state. Accordingly, this position was concluded to be out of line with the requirements of Action 14. A recommendation was provided to ensure that taxpayers have access to MAP in cases where disputes are settled under the VsV Act. Updating of the MAP guidance in this regard was also suggested.

CBDT in the updated MAP guidance has clarified the interplay between MAP and the VsV scheme. CBDT has stated that where an Indian resident taxpayer opts for the VsV scheme to settle a transferpricing dispute, and the tax authorities of India accept the same, the CA of the other countries may accept MAP applications from their taxpayers (i.e., associated enterprises of the Indian taxpayer) and notify the CA of India. The CA of India would then allow access to MAP but shall not deviate from the result arrived under the VsV. Instead, they would request the CA of the DTAA country to provide correlative relief.

However, CBDT has clarified that the CA of India shall not provide access to MAP to a non-resident taxpayer that has itself opted for the VsV scheme on the same issue, because this applicant has given up its legal right to access MAP under the provisions of the VsV Act.

b) Responsibility of applicant to make full & complete disclosure

MAP operates on trust and good faith among CAs and taxpayers. Unlike regular scrutiny or appeal proceedings, CAs resolve the MAP in most cases through amicable discussions. CBDT has highlighted that certain instances have come to the notice of CAs wherein taxpayers have suppressed information. In such case, CAs of the two countries can be blindsided in negotiations. Accordingly, CBDT has stated that an Indian resident taxpayer making a MAP application should provide all the facts of the case that can materially affect the negotiation process. Further, applicant must keep the CAs up-to-date on all material changes and new information or documentation relevant to the issues under consideration.

Ministry of Corporate Affairs (MCA) allows restoration of name of candidates willing to be appointed as Independent Directors, in case their name is removed from the database maintained by Indian Institute of Corporate Affairs (IICA)

Pursuant to the Companies (Appointment & Qualification of Directors) rules, every individual willing to be appointed as an Independent Director in any company shall:

- Have his name included in the databank of Independent Directors maintained by IICA; and
- Qualify an online proficiency self-assessment test conducted by IICA within 2 years from the date of inclusion of his name in the databank, failing which his name shall stand removed from the databank

To provide some relaxation, Ministry of Corporate Affairs (MCA) vide notification dated 10th June 2022 has amended the aforesaid rules. Going forward, every individual whose name is removed from the database maintained by IICA, may apply for restoration of his name on payment of statutory fee of Rs. 1,000, subject to fulfilment of following conditions:

- His name shall be shown in a separate restored category for 1 year from the date of name restoration within which, he shall be required to pass the online proficiency self-assessment test conducted by IICA and thereafter on qualifying the said test, his name shall be included in the databank, and
- In case he fails to qualify the online proficiency self-assessment test within 1 year from the date of name restoration, his name shall be removed from the databank and he shall be required to apply afresh for inclusion of his name in the databank

Please <u>Click Here</u> to read the Notification dated 10th June 2022.

Investment from countries sharing land border with India – Prior approval from Government of India mandatory for (a) allotment of Director Identification Number (DIN) & appointment of Director for nationals belonging to such countries, & (b) undertaking merger / demerger between an Indian company & an entity belonging to such country

Background

To prevent opportunistic takeover of Indian companies at the time of COVID outbreak, Reserve Bank of India (RBI) vide Press Note no 3 (2020) dated 17 April 2020 had notified that prior approval from Government of India shall be mandatory for all foreign investments made in India:

- · by entity of any country sharing land border with India; or
- where the beneficial owner of such a foreign investment is situated in or is a citizen of any country sharing land border with India; or
- transfer of ownership of any existing or future foreign investment in an entity in India, directly or indirectly, resulting in the beneficial ownership falling within the purview of the land border-sharing countries

Corresponding amendment by MCA

In line with the above RBI requirement, MCA vide notification dated 1 June 2022 has amended Rule 8 and 10 of the Companies (Appointment & Qualification of Directors) rules, as below:

- In case of allotment of Director Identification No. (DIN) to any individual who is national of a country sharing land border with India, he shall be required to obtain prior approval from the Government of India before filing the application for DIN allotment in Form DIR-3. Accordingly, copy of the Government's approval obtained by him shall be enclosed along with his application for DIN in Form DIR-3;
- In case any individual who is national of a country sharing land border with India, is to be appointed as a Director in any Indian company, he shall be required to obtain prior approval from the Government of India before his appointment as Director. Copy of the Government's approval shall be enclosed along with his consent to act as Director in Form DIR-2

Please <u>Click Here</u> to read Notification dated 1st June 2022.

Further, vide notification dated 30 May 2022, MCA has notified that in case of any merger / demerger / compromise / arrangement between an Indian company and any company / body corporate belonging to such country, a declaration needs to be filed with the National Company Law Tribunal (NCLT) in Form CAA-16 at the stage of submission of merger / demerger / compromise / arrangement application u/s 230 of the Companies Act, 2013. Copy of the Government's approval shall also attached with the said declaration.

Please <u>Click Here</u> to read Notification dated 30th May 2022.

Extension of timeline for filing annual Corporate Social Responsibility (CSR) report for the FY 2020-21 from 31 May 2022 till 30 June 2022

Pursuant to Companies (Accounts) Amendment Rules, 2022, every company undertaking CSR activities u/s 135 of the Companies Act, 2013 is required to file annual CSR report in Form CSR-2, as an addendum to Form(s) AOC-4 / AOC-4 XBRL / AOC-4 NBFC (forms for filing financial statements) with the Registrar of Companies (ROC).

Accordingly, the due date for filing annual CSR report for the preceding FY 2020-21 has been shifted from 31st May 2022 till 30th June 2022.

Further the annual CSR report for the FY 2021-22 shall be filed separately on or before 31st March 2023, post the filing of Form(s) AOC-4 / AOC-4 XBRL / AOC-4 NBFC with ROC.

Please <u>Click Here</u> to read the Notification dated 31st May 2022.

MCA bars not-for-profit section 8 companies from undertaking any micro finance / micro credit activities by way of simply altering their Memorandum of Association (MOA) post incorporation, a malpractice observed by the MCA

MCA vide letter no 05/33/2017-CL-V dated 10 February 2020 and 31 August 2020 had clarified that no not-for-profit section 8 company shall be incorporated with the main object / business of pursuing micro finance / micro credit activities, if such companies do not comply with the stringent criterion of net-owned funds as per RBI regulations.

Reportedly, it has been observed by MCA that various not-for-profit section 8 companies, to dodge RBI's requirement regarding minimum net owned funds, are altering their main object clause of MOA post incorporation for carrying out micro finance / micro credit activities, simply by taking their shareholder's approval through special resolution and subsequently filing form MGT-14 with ROC, which is strictly prohibited and against the legal intention.

To prevent such malpractice, MCA vide circular dated 30 May 2022 has directed that immediate action shall be taken by ROC against all such not-for-profit section 8 companies which are altering their main objects in the MOA for carrying out any kind of micro finance / micro credit activities.

Please <u>Click Here</u> to read the Circular dated 30 May 2022 and Letter no. 05/33/2017-CL-V dated 10 February 2020 and 31 August 2020.

Waiver of late filing fees on annual return & event based e-forms to be filed by Limited Liability Partnerships (LLPs) till 30th June 2022

In view of the transition from version-2 to version-3 of MCA's online portal for all LLP related filings, MCA vide circulars dated 27 May 2022 and 31 May 2022 has notified that no late filing fees shall be levied upto 30th June 2022 for:

- · Filing annual return of LLPs in form 11 for FY 2021-22; and
- All event based LLP e-forms due for filing between 25 February 2022 to 31 May 2022

Please <u>Click Here</u> to read the Circular dated 31st May 2022.

Please <u>Click Here</u> to read the Circular dated 27th May 2022.



Reserve Bank of India ('RBI')

Discontinuation of requirement to file quarterly return with RBI for reporting details of guarantee availed & invoked from non-resident entities

Pursuant to RBI Master Direction on External Commercial Borrowings, Trade Credits and Structured obligations dated 26 March 2019, where any facility which is either fund based or non-fund based (such as letter of credit / guarantee / letter of undertaking / letter of comfort) entered between any 2 persons resident in India, is guaranteed by non-resident entities, then in such a case, the details of the guarantee availed and invoked from non-resident entities was required to be filed with RBI in the form of a quarterly return on or before 10th day of the following month.

RBI vide notification dated 9 June 2022 has decided to discontinue the filing of the aforesaid return with effect from the quarter ending April - June 2022.

Please <u>Click Here</u> to read Notification dated 9 June 2022.



Securities Exchange Board of India ('SEBI')

SEBI strengthens investor grievance redressal mechanism

In order to improve redressal of investors' grievances, SEBI vide circular dated 6 November 2020 had laid down following measures:

- SEBI had instructed the Stock Exchanges to ensure that investor grievances are resolved within 15 working days after receiving such complaints;
- Additional information, if any, required from the complainant, would be sought within 7 working days from the date of receipt of the complaint;
- The Investor Grievance Redressal Committee (IGRC) would not dispose of the complaint citing lack of information and complexity of the case. However, in case the complainant is not satisfied with the resolution, the same may be referred to IGRC after recording the reasons in writing by the Chief Regulatory Officer or any other authorised officer of the Stock Exchange;
- Further, all the expenses of IGRC will be borne by the respective Stock Exchange and no fees would be charged to the complainant;
- With regard to handling complaints by IGRC, SEBI has mandated that the committee will have a time period of 15 working days to resolve the investor complaint through a conciliation process;
- Any dispute between the member of Stock Exchange and the investor, which is of civil nature, will be 1st referred to IGRC and / or to arbitration mechanism provided by the Stock Exchange before resorting to other remedies available under any other law

Going a step further in redressing investors' grievances through arbitration, SEBI vide circular dated 3 June 2022 has notified following changes in the principal circular dated 6 November 2020:

Particulars	Existing Provision	Amendment
Competence of Arbitrators to consider complaints & claims filed by the investors	The sole arbitrator or the panel of arbitrators appointed under the Stock Exchange arbitration mechanism, shall always deemed to have the competence to consider all the complaints filed by the investors falling under their respective jurisdiction	The sole arbitrator or the panel of arbitrators, apart from dealing with the complaints falling under their respective jurisdiction, shall also settle claim(s) related to any dispute between the stock brokers and the investors arising out of any transactions undertaken in the Stock Exchange
Time period for filing complaints under the arbitration mechanism	In case any complainant who is not satisfied with the recommendation of the IGRC for the settlement of his complaint, he may file his complaint with the arbitration mechanism of the Stock Exchange within 6 months from the date of IGRC recommendation	The time period for filing complaints under the arbitration mechanism has been reduced from 6 months to 3 months. However for all other cases, time period for filing complaints shall be governed by the Limitation Act, 1963

Please <u>Click Here</u> to read Circular dated 3 June 2022.

SEBI

SEBI notifies Standard Operating Procedure (SOP) for dispute resolution under the Stock Exchange Arbitration Mechanism

SEBI vide circular dated 30 May 2022 has notified SOP for dispute resolution between a Listed Company and / or Registrars to an Issue and Share Transfer Agents (RTAs) and its shareholder(s) / investors under the Stock Exchange Arbitration Mechanism. The new framework will be effective from 1 June 2022 onwards.

Key features

- The Arbitration Mechanism shall be initiated post exhausting all actions for resolution of complaints including those received through the SEBI Complaints Redress System (SCORES) portal;
- The Arbitration reference shall be filed with the Stock Exchange where the initial complaint has been addressed;
- In case of arbitration matters involving a claim of up to Rs. 25 lakh, a sole arbitrator shall be appointed and, if the value of the claim is > Rs. 25 lakh, a panel of 3 arbitrators shall be appointed;
- The arbitration and appellate arbitration shall be conducted at the regional center of the Stock Exchange nearest to the shareholder(s) / investor(s);
- The Stock Exchange(s) shall preserve the documents related to arbitration for 5 years from the date of the Arbitral award, appellate arbitral award or order of the court, as the case may be; and register the destruction of records relating to the above, permanently;
- The Stock Exchange(s) shall disclose on its website, details of the disposal of arbitration proceedings as per the formats prescribed by SEBI for already available arbitration mechanisms

Please <u>Click Here</u> to read the circular dated 30 May 2022.

Compliance Calendar

Compliance calendar for the month of July 2022

Compliance Due Date	Concerned (Reporting) Period	Compliance Detail	Applicable To
	.	TDC/TCS deposit	Non-Government Deductors
7 th July		Equalization Levy deposit	All Deductors
10 th July	June 2022	a) GSTR-7 (TDS return under GST) b) GSTR-8 (TCS return under GST)	a) Person required to deduct TDS under GST b) Person required to collect TCS under GST
11 th July		GSTR-1 (Outward supply return)	Taxable persons having turnover > Rs. 5 crore
13 th July		GSTR-6 [Return by input service distributor (ISD)]	Person registered as ISD
	April – June 2022	GSTR-1 (Outward supply return)	Taxable persons having turnover ≤ Rs. 5 crore and opted for QRMP Scheme
15 th July	June 2022	Deposit of PF & ESI contribution	All Deductors
	FY 2021-22	Annual Return on Foreign Liabilities & Assets (FLA)	Indian companies / LLPs which have received Foreign Direct Investment (FDI) or made overseas investment
	April – June 2022	TCS Return	All Collectors
20 th July	June 2022	 a) GSTR-5 (Return by Non-resident) b) GSTR-5A [Online Information Database Access and Retrieval (OIDAR) services return] 	a) Non-resident taxable person b) OIDAR services provider
		GSTR-3B (Summary return)	All taxable persons (except composition dealer) having annual turnover > Rs. 5 crore in FY 2021-22
22 nd July 24 th July	April – June 2022		All taxable persons (except composition dealer) having annual turnover upto Rs. 5 crore and having principal place of business in Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands, Lakshadweep All taxable person (except composition dealer) having annual turnover upto Rs. 5 crore and having principal place of business in any other state
30 th July		Issue of TCS Certificate in form	All Collectors
31 st July		27D TDS Return	All Deductors
	FY 2021-22	Income Tax Return (ITR)	Individuals (including expatriates) & Non- corporates, not liable for Tax Audit.

About KrayMan

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The Leadership team comes with rich experience and is supported by a capable & efficient team of professionals including Chartered Accountants, Company Secretaries, Cost Accountants, Advocates and MBAs who are committed in providing timely, professional and quality services to our Clients

We believe that in today's dynamic and ever changing business environment, it is important for accounting, tax & legal professionals to operate with a global approach and mind set. In pursuit of extending global footprints, we have a Japan Desk and an EU Desk to support investments from these countries into India.

In addition, we are members of various associations and forums both at national as well as international levels viz. JCCII, IICCI, IFCCI, CBA, PAN, CII and TiE Delhi

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