

TAX EDGE

Monthly Tax & Regulatory Updates



Audit



Tax



Regulatory

October 2022

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Contents

- 1. Measures to combat COVID-19**
- 2. Goods & Services Tax ('GST')**
- 3. Direct Tax**
- 4. International Tax**
- 5. Reserve Bank of India ('RBI')**
- 6. Securities Exchange Board of India ('SEBI')**
- 7. Compliance Calendar**

Measures to combat COVID-19



Measures to combat COVID-19

India's cumulative COVID-19 vaccination coverage exceeds 2.19 billion doses, over 41.1 million 1st dose vaccines administered for age group 12 – 14 years


Ministry of Information and Broadcasting
Government of India

#IndiaFightsCorona
#We4Vaccine

COVID-19 UPDATE

(As on 18 October, 2022)

- ▶ **219.37 crore** vaccine doses administered so far
- ▶ **89.89 crore** total tests conducted so far



3/4


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India's COVID-19 vaccination coverage has exceeded 2.19 billion doses. COVID-19 vaccination for the age group 12-14 years was started on 16 March 2022. So far, more than 4,11,60,467 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 26,449. Active cases now constitute 0.06% of the country's total positive cases. India's recovery rate stands at 98.76%. Weekly positivity rate stands at 1.02%, daily positivity rate stands at 0.68%.



Measures to combat COVID-19


 Ministry of Information and Broadcasting
Government of India

#IndiaFightsCorona
#We4Vaccine

COVID-19 UPDATE

(As on 18 October, 2022)

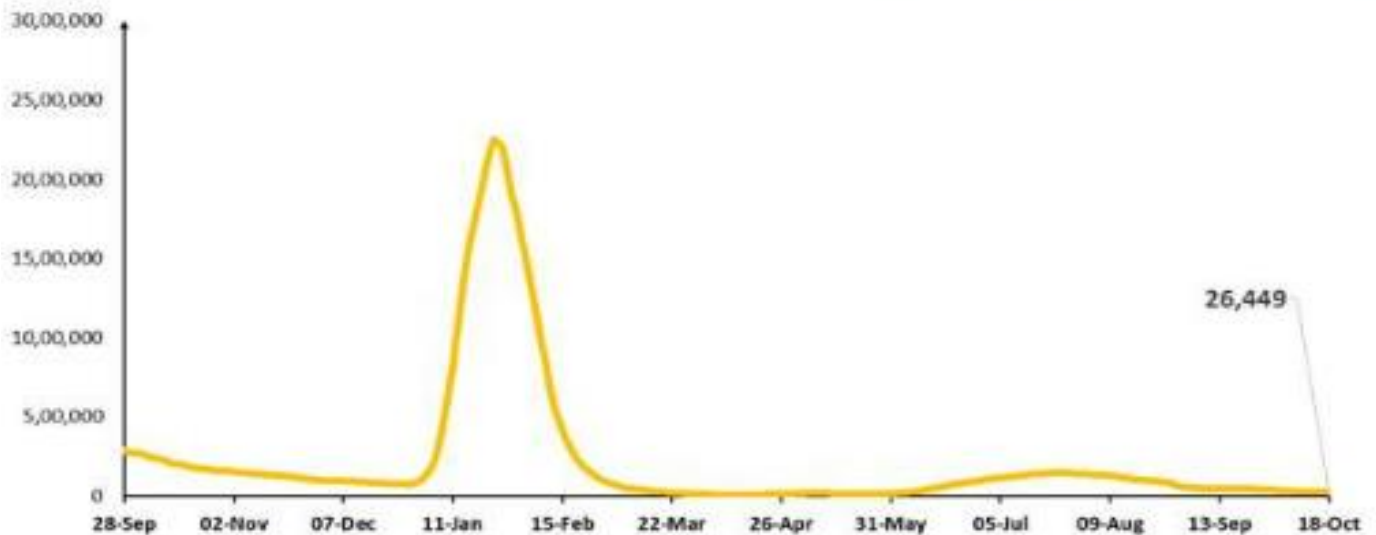
- ▶ **1,919** patients **recovered** during **last 24 hours**
- ▶ **4.40 crore Total Recoveries** across the country so far
- ▶ **Recovery Rate** currently at **98.76%**



4/4

[/COVIDNewsByMIB](#) [/MIB_India](#) [/MIB_Hindi](#) [/inbministry](#) [/inbministry](#) [/mib_india](#) [/mib_india](#) [/MIB_India](#)

India's Active Cases Trajectory



Please [Click Here](#) to read the Press Release dated 18 October 2022.

Measures to combat COVID-19

Union Government has provided more than 2.03 billion vaccine doses to States / Union Territories (UTs)

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 2 October 2022	
Supplied	2,03,45,65,325
Balance Available	2,19,90,090

More than 2.03 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 2,19,90,090 balance and unutilized COVID-19 Vaccine doses are still available with the States/UTs to be administered.

Please [Click Here](#) to read the Press Release dated 2 October 2022.



Measures to combat COVID-19

Union Health Minister reviews status of COVID-19 in the country

Union Minister of Health and Family Welfare chaired a meeting on 18 October 2022 with public health experts and officials to review the COVID-19 pandemic situation in the country, status of vaccination drive and the global scenario of new variants of COVID-19. NITI Aayog was also present during the meeting.

The Additional Secretary (AS), Ministry of Health & Family Welfare (MOHFW) made a detailed presentation on global scenario of surge in COVID cases, primarily in Europe and an analysis of various *Omicron Variants* in the world. The presentation included a detailed analysis of COVID-19 situation in the country with trend of COVID-19 cases; daily cases being reported, active cases, case positivity and testing status along with state-wise weekly tests per million including share of RT-PCR in tests conducted.

Presentation was also given on the current status of vaccination in the country, availability of vaccines, state-wise analysis of vaccine administration and the slow pace of administration of precautionary dose in the country.

Union Health Minister stressed on the need to 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 across the country, particularly through sentinel sites including monitoring of SARI & ILI cases and on *Whole Genome Sequencing* (WGS) to scan for any possible mutation in the wake of identification of *Omicron variants* in other countries. The officials were also urged to closely monitor hospitalizations due to COVID-19.

With the emergence of new *Omicron variants*, many countries are witnessing a steep rise in cases. Union Health Minister stressed on monitoring the points of entries. He also highlighted the need for community awareness for continued implementation of the COVID Appropriate Behaviour (CAB).

The meeting was attended by the Principal Scientific Advisor to the Government, Indian Council of Medical Research and other senior officials of the Health Ministry.

Please [Click Here](#) to read the Press Release dated 18 October 2022.

Goods & Services Tax (`GST`)



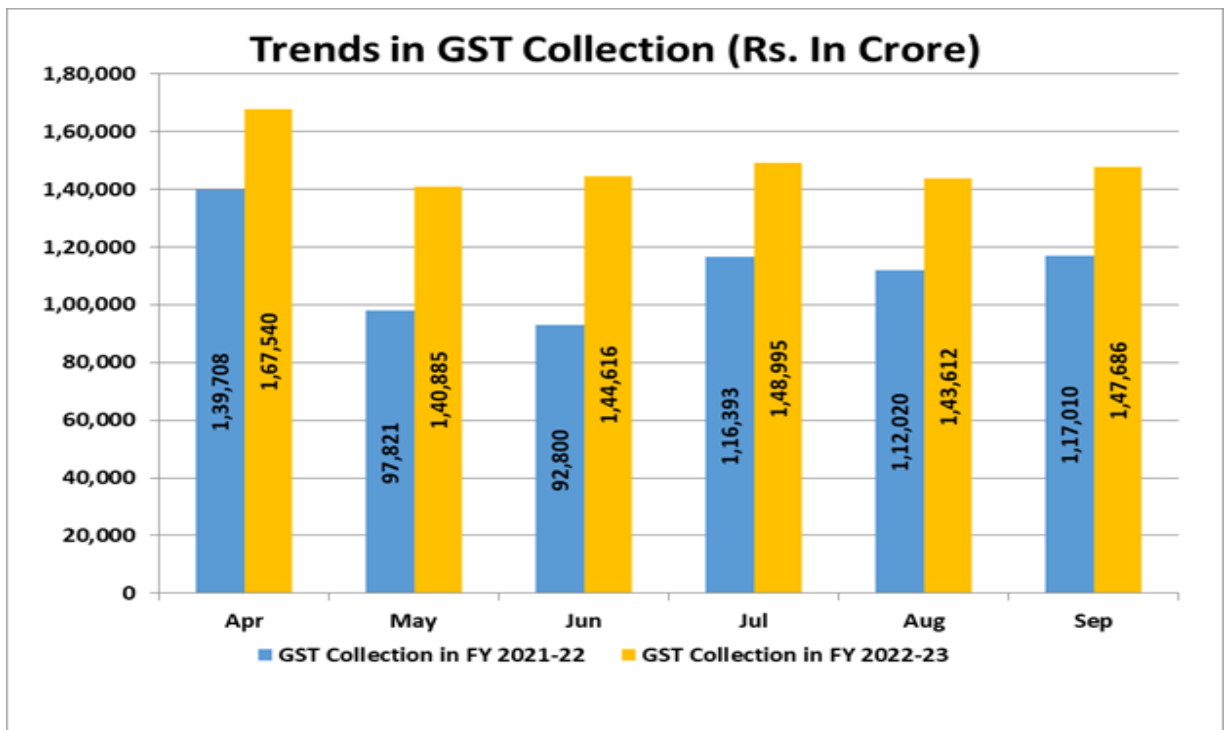
GST

GST revenue collection for September 2022 Rs. 147,686 Crore (26% higher than GST revenue collection in September 2021)

The gross GST collected in the month of September 2022 is Rs. 147,686 Crore as below.

IGST (Integrated Goods and Services Tax)	Rs. 80,464 Crore
CGST (Central Goods and Services Tax)	Rs. 25,271 Crore
SGST (State Goods and Services Tax)	Rs. 31,814 Crore
Compensation cess	Rs. 10,137 Crore
Total	Rs. 1,47,686 Crore

For 7 months in a row now, the monthly GST revenues have been more than the Rs. 1.4 lakh crore mark. The revenues for the month of September 2022 are 26% higher than the GST revenues in September 2021. During the month, revenues from import of goods were 39% higher and the revenues from domestic transaction (including import of services) are 22% higher than the revenues from these sources during the same month last year.



Please [Click Here](#) to read Press Release dated 1 October 2022.

GST

Implementation of mandatory reporting of Harmonized System of Nomenclature (HSN) codes in Form GSTR-1 (statement of outward supplies)

Background

Central Board of Indirect Taxes & Customs (CBIC) vide Notification no. 78/2020 – Central Tax dated 15 October 2020 made it mandatory for taxpayers to report minimum 4-digit or 6-digit of HSN code in table-12 of Form GSTR-1 based on their Aggregate Annual Turnover (AATO) in the previous year.

What is AATO?

AATO means the aggregate value of all taxable supplies (excluding value of inward supplies on which tax is payable by a person under reverse charge), exempt supplies, export of goods or services or both and inter state supplies of persons having the same Permanent Account Number (PAN), to be computed on all India basis.

Implementation on GST Portal

The above is being implemented in a phased manner on GST portal as below.

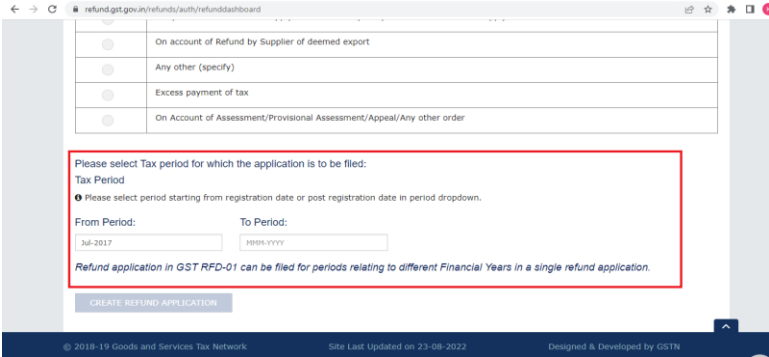
Phase	Part	Taxpayer with AATO		Date of Implementation
		≤ INR 5 Crore	> INR 5 Crore	
I	1	Mandatorily 2-digit HSN code is required to be mentioned	Mandatorily 4-digit HSN code is required to be mentioned	1 April 2022 onwards (already active on GST portal)
	2	Mandatorily 2-digit HSN code is required to be mentioned	Mandatorily 6-digit HSN code is required to be mentioned	1 August 2022 onwards (already active on GST portal)
II	-	Mandatorily 4-digit HSN code is required to be mentioned		1 November 2022 (yet to be implemented)
III & IV	-	Yet to be clarified and implemented		

In case there is an error and warning message upon manual entry on the GST portal, taxpayers have been advised to rectify the HSN details. However, it is not a mandatory validation for filing Form GSTR-1.

Please [Click Here](#) to read the detailed advisory dated 22 October 2022.

New functionalities for taxpayers on GST Portal

Relating To	Form/Functionality	Detailed Information												
Registration	<p>Functionality to add new fields while submitting response to a notice in Form GST REG-04</p> <p>(application for filing clarification / additional information / document for registration/ amendment /cancellation / revocation of cancellation)</p>	<ul style="list-style-type: none"> • Upon filing the application for GST registration the officer may ask the applicant to provide certain clarification / additional information / document in Form GST REG-04 • Earlier while filing such clarification, the applicant was not able to edit fields of registration except for only those fields where the officer had raised the query • Now, while filing such clarification, whenever the applicant clicks on any tab in registration module, GST portal will display a pop-up window with the following options: <ul style="list-style-type: none"> ✓ 'Open all allowed fields' – By choosing this option the applicant would be able to edit or add all the allowed fields (wherever required with option to upload documents) except for some core fields ✓ 'Open fields with queries raised through REG-03' – If the applicant wants to edit only the fields where officer had raised the query under Form GST REG-03 (notice for seeking clarification/additional information / document) , he can select this option while filing the response 												
	<p>Addition of restricted items in composition restriction table</p>	<ul style="list-style-type: none"> • While applying for GST Registration under composition scheme, following goods have been added to the composition restriction table based on Notification No. 04/2022 – Central Tax dated 31 March 2022 and Notification No. 43/2019 – Central Tax dated 30 Sep 2019. Composition restriction table contains list of those goods trading of which is not entitled for the beneficial scheme of composition levy under the GST Act. <table border="1" data-bbox="632 1383 1362 1818"> <thead> <tr> <th data-bbox="632 1383 839 1450">HSN</th> <th data-bbox="839 1383 1362 1450">Description</th> </tr> </thead> <tbody> <tr> <td data-bbox="632 1450 839 1518">2202 10 10</td> <td data-bbox="839 1450 1362 1518">Aerated Water</td> </tr> <tr> <td data-bbox="632 1518 839 1619">6815</td> <td data-bbox="839 1518 1362 1619">Fly ash bricks or fly ash aggregate with 90 percent or more fly ash content; fly ash blocks</td> </tr> <tr> <td data-bbox="632 1619 839 1686">6901 00 10</td> <td data-bbox="839 1619 1362 1686">Bricks of fossil meals or similar siliceous earths</td> </tr> <tr> <td data-bbox="632 1686 839 1754">6904 10 00</td> <td data-bbox="839 1686 1362 1754">Building bricks</td> </tr> <tr> <td data-bbox="632 1754 839 1818">6905 10 00</td> <td data-bbox="839 1754 1362 1818">Earthen or roofing tiles</td> </tr> </tbody> </table>	HSN	Description	2202 10 10	Aerated Water	6815	Fly ash bricks or fly ash aggregate with 90 percent or more fly ash content; fly ash blocks	6901 00 10	Bricks of fossil meals or similar siliceous earths	6904 10 00	Building bricks	6905 10 00	Earthen or roofing tiles
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Relating To	Form/Functionality	Detailed Information
Returns	Settlement of Inadmissible / Ineligible Input Tax Credit (ITC) – Label change	<ul style="list-style-type: none"> The Central Board of Indirect Taxes & Customs (CBIC) vide Notification No. 14/2022 – Central Tax dated 5 July 2022 had notified certain changes in Table 4 of Form GSTR-3B (summary return) for enabling taxpayers to correctly report information regarding ITC availed, ITC reversal and ineligible ITC in the said Table Such notified changes have been incorporated in Form GSTR-3B and are now available on GST portal for filings relevant for the period August 2022 onwards. The taxpayers have been advised to report their ITC availment, reversal of ITC and ineligible ITC correctly as per new format of Table 4 of Form GSTR-3B Please Click Here to read the detailed advisory dated 2 September 2022
Refund	Changes in time limit for filing Form GST RFD-01 (application for online processing of refunds)	<ul style="list-style-type: none"> Earlier the GST portal was configured to allow taxpayers to file Form GST RFD-01 for only up to previous 60 months Now, while filing Form GST RFD-01 the period beginning from July 2017 onwards has been made available for selection by taxpayers  <p>The screenshot shows the GST RFD-01 application form. It includes radio button options for refund types: 'On account of Refund by Supplier of deemed export', 'Any other (specify)', 'Excess payment of tax', and 'On Account of Assessment/Provisional Assessment/Appeal/Any other order'. Below these is a section for 'Tax Period' with a dropdown menu and a note: 'Please select period starting from registration date or post registration date in period dropdown.' There are 'From Period' and 'To Period' input fields, with 'Jul-2017' entered in the 'From Period' field. A red box highlights these two fields. At the bottom, there is a 'CREATE REFUND APPLICATION' button and footer text: '© 2018-19 Goods and Services Tax Network. Site Last Updated on 23-08-2022. Designed & Developed by GSTN.'</p>
	Edit facility in 'Undertaking for Form GST PMT-03 (order for re-credit of the amount to cash or credit ledger on rejection of refund claim) of inadmissible amount' provided to taxpayers for revising the inadmissible amount after submission of undertaking	<ul style="list-style-type: none"> In cases where the refund amount claimed by the taxpayer is partially/fully rejected, the rejected/inadmissible refund amount is re-credited to the respective ledger from which it was debited earlier by tax officer in Form GST PMT-03. This amount is re-credited only after the taxpayer submits an undertaking for not filing an appeal for the entire/part of the inadmissible amount Earlier post submission of the undertaking, the taxpayer was not able to modify the amount declared Now the taxpayer have been provided with a functionality to modify the amount declared by him in the undertaking if he had committed a mistake while entering the amount at the time of submission of undertaking

Advisory on filing of TRAN forms to claim transitional input tax credit (ITC)

Background

- The Supreme Court (SC) while disposing of the batch appeals in the case of Filco Traders Centre Pvt Ltd had directed GST Network (GSTN) to open GST common portal for aggrieved taxpayers to avail transitional credit [through filing or revising Form TRAN-1 & TRAN-2 (transition ITC declaration forms)] for 2 months starting from 1 September 2022
- Subsequently, SC extended the time for opening the GST common portal for the above purpose by another 4 weeks. In accordance with the directions of SC, the said facility is now available on GST portal from 1 October 2022 to 30 November 2022
- CBIC had issued Circular No. 180/12/2022-GST dated 9 September 2022 mentioning the guidelines for filing / revision of Form TRAN-1 & TRAN-2

What is form TRAN-1 & TRAN-2?

- Form TRAN-1 is a transition form filed by taxpayer registered in old taxation laws prior to GST to carry forward ITC from earlier regime to GST regime
- Form TRAN-2 is a transition form filed by a taxpayer who is registered under GST but was unregistered under old taxation laws prior to GST to claim ITC on the stock held as on 30 June 2017

Advisory issued by CBIC on 1 October 2022

The filing process has been enhanced and the user interface of the GST portal has been made more intuitive to simplify it for taxpayers to file their transition ITC declaration forms. For smooth and easy filing, a detailed step by step frame has been issued.

Please [Click Here](#) to read the detailed advisory dated 1 October 2022.

Central Board of Indirect Taxes & Customs (CBIC) enforces certain amendments in GST law from 1 October 2022 onwards (such as conditions for availing ITC, timeline for compliances, filing of returns & application for refund, cancellation of registration & reversal of ITC)

Government vide Finance Act, 2022 has made various amendments in CGST Act, 2017. CBIC vide Notification No. 18/2022 – Central Tax dated 28 September 2022 has implemented some of these amendments from 1 October 2022 onwards as below.

Amendment relating to	Details
Conditions for availing ITC	<p>Following has been added to the list of situations u/s 38 of CGST Act in which ITC shall be restricted:</p> <ul style="list-style-type: none">• Supplier has defaulted in tax payment, or• Supplier's output tax liability declared in Form GSTR-1 exceeds the tax paid in Form GSTR-3B, or• Supplier has availed ITC in excess of ITC eligible to him based on Form GSTR-2B (statement containing details of ITC), or• Purchase from any class of suppliers other than above, as may be prescribed by the Government
Change in timelines for compliances	<ul style="list-style-type: none">• Change in timelines for certain compliances relating to availment of unclaimed ITC, declaration of details of credit notes, rectification of details filed in Form GSTR-1, Form GSTR-3B and Form GSTR-8 (TCS return under GST) have been made by CBIC• Earlier, the timeline for said compliances was due date of filing of return for the month September of the following FY. Now the said timeline has been extended to 30 November of the following FY• Reportedly, a number of doubts have been raised by the taxpayers regarding such change in timelines. In this regard, Press Release dated 4 October 2022 has been issued by Ministry of Finance clarifying the below:<ul style="list-style-type: none">✓ Whether the extension in timeline is applicable for FY 2022-23 onwards or is the same also applicable for compliances for FY 2021-22? It has been clarified that the extension is applicable for compliances from FY 2021-22 onwards✓ Whether the timeline is extended to the date of filing of relevant return for the month of November 2022 or the same can be carried out in the relevant return filed upto 30 November 2022? It has been clarified that the timeline for compliances can be carried out in the relevant return filed upto 30 November 2022 or date of furnishing annual return, whichever is earlier

GST

Amendment relating to	Details
Filing of returns	<p>Form GSTR-1 – As per existing regulation, it is not a mandatory prerequisite to file Form GSTR-1 for any perior period(s) if a taxpayer wants to submit the said form for a subsequent period. However, section 37(4) of the CGST Act has been amended to say that henceforth a taxpayer will not be allowed to file Form GSTR-1 for a subsequent period if the said form for any previous period(s) is not filed (for example, Form GSTR-1 for October 2022 cannot be filed if Form GSTR-1 for July 2022 is not filed).</p> <p>Form GSTR 3B – As per existing regulation, if Form GSTR 3B is not filed for a previous period(s), the GST portal does not allow filing of the said form for a subsequent period. However, section 39(10) of the CGST Act has been amended to say that henceforth, even if Form GSTR-1 is not filed for any previous or current period(s), filing of Form GSTR-3B for current period will not be allowed (for example, it is mandatory to file Form GSTR-1 for the month of October 2022 before filing Form GSTR-3B for the said month).</p>
Refund	<p>Relevant date for filing claim by taxpayer for GST refund in respect of supplies made to Special Economic Zone (SEZ) unit/developer shall be the due date of filing Form GSTR-3B for such supplies.</p> <p>Refund of balance in Electronic Cash Ledger shall be claimed through Form GST RFD-01 instead of Form GSTR-3B.</p>

Please [Click Here](#) to read Notification no. 18/2022-Central Tax dated 28 September 2022.

Please [Click Here](#) to read Press Release dated 4 October 2022.

Please [Click Here](#) to read the detailed advisory dated 21 October 2022.



GST

Further, CBIC vide Notification No. 19/2022 – Central Tax dated 28 September 2022 has made following consequential amendments to GST Rules effective from 1 October 2022 onwards.

Amendment relating to	Details
Cancellation of GST registration in certain cases	<p>Earlier, the following situations were prescribed for cancellation of GST registration in case a taxpayer;</p> <ul style="list-style-type: none">• Does not conduct business from the declared premises• Issues invoice / bill without actual supply of goods / services• Violates the rules regarding anti-profiteering• Does not report correct bank details• Avails ITC in violation of the prescribed rules• Furnishes excess value of outward supply in Form GSTR-1 viz-a-viz. form GSTR 3B• Violates the restrictions on use of ITC amount available in Electronic Credit Ledger <p>CBIC has added the following situations to the above list:</p> <ul style="list-style-type: none">• If a taxpayer (who has not opted for Quarterly Return Monthly Payment scheme) fails to file GST returns for a continuous period of 6 months, or• If a taxpayer (who has opted for Quarterly Return Monthly Payment scheme) fails to file GST returns for continuous period of 2 quarters or part thereof
Reversal of ITC in case of non-payment of consideration	<p>Earlier, in case of non-payment or short-payment of consideration to a supplier within 180 days of date of invoice, ITC availed by a taxpayer was required to be reversed on a proportionate basis depending on the amount short-paid or not paid. For example, say payment of INR 600 was made by a taxpayer to a supplier (within 180 days) against invoice of INR 1000. In such situation, the amount of ITC was required to be reversed on proportionate basis only to the extent of INR 400.</p> <p>Now, CBIC has amended the rule to say that the entire amount of ITC availed by the taxpayer in such case needs to be paid by him / her (i.e. INR 1000 in this case) in Form GSTR-3B of the tax period following the period of 180 days from the date of invoice.</p>

Please [Click Here](#) to read Notification no. 19/2022-Central Tax dated 28 September 2022.

Direct Tax



Direct Tax

Extension of due date for furnishing withholding tax (WHT) return in Form 26Q for the period Jul-Sep 2022 from 31 October to 30 November 2022 in case of non-salary payments to residents

The due date for filing quarterly WHT return by a taxpayer for the period July to September 2022 is 31 October 2022. The said date has been extended to 30 November 2022 for WHT on (non-salary) payments to tax residents in India for the said period. The due date continues to remain the same (i.e., 31 October 2022) for WHT return on other categories of payments (i.e, salary payments and payments to non-residents).

Please [Click here](#) to read Circular no. 21 dated 27 October 2022.

Extension of due date for furnishing Income-tax Return (ITR) for Assessment Year (AY) 2022-23 from 31 October 2022 to 7 November 2022 (in case transfer pricing provisions are not applicable)

Taxpayers not subject to transfer pricing provisions of the Income-tax Act, 1961 (Act)

The Central Board of Direct Taxes (CBDT) has extended the due date for furnishing ITR for AY 2022-23 for following categories of taxpayers, from 31 October to *7 November 2022*, provided transfer pricing provisions are not applicable on them.

- Corporates
- Non-corporates whose accounts are required to be audited
- Partner of a firm whose accounts are required to be audited

The extension in due date comes as a result of last month's circular of CBDT extending the due date for submission of tax audit report in above cases from 30 September 2022 to 7 October 2022.

Taxpayers subject to transfer pricing provisions

For taxpayers to whom transfer pricing provisions are applicable, the due date for submission of ITR continues to remain 30 November 2022. Further, it is worthwhile to note that for such taxpayers, the due date for submission of tax audit report has not changed, i.e., the due date for submission for tax audit report *for such taxpayers* continues to remain 31 October 2022 (and *not 7 November 2022*).

Please [Click here](#) to read Circular no. 20 dated 26 October 2022.

Please [Click here](#) to read last month's Circular no. 19 dated 30 September 2022.

Direct Tax

Tax exemption to educational institutions – Supreme Court's (SC's) decision (in case of New Noble Educational Society) denying tax exemption to institutions with multiple objects

The SC recently in a batch of appeals (lead by a taxpayer called New Noble Educational Society) has rejected the claim for grant of approval for tax exemption to following categories of taxpayers:

- Educational institutions not existing *solely* for the educational purposes, and
- Educational institutions not registered under applicable state laws

The decision of SC is an important development in connection with tax-exemption enjoyed by educational institutions covered by section 10(23C)(vi) of the Income-tax Act. It clarifies many doubts of the industry which have accumulated over the years in relation to entitlement of tax-exemption to educational institutions.

Background

- Section 10(23C)(vi) of the Act allows tax exemption to a university or educational institution existing *solely* for educational purposes and not for purposes of profit and which has been granted prior approval by the Principal Commissioner of Income-tax
- The tax exemption is available subject to fulfilment of certain other conditions as well (such as spending a minimum of 85% of its income on the objects of the trust or institution, etc.)
- Basis the prior approval granted by Principal Commissioner of Income-tax, such institutions are required to be registered for legal compliances under the applicable state laws of India
- In the past, courts (including SC) has held that:
 - ✓ It is not necessary for an educational institution to exist *solely* for the purposes of education, and that tax exemption will be available even in cases where education was the predominant (but not only) object of the institution
 - ✓ The nature of enquiry for grant of approval (for tax exemption) by Principal Commissioner is restricted to examining the objects of the institution. In other words, the Principal Commissioner was prevented from going *beyond* examination of the objects for grant of approval

The above aspects required clarity, including the question as to whether institutions which were registered under the Income-tax Act were required to comply with registration and other applicable provisions under the *state laws* of India

Direct Tax

SC's decision dated 19 October 2022

The SC ruled as below on the above questions:

Question 1: Whether tax exemption u/s 10(23C)(vi) is available only if the educational institution exists *solely* for educational purposes?

SC's ruling:

- Yes. The educational institution will qualify for tax-exemption only if *all* objects of the institution relate to imparting of education and does not have objects unrelated to education
- Where objective of the institution is profit-oriented, such institution would not qualify for tax-exemption; though, generation of surplus in 1 or more years itself will not debar the institution from tax-exemption *provided* that such surplus is generated in the course of providing education or incidental activities

Luckily enough for taxpayers, the ruling of the SC is prospective (and not retrospective) to give taxpayers time and space to make suitable adjustments.

Question 2: While deciding to grant or reject approval for tax-exemption, whether the examination by Principal Commissioner must be restricted to objects of the institution or can it stretch further?

SC's ruling: The examination by Principal Commissioner need not be restricted to the objects of the institution. He / she is free to call for such other information (including audited accounts) as is necessary for recording satisfaction regarding genuineness of the institution's intention to achieve the objects.

Question 3: Whether the institutions are mandatorily required to register and comply with the applicable state regulations?

SC's ruling: Yes. Such compliance will help the Principal Commissioner to check genuineness of the institution.

Please [Click here](#) to read the detailed ruling dated 19 October 2022 of SC.

Direct Tax

Tax deduction of Employee's contribution to social security schemes – SC clarifies applicable due date for entitlement to the tax deduction

Background

The Income-tax Act allows tax-deduction of employees' and employers' contribution to social security schemes of India as below, while computing taxable business income of a taxpayer.

Section of the Income-tax Act	Nature of payment	Tax-deduction while computing business income of a taxpayer
36(1)(va)	Employee's contribution to social security schemes of India	Allowable in year of expense / booking provided the funds are deposited with Government on or before the statutory date as per the relevant scheme. If the funds are not deposited within the statutory due date, the amount is permanently disallowed forever.
43B	Employer's contribution to social security schemes of India	Allowable in year of expense provided the funds are deposited with Government on or before due date of filing Income-tax Return for the said year. If the funds are deposited after the due date of filing the Income-tax Return, the tax deduction is allowed in the year of actual payment.

The dispute

The provisions of section 43B have undergone many changes / amendments from time to time. This fact along with past judicial precedents have created a confusion as to whether the due date for deposit of *Employees' contribution* to social security schemes is;

- (a) Statutory due date as per the relevant scheme, or
- (b) Due date for filing Income-tax return for the relevant year,

for the purpose of reckoning entitlement to tax deduction for the taxpayer (employer).

Direct Tax

SC's decision dated 12 October 2022

The SC recently in a batch of appeals (lead by a taxpayer called Checkmate Services Pvt. Ltd.) has resolved the above dispute by holding (a) as answer to the question. In other words, the due date to be considered as applicable for entitlement of tax-deduction to employer (taxpayer) would be statutory date for deposit of employees' contribution with the social security schemes of India (and *not* due date of tax return filing). If the employer does not deposit the same within the statutory due date, he / she has to forego the tax-deduction permanently. In India, 15th day of the succeeding month is the due date for deposit of employees' contribution to provident fund and state insurance, 2 of the most common social security schemes in India.

The SC has basically ruled in favour of the tax authority and effectively endorsed the amendment in section 43B vide Finance Act 2021 with effect from financial year 2020-21. The ruling is delivered by a 3-Judge bench of the SC and overrides any contrary observations in earlier judicial precedents. Even though the ruling is adverse for a taxpayer, atleast it brings clarity to a much long dispute with the tax authorities in India and is helpful to that extent.

Please [Click here](#) to read the detailed ruling dated 12 October 2022 of SC.

Application to Assessing Officer for recomputation of taxable income determined in assessment / scrutiny proceedings - Central Board of Direct Taxes (CBDT) prescribes process & forms (Form 69 & 70) for declaration

Background – 'Surcharge' and 'Cess' are not deductible expenditure while calculating business income of a taxpayer

- The Finance Act 2022 introduced a clarificatory amendment in the Income-tax Act, 1961 [section 40(a)(ii)] to say that 'surcharge' and 'cess' are not a deductible expenditure while calculating taxable income of a person
- The amendment is retrospective from Assessment Year (AY) 2005-06 onwards and meant to avoid tax leakage due to taxpayers adopting a position that 'surcharge' and 'cess' are an allowable expenditure since the same are not specifically mentioned in section 40(a)(ii) of the Act

Direct Tax

Section 155 of the Income-tax Act – Provision for amendments in assessment order

- Section 155 contains provisions for amendments in the order or assessment (scrutiny). It says that the assessment of a taxpayer shall be modified if due to change in certain circumstances, his income is required to be re-computed
- Consequent to the amendment in section 40(a)(ii), the Finance Act 2022 inserted section 155(18) empowering the Assessing Officer to re-compute the taxable income of a taxpayer for such year in the past in which the taxpayer claimed deduction of surcharge or cess. The income so recomputed shall be considered as 'under-reported income' and accordingly the taxpayer is required to deposit tax *plus* penalty @ 50% of the tax payable on such unreported income
- If, however, the taxpayer makes an application to Assessing Officer requesting him to recompute the taxable income *without* allowing the claim for deduction of surcharge or cess and pays the tax amount on his / her own, such claim shall not be considered as under-reported income

New Rule 132 and Forms 69, 70 inserted by CBDT

To implement the above amendment in section 155(18), CBDT has inserted a new Rule 132 in the Income-tax Rules, 1962, prescribing the following manner for application to be submitted with the Assessing Officer for re-computation of taxable income

- The taxpayer shall make an application in *Form 69*, requesting Assessing Officer for recomputation of taxable income of the previous year without allowing the claim for deduction of surcharge or cess
- The application shall be furnished electronically on or before 31 March 2023
- On receipt of the application, Assessing Officer shall recompute the total income by amending the relevant order. He shall issue a notice of demand u/s 156 specifying the time within which the additional amount of tax payable (if any) is to be deposited by the taxpayer
- The taxpayer shall deposit the additional tax and furnish the details of payment in *Form 70* to the Assessing Officer within 30 days from the date of making the tax payment

Direct Tax

Details	Form 69	Form 70
Form for:	Application to Assessing Officer for recomputation of taxable income as per section 155(18)	Intimation to Assessing Officer of additional tax paid on account of amendment in section 40(a)(ii) by Finance Act 2022
Key details required to be mentioned by taxpayer	<ul style="list-style-type: none">Name, PAN, Aadhaar, Address, Mobile no.Details of computation of total income without deduction of 'surcharge' and 'cess'	<ul style="list-style-type: none">AY, date of order, details of additional tax payableDetails of additional tax paid (BSR code of bank, challan no., date of tax payment)

Please [Click here](#) to read Notification no. 111 dated 28 September 2022.

Direct tax collection for Financial Year 2022-23 (upto 8 October 2022) Rs.898,000 Crore (approx.), 23.8% higher than gross collection for corresponding period last year

CBDT has released the following statistics on 9 October 2022:

- Direct tax collections up to 8 October 2022 Rs. 8.98 lakh crore, 23.8% higher than the gross collections for the corresponding period last year
- Direct tax collection, net of refunds, Rs. 7.45 lakh crore, 16.3% higher than the net collections for the corresponding period last year
- Growth rate for corporate income-tax is 16.73% while that for personal income tax (including securities transaction tax) is 32.30%
- Refunds amounting to Rs.1.53 lakh crore have been issued during the period 1 April 2022 to 8 October 2022, 81% higher than refunds issued during the corresponding period last year

Please [Click here](#) to read Press Release dated 9 October 2022.

International Tax



International Tax

Organisation for Economic Co-operation & Development (OECD) releases new global tax reporting framework for Cryptocurrency

On 10 October 2022, the OECD released its new global tax reporting standards for cryptocurrency and other digital assets, the Crypto-Asset Reporting Framework (CARF) and Amendments to the Common Reporting Standard. OECD, based in Paris, is an international organisation of 38 countries committed to democracy and market economy.

The CARF provides standards that if adopted by countries, would require cryptocurrency exchanges, intermediaries and other service providers to report tax information pertaining to certain crypto-asset transactions to the tax authorities.

In order to address the emerging markets for transfer / usage of Cryptocurrency, the G-20 mandated the OECD to develop a framework for the exchange of tax information for crypto-assets. According to the OECD, crypto-assets are often transferred without the use of traditional financial intermediaries and the CARF addresses coverage gaps in the Common Reporting Standard (CRS) to develop an international reporting framework to ensure standardized tax reporting for crypto-asset transactions.

The CARF includes model rules and commentary for countries to implement domestic laws to collect information related to crypto-asset transactions and is focused on following key areas:

- Scope of crypto-assets to be covered,
- Entities and individuals subject to reporting,
- Transactions subject to reporting, and
- Due diligence procedures

In March 2022, the OECD released the CARF for public consultation and comments. After receiving the feedback from industry, the OECD approved the CARF in August 2022. The CARF is to be presented at the meeting of G-20 Finance Ministers and Central Bank meeting in Washington, DC as part of the OECD Secretary-General's Tax Report.

International Tax

Salient features of the CARF

- It requires reporting for a broad scope of crypto-assets. 'Crypto-Asset' has been defined as 'a digital representation of value that relies on a cryptographically secured distributed ledger or a similar technology to validate and secure transactions'
- It requires exchanges, brokers, dealers and automated teller machines (ATMs) to report. It considers intermediaries and other service providers that effectuate exchange transactions for or on behalf of customers to be a Reporting Crypto-Asset Service Provider (RCASP) under the CARF
- It imposes new due diligence requirements on Intermediaries, such as RCASPs to identify their users, determine their relevant tax jurisdictions for reporting information and collect the required information
- It requires reporting of a broad range of transactions, such as exchanges between 1 or more forms of relevant crypto-assets, and transfers including reportable retail payment transactions of relevant crypto-assets, etc.

Way forward

The OECD is still working on an implementation package to ensure the consistent domestic and international application and effective implementation of the CARF. The implementation package will consist of a framework of bilateral or multilateral competent authority arrangement for the automatic exchange of information collected under the CARF and information technology solutions to support the exchange of information. Similarly, work is also in progress to put in place the appropriate mechanisms to automatically exchange information pursuant to the amended CRS. Finally, coordinated implementation timelines for both the CARF and amended CRS will be agreed.

Scheme for taxation on transfer of 'virtual digital assets' in India

In India, the scheme for taxation on transfer of 'virtual digital assets' (including Cryptocurrency) was introduced for the first time ever vide annual Union Budget in February 2022 as below (now section 115BBH of the India Income-tax Act, 1961):

- Income arising from transfer of any virtual digital assets to be taxable @ 30%. No deduction or set-off of loss to be allowable while computing said income, except cost of acquisition
- Loss arising on transfer of virtual digital assets cannot be
 - ✓ Set-off against any other taxable income, or
 - ✓ Carried forward to subsequent years
- Existing rule of taxability of income from other sources to apply on gifting of virtual digital assets as well
- Withholding tax @ 1% on payment for transfer of virtual digital assets to a tax resident in India

Please [Click here](#) to read the detailed framework released by OECD on 10 October 2022.

Reserve Bank of India (‘RBI’)



RBI issues concept note on 'Central Bank Digital Currency' (CBDC)

RBI vide Press Release dated 7 October 2022 has issued a concept note on CBDC for India. The purpose behind this concept note is to create awareness about CBDCs in general and to explain the planned features, objectives, choices, benefits and risks of issuing a CBDC in India. The concept note also seeks to explain RBI's approach towards the introduction of the CBDC.

What is CBDC?

CBDC is a digital form of currency notes issued by a central bank. RBI broadly defines CBDC as the legal tender issued by a central bank in a digital form. It is akin to traditional paper currency but takes a different form, exchangeable at par with the existing currency. CBDC shall be accepted as a medium of payment, legal tender and a safe store of value. These CBDCs would appear as liability on the central bank's balance sheet.

Key motivation behind introduction of CBDC

- Reduction in operational costs involved in physical cash management
- Fostering financial inclusion, bringing resilience, efficiency and innovation in payments system
- Adding efficiency to the settlement system
- Boosting innovation in cross-border payments and providing public with uses that any private virtual currencies can provide without the associated risks
- The use of offline feature in CBDC would also be beneficial in remote locations and offer availability and resilience benefits when electrical power or mobile network is not available

Key design choices to be considered for issuing CBDCs

- Type of CBDC to be issued (Wholesale CBDC and/or Retail CBDC);
- Models for issuance and management of CBDCs (Direct, Indirect or Hybrid model);
- Form of CBDC (Token-based or Account-based);
- Instrument Design (Remunerated or Non-remunerated);
- Degree of Anonymity

Consumer related risks associated with CBDCs

CBDC being digital in nature is likely to bring up issues relating to consumer protection for its users. Considering the CBDC architecture and technological design considerations, the major consumer related risks associated with CBDC may be summarised as below:

Privacy Risk

- The wide adoption of CBDCs would pose the entire ecosystem to enhanced privacy risk as CBDCs provide anonymity and privacy upto a certain extent;
- The design principles of the CBDCs will determine the extent of privacy risk posed to the consumers as well as the potential ways to mitigate the risk

Security & Technology Risk

- Several issues regarding how security protocols are designed as well as how they are technically implemented would prove critical for the safety and soundness of the CBDCs;
- Given that technical understanding of the CBDCs would be beyond the understanding of an average consumer, therefore appropriate technical and audit standards may be necessary to neutralize technical obstacles which can indirectly cause consumer risk

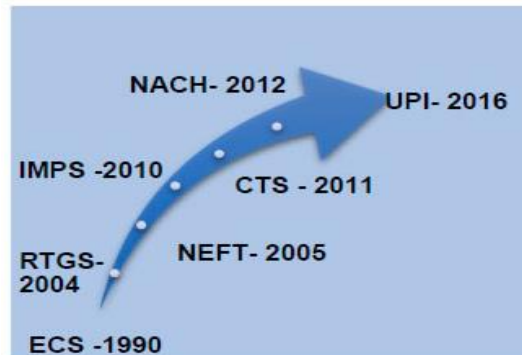
Accountability Risk

- The identification of who is accountable to consumers in case of loss is crucial and a core issue for consumer protection associated risk



Technology-based solutions introduced by RBI in the past

RBI has introduced other initiatives since mid-1980s to bring technology-based solutions to the banking system as below.



Road ahead for CBDCs

RBI has been exploring the pros and cons of introducing CBDCs for some time. As there are multiple motivations for the introduction of CBDCs, RBI is currently engaged in working towards a phased implementation strategy, going step by step through various stages followed by the final launch of the CBDCs in India. Accordingly, multiple technological options shall be tested and based on the outcome, the final architecture shall be decided.

Please [Click Here](#) to read the Press Release dated 7 October 2022.

Please [Click Here](#) to read the Concept Note dated 7 October 2022

RBI launches 'Daksh', an advanced monitoring system to make the supervisory processes more robust

RBI has been undertaking various initiatives to strengthen its supervisory processes including adoption of latest data and analytical tools and leverage of technology for implementing more efficient and automated work processes.

In continuation of this effort, the RBI Governor on 6 October 2022 has launched a new SupTech initiative named 'DAKSH' to make the supervisory processes more robust, flexible and transparent.

Key features

- 'DAKSH' is a web-based end-to-end workflow application through which RBI shall monitor compliance requirements in a more focused manner
- It will help RBI in attaining its objective of improving the compliance culture in supervised entities like banks and non-banking financial companies (NBFCs)
- It will also enable seamless communication, inspection, planning and execution
- Reporting such as cyber incident reporting and analysis, provision of various management information system (MIS) reports etc., through this web-based platform shall enable anytime-anywhere secure access

Please [Click Here](#) to read the Press Release dated 6 October 2022.

Uniform imposition of late submission fee for delayed reporting under Foreign Exchange Management Act (FEMA)

RBI vide notification dated 30 September 2022 has imposed uniform late submission fee (LSF) for delayed reporting with respect to Foreign Direct Investment (FDI), External Commercial Borrowings (ECBs) and Overseas Direct Investments (ODI) undertaken by entities / individuals under the provisions of FEMA.

Type of form / return	Purpose of filing	LSF amount (INR)
Form ODI Part II / Annual Performance Report (APR)	To be filed annually by resident entities who have undertaken ODI and accordingly have an overseas Joint Venture / Wholly-owned subsidiary (WOS) in existence	7500
Foreign Liabilities and Assets (FLA) return	To be filed annually by every Indian Company / Limited Liability Partnership (LLP) which has received FDI in the previous year(s)	
Form OPI	To be filed on half-yearly basis by resident entities making Overseas Portfolio Investment (OPI) or transferring such investment during the reporting period	
Form FC-GPR	To be filed by every Indian Company issuing shares / debentures to non-resident individual / entity within 30 days from the issue of such shares / debentures	$[7500+(0.025\% \times A \times n)]$ Notes: a) 'n' is the number of years of delay rounded-upwards to the nearest month and expressed up to 2 decimal points b) 'A' is the amount involved in the delayed reporting c) Maximum LSF amount will be limited to 100% of 'A' and will be rounded upwards to the nearest hundred
Form FC-TRS	To be filed by Indian resident transferor / transferee shareholder, as the case may be, in case of transfer of shares between non-resident shareholder to resident shareholder or between resident shareholder to non-resident shareholder, within 60 days from the receipt of transfer consideration	
Form LLP-1	To be filed by every Indian LLP receiving monetary contribution from any of its non-resident partners within 30 days from the date of receipt of the contribution	
Form ECB-2	To be filed on monthly basis by all Indian entities that have raised ECBs from foreign entities	

Please [Click Here](#) to read Circular no.16 dated 30 September 2022.

Securities Exchange Board of India ('SEBI')



SEBI issues instructions to Credit Rating Agencies (CRAs) undergoing surrender, suspension or cancellation of their registration

CRAs are SEBI-registered entities that provide credit rating facility to various securities of their clients which are either listed or proposed to be listed with SEBI. However, in cases where CRAs undergo surrender, suspension or cancellation of their registration(s) with SEBI, there is always a risk and inconvenience involved for their existing clients with respect to successful migration of their credit ratings from the aforesaid inactive CRAs to another active SEBI registered CRA.

Hence, in order to facilitate this orderly migration of credit ratings for client entities, SEBI vide circular dated 13 October 2022 has laid down following instructions for CRAs whose Certificate of Registration (CoR) is surrendered or suspended or cancelled by SEBI:

Surrender of CoR

- CRA shall disclose prominently on its website the surrender order issued by SEBI;
- CRA shall also communicate the same to all its clients within 15 days from the date of the surrender order;
- CRA shall not take any new clients or fresh mandates
- CRA shall allow its clients to withdraw any assignment given to the CRA without any additional cost to such client
- Facilitate an orderly migration of assignments as desired by clients to other CRA(s) holding registration with SEBI
- Continue to co-operate with SEBI with regard to sharing of information as and when requested

Suspension of CoR

- CRA shall suspend undertaking any activity for which such CoR had been granted;
- CRA shall continue to co-operate with SEBI on matters pertaining to the activities undertaken by it;
- CRA shall make provisions as regards to liability incurred or assumed by it;
- CRA shall take such other actions including providing any records or documents within the time period and in the manner, as may be required under the CRA regulations or as may be directed by SEBI

Cancellation of CoR

- In case of cancellation of CoR, the credit ratings assigned by the said CRA shall be valid till the time client withdraws the assignment and / or migrates the assignment to any other active SEBI registered CRA

Compliance Calendar

Compliance calendar for the month of November 2022

Compliance Due Date	Concerned (Reporting) Period	Compliance Detail	Applicable To
7 th November	FY 2021-22	Income-tax Return (where Transfer Pricing is not applicable)	a) Corporates b) Non corporates (whose accounts are required to be audited) c) Partner of a firm whose accounts are required to be audited
	October 2022	TDC/TCS deposit	Non-Government Deductors
		Equalization Levy deposit	All Deductors
10 th November		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 November		GSTR-1 (Outward supply return)	a) Taxable persons having annual turnover > Rs. 5 crore in FY 2021-22 b) Taxable persons having annual turnover ≤ Rs. 5 crore in FY 2021-22 and not opted for Quarterly Return Monthly Payment (QRMP) Scheme
13 th November		GSTR-6 [Return by input service distributor (ISD)]	Person registered as ISD
		Invoice Furnishing Facility – IFF (Details of outward supplies of goods or services)	Taxable persons having annual turnover ≤ Rs. 5 crore in FY 2021-22 and opted for QRMP scheme
15 th November		Deposit of PF & ESI contribution	All Deductors
	July-Sep 2022	Issue of TDS Certificate (other than salary and payments to Indian tax residents)	
20 th November	October 2022	GSTR-3B (Summary return)	a) Taxable persons having annual turnover > Rs. 5 crore in FY 2021-22 b) Taxable persons having annual turnover ≤ Rs. 5 crore in FY 2021-22 and not opted for QRMP scheme
		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
25 th November		Form GST PMT-06 (payment of tax for QRMP filers)	Taxable persons having annual turnover ≤ Rs. 5 crore in FY 2021-22 and opted for QRMP scheme
29 th November	FY 2021-22	Filing of Annual Return in form MGT-7 with ROC.	All Companies
30 th November		Income-tax Return (where Transfer Pricing is applicable)	All taxpayers subject to Transfer Pricing regulations as per Income-tax Act, 1961
	July-Sep 2022	TDS Return in Form 26Q	TDS Deductors on (non-salary) payments to tax residents in India

About KrayMan

KrayMan Consultants LLP is an Accounting and multi-disciplinary Advisory Firm founded in 2012 by professionals with Big-4 Consulting and Industry experience. Our forte lies in handholding foreign companies establishing presence in India by demystifying the complex Indian regulatory environment making it easy for them to do business in India. Since inception, we have been delivering value to a mix of multinational Clients from across the globe

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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