## TAX EDGE

**Monthly Tax & Regulatory Updates** 











Regulatory

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# India's cumulative COVID-19 vaccination coverage exceeds 2.20 billion doses, over 0.95 billion 2nd dose & 0.22 billion precaution dose vaccines administered

India's COVID-19 vaccination coverage has exceeded 2.20 billion doses. So far, more than 0.95 billion and 0.22 billion vaccines have been administered with the 2<sup>nd</sup> dose and precuation dose respectively.

India's active caseload currently stands at 2,035. Active cases now constitute 0.01% of the country's total positive cases. India's recovery rate stands at 98.8%. Weekly positivity rate stands at 0.09%, daily positivity rate stands at 0.05%.

Please Click Here to read the Press Release dated 17 January 2023.

Ministry of Health & Family Welfare (MOHFW) negates media reports claiming admission of 'multiple side-effects of COVID-19 vaccines' by Indian Council of Medical Research (ICMR) & Central Drugs Standard Control Organization (CDSCO)

A recent media report in The Economic Times has claimed that ICMR and CDSCO have admitted to 'multiple side-effects of COVID-19 vaccines' in response to a Right to Information (RTI) query. It states that ICMR and CDSCO officials have cited a plethora of ramifications arising out of all the COVID vaccines.

MOHFW has clarified that such news report is ill-informed and provides erroneous information. As is the case with all other vaccines, those who get vaccinated with different COVID-19 vaccines may experience mild symptoms like injection site tenderness, pain, headache, fatigue, myalgia, malaise, pyrexia, chills, arthralgia etc. Rarely, few individuals may experience severe adverse events depending upon certain pre-disposing conditions.

Please Click Here to read the detailed Press Release dated 17 January 2023.

# Union Health Minister reviews arrangements for screening & testing of international passengers at Indira Gandhi International Airport, New Delhi

Dr. Mansukh Mandaviya, Union Minister of Health and Family Welfare visited the Indira Gandhi International airport, New Delhi on 2 January 2023 to review arrangements for screening and testing of international passengers in view of the recent spike in cases of COVID-19 in some countries.



Dr Mansukh Mandaviya reviewed the RT-PCR testing mechanism and the Air Suvidha portal which has been started from 1 January 2023. He also visited the Airport Health Organization office (APHO) and interacted with the officials present there. He stated that 'passengers arriving from 6 high-risk countries are now mandatorily required to upload their negative RT-PCR test reports in the Air Suvidha portal within 72 hours of undertaking their journey to India while travellers from other countries are being randomly tested at the airports upon their arrival in India'. He further stated that 'This is being done to ensure that genome sequencing of any positive case is promptly done to understand the strength and behaviour of any new variants'.



Underscoring the challenge posed by the increasing number of COVID-19 cases in some countries across the world such as China, Japan, South Korea, Thailand and United States, Union Health Minister emphasized the importance of being prepared and remaining alert against new and emerging strains of COVID-19. He directed officials to be fully geared up and urged people to follow COVID Appropriate Behaviour and get vaccinated against COVID. He also stated that the Union Government is taking all necessary measures to ensure effective preparation and management of the emerging COVID-19 scenario.

Please Click Here to read the Press Release dated 2 January 2023.

International passengers travelling from China, Hong Kong, Japan, South Korea, Singapore & Thailand to India to undergo mandatory RTPCR tests before departure & upload report on Air Suvidha portal from 1st January 2023 onwards

International passengers travelling from China, Hong Kong, Japan, South Korea, Singapore and Thailand to India are mandatorily required to undergo RTPCR tests before their departure from these countries / destinations and upload the COVID negative RTPCR test report on Air Suvidha portal from 1st January 2023 onwards. The test should have been conducted within 72 hours of undertaking the journey to India.

This requirement is in addition to the random 2% tests of all international passengers in all incoming international flights on their arrival to India irrespective of port of departure. This is being done in view of the evolving COVID19 situation across the world, particularly in the aforesaid countries.

Please Click Here to read the Press Release dated 29 December 2022.



# Union Health Minister reviews status of essential medicines & drugs with pharma companies in view of spike in COVID-19 cases in some countries

Dr. Mansukh Mandaviya, Union Minister of Health and Family Welfare reviewed the status, adequacy of COVID management drugs and production capacities with representatives of pharma companies through video conferencing on 29 December 2022, so that India is equipped to effectively handle any situation. This review meeting was taken in view of the spike in COVID-19 cases in some countries worldwide.

Through a presentation, the Union Minister was briefed regarding the evolving global scenario. He appreciated and congratulated the pharma companies for their invaluable contribution during the COVID pandemic in the country. 'India's pharmaceutical industry is robust, resilient and responsive. It is due to their strength that we could not only meet our down demand during the pandemic, but also be in a position to supply medicines to 150 countries.' This was achieved without any fall in quality and no hike in the price of the medicines, he stressed.



The pharma companies were asked to keep a close watch on the global supply chain scenario. They were also asked to closely monitor production and availability of Active Pharmaceutical Ingredients (APIs) as well as formulations of essential medicines for COVID management. They were asked to ensure adequate stocks and availability of all drugs including COVID drugs in the supply chain up to the retail level. The pharma companies hailed the timely review meeting chaired by the Union Minister and assured their continued support. They expressed confidence that they will be able to manage the supply chain of COVID drugs.

Please Click Here to read the Press Release dated 29 December 2022.

# Goods & Services Tax ('GST')



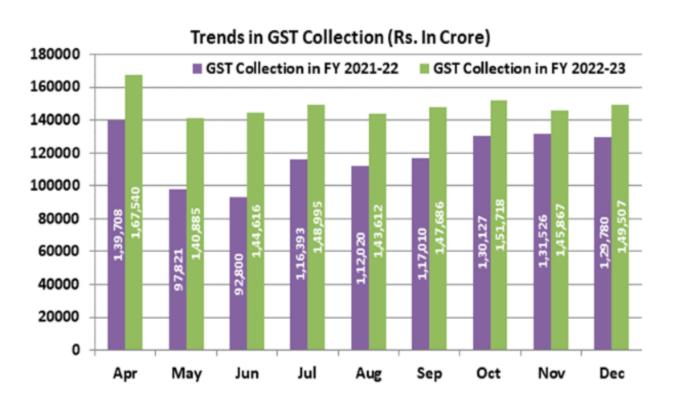


## GST revenue collection for December 2022 Rs. 149,507 Crore (15% higher than GST revenue collection in December 2021)

The gross GST collected in the month of December 2022 is Rs. 149,507 Crore as below:

IGST (Integrated Goods and Services Tax)	Rs. 78,434 Crore
CGST (Central Goods and Services Tax)	Rs. 26,711 Crore
SGST (State Goods and Services Tax)	Rs. 33,357 Crore
Compensation cess	Rs. 11,005 Crore
Total	Rs. 1,49,507 Crore

The revenues for the month of December 2022 are 15% higher than the GST revenues in December 2021. During the month, revenues from import of goods are 8% higher and the revenues from domestic transactions (including import of services) are 18% higher than the revenues from these sources during the same month last year.



Please Click Here to read Press Release dated 1 January 2023.



# Central Board of Indirect Taxes & Customs (CBIC) issues clarifications regarding GST rates & classification of certain goods & services based on recommendations of GST Council in its 48th meeting on 17 December 2022

CBIC has issued the below clarifications on 13 January 2023.

Goods	Issue	Clarification issued
Rab (a kind of suspension of sugar crystals in a mother liquor, after boiling of syrup; produced in a sugar factory)	Whether Rab shall be covered under molasses and classified under heading 1703?	No. It shall be classified under heading 1702 and attract GST @ 18%
By-products of milling of pulses such as chilka, khanda and churi	What will be the applicable GST rate effective from 1 January 2023 onwards?	Exempt from GST
Carbonated beverage of fruit drink / Carbonated beverage with fruit juice	What will be the applicable 6 digit Harmonized System of Nomenclature (HSN) code and GST rate?	HS 2202 99. The goods will attract GST @ 28% along with compensation cess @ 12%
Snack pellets manufactured through process of extrusion (such as fryums)	What will be the classification and GST rate?	Tariff item 1905 90 30. The goods will attract GST @ 18%
Sports Utility Vehicles (SUV) having –  • Engine capacity> 1500cc  • Length > 4000 mm  • Ground clearance ≥ 170mm	What will be the applicable compensation cess rate?	22%
Services	Issue	Clarification issued
Accommodation services supplied by Air Force mess/Army mess/Navy mess to its personnel or any person other than business entity	Whether GST is applicable?	No, provided the services qualify to be considered as services supplied by the Government or any local authority
Incentive paid by Ministry of Electronics and Information Technology (MeitY) to acquiring banks under incentive scheme for promotion of RuPay debit cards and low value BHIM-UPI transactions ≤ Rs. 2,000		No, the incentive is in the nature of subsidy.

Please Click Here to read Circular No. 189/01/2023-GST dated 13 January 2023.

Please Click Here to read Circular No. 190/02/2023-GST dated 13 January 2023.



#### **New functionalities for taxpayers on GST Portal**

Relating to	Form / Functionality	Detailed Information
Registration	Automation of Drop Proceedings for taxpayer suspended upon issuance of show cause notice in Form GST REG-17 (notice for cancellation of registration)	<ul> <li>If a taxpayer who has not opted for Quarterly Return Monthly Payment scheme fails to file GST returns for a continous period of 6 months, or a taxpayer who has opted for Quarterly Return Monthly Payment scheme fails to file GST returns for continous period of 2 quarters or part thereof, a system-generated notice in Form GST REG-17 shall be issued to such taxpayer regarding cancellation of GST registration</li> <li>If such suspended taxpayer files all his pending returns, the cancellation proceedings get automatically dropped on the portal</li> <li>A new functionality has been deployed on the portal effective from 1 December 2022 onwards where the suspended taxpayer can himself initiate the process of drop proceedings after having filed all pending returns by clicking 'Initiate Drop Proceeding' button by navigating Notices/Order after login on portal dashboard</li> </ul>
Return	Re-computation of Interest	GST Portal has the functionality to automatically compute Interest payable on delayed payment of GST in Form GSTR-3B (summary return). Earlier, no functionality was available relating to change in amount of interest by the taxpayer and accordingly taxpayer was bound to pay the system computed interest.  Now, a Re-Compute Interest button has been provided in Table 5.1 of Form GSTR-3B which enables the taxpayer to re-compute interest in case he found any discrepancy in system computed interest. Upon click on 'Re-Compute Interest' button, the system will re-compute the interest and update the system generated Form GSTR-3B  □ □ □ □ □ □ □ □ □ □ □ □ □ □ □ □ □ □ □

Relating to	Form / Functionality	Detailed Information			
Return	Enabling validation at 4 digit HSN declaration in Form GSTR-1 (statement of outward supplies)	w ci m • 'A va re ai	rore has to mandatorily nessage shall be displanted and the sage shall be displanted and the sage of inward supplies everse charge), exempend inter state supplies count Number (PAN)  Preturngst.gov.in/returns/auth/gstrl/hsn/summary  Note:  1. In case there are no suggestions for any HSN	n Aggregate Annual Ty enter minimum 4 diayed if less than 4 diayed if less than 4 diayed if less than 4 diayed aregate value of all tax son which tax is payot supplies, export of of persons having the of persons having the on, to be computed on	Furnover (AATO) ≤ Rs.5 gits of HSN. A warning gits are entered  cable supplies (excluding able by a person under goods or services or both he same Permanent all India basis



Relating to	Form / Functionality	Detailed Information
Return	Implementing sequential filing of Form GSTR-1 and filing of Form GSTR-1 prior to filing of Form GSTR-3B from October 2022 onwards for both monthly and quarterly filers	Filing of Form GSTR-1 has been made sequential. The system would not allow filing of Form GSTR-1 until the GSTR-1 for the previous month / quarter is filed      Further, filing of Form GSTR-1 before filing of Form GSTR-3B has been made mandatory on portal      ← → C
	Validation to check duplicate entries in Form GSTR-2B (statement containing details of input tax credit)  Turnover threshold validation on filing by composition taxpayers	From September 2021 onwards, an option was provided to the taxpayer to fetch the Bill of Entry (BOE) details in Form GSTR-2B in case it was not populated automatically from ICEGATE portal using 'Fetch Bill of Entry' functionality. However, in some cases due to absence of a check in the system the BOE details were getting populated twice in form GSTR-2B  A validation has now been implemented on the portal to ensure that BOE details do not get populated twice in Form GSTR-2B  From Financial Year 2021-22, a validation has been implemented on the portal to ensure that a taxpayer whose aggregate turnover > Rs. 1.5 Crore for goods or Rs. 0.5 crore for goods and services will not be able to file quarterly statement in Form CMP-08 (summary return for composition taxpayers) and annual return in form GSTR-4 (annual return for composition taxpayer). An alert message will be displayed on the taxpayer's dashboard in such cases



Relating to	Form / Functionality	Detailed Information
Refund	Label change in statement 1 of Form RFD 01 (application for refund) for refund on account of input tax credit (ITC) accumulated due to Inverted Duty Structure (IDS)	In terms of Notification No. 14/2022 dated 5 July 2022, the column 'tax payable on such inverted rated supply of goods & services' has been substituted with 'tax payable on such inverted rated supply of goods and services * (Net ITC/ITC availed on inputs & input services)' in statement 1 of form GST RFD-01 filed for refund due to IDS   Refund on account of ITC accumulated due to Inverted Tax Structure  Refund on account of ITC accumulated due to Inverted Tax Structure  Refund on account of ITC accumulated due to Inverted Tax Structure  Important Message  Adjusted Total turnover means the sum total of the value of (a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and (b) the turnover of services specialise; excluding:  (i) the value of exempt supplies other than zero-rated supply of services determined in terms of clause (0) of rule 89(4) of CGST Rules, 2017 and non-zero-rated supply of services, excluding:  (i) the value of exempt supplies other than zero-rated supplies; and (ii) the unrover of supplies in respect of which refund is being claimed:  Computation of Refund to be claimed (Statement 1)  Turnover of inverted rated supply of goods and services * (let ITC / ITC availed on input services and services * (let ITC / ITC availed on input services and services * (let ITC / ITC availed on input services and services * (let ITC / ITC availed on input services and services * (let ITC / ITC availed on input services and services * (let ITC / ITC availed on input services and services * (let ITC / ITC availed on input services and services * (let ITC / ITC availed on input services and services * (let ITC / ITC availed on input services and services * (let ITC / ITC availed on input services and services * (let ITC / ITC availed on input services and services * (let ITC / ITC availed on input services and services * (let ITC / ITC availed on input services and services * (let ITC / ITC availed on input services and services * (let ITC
	Removing the validation of return filing of Form GST CMP 08 and Form GSTR 4	The composition taxpayers were earlier being prevented from applying from refund on account of excess payment of tax in cases where they had defaulted in filing statement in Form GST CMP-08 and/or return in Form GSTR-4. This validation has now been removed
Advance Ruling	Filing application for Advance Ruling by unregistered taxpayer	<ul> <li>Earlier, unregistered taxpayers could only submit the fee towards advance ruling application but were required to file the application through offline mode only</li> <li>Now, a new functionality has been deployed on the portal to allow the unregistered taxpayers to file an application for advance ruling on the portal. They can submit the application by creating a temporary ID on the GST portal</li> </ul>
Enforcement	Miscellaneous enhancements in enforcement module	A functionality has been provided on the portal for taxpayers to file request for adjournment while replying to a notice to summon in enforcement cases. The same can be done by following the below mentioned steps  Login > Services > User Services > View Additional Notices and order > click here (hyperlinked) > Notices folder > select Reply for Notice to Summon

CBIC provides mechanism for (a) Reversal of input tax credit due to non-payment of GST liability by supplier, & (b) Manner of dealing with difference in GST liability reported in Form GSTR-1 (statement of outward supplies) viz-a-viz GSTR-3B (summary return)

CBIC has provided the following mechanism:

Reversal of ITC due to non-payment of GST liability by supplier (new Rule 37A inserted in CGST Rules, 2017)

A taxpayer is required to reverse ITC if the supplier has reported details of supply in Form GSTR-1 but failed to furnish Form GSTR-3B (for any given period) on or before 30 September of the FY succeeding the FY in which the ITC was claimed. Such reversal needs to be made in Form GSTR-3B to be submitted on or before 30 November of the FY succeeding the FY in which the ITC was claimed. In case the reversal is not made, the amount of GST liability shall be paid by the taxpayer along with interest. If the supplier subsequently submits Form GSTR-3B, the taxpayer can re-avail the lost ITC

Manner of dealing with difference in GST liability reported in Form GSTR-1 viz-a-viz GSTR-3B (new Rule 88C inserted in CGST Rules, 2017)

If the GST liability reported by a taxpayer in Form GSTR-1 for any period exceeds the amount of GST liability reported in Form GSTR-3B for the said period, the taxpayer shall be informed electronically through Part-A of Form GST DRC-01B. The taxpayer shall be asked to either explain the reason for difference *or* pay the differential GST liability, within 7 days of receipt of notice. In case the taxpayer decides to deposit the differential GST liability, it shall be required to submit the details of such payment in Part B of Form GST DRC-01B. In case the taxpayer fails to take any action thereof, the GST department shall proceed to recover the liability from it.

Please Click Here to read the Notification no. 26/2022-Central Tax dated 26 December 2022.





Direct tax collection for Financial Year (FY) 2022-23 (upto 10th January 2023) Rs. 14.71 Lakh Crore (approx.), 24.58% higher than gross collection for corresponding period last year

Central Board of Direct Taxes has released the following statistics till 10 January 2023:

Description (for the period 1 April 2022 till 10 January 2023)	Amount / Percent	Remarks
Gross direct tax collection	Rs. 14.71 lakh crore	24.58% higher than gross collection for corresponding period last year
Net direct tax collection (after adjustment of refunds)	Rs. 12.31 lakh crore	<ul> <li>19.55 % higher than net collection for corresponding period last year</li> <li>The collection represents 86.68% of the total direct tax budget estimates for FY 2022-23</li> </ul>
Growth rate of corporate income tax  • Gross	19.72 %	-
Net (after adjustment of refunds)	18.33 %	
Growth rate of personal income tax (including securities transaction tax)  • Gross	30.46 %	-
Net (after adjustment of refunds)	20.97 %	
Refunds issued	Rs. 2.40 lakh crore	58.74% higher than refunds issued during corresponding period last year

Please Click Here to read Press Release dated 11 January 2023.

Capital gains exemption u/s 54 to 54GB of the Income-tax Act, 1961 – Central Board of Direct Taxes (CBDT) further extends timeline for action / compliance by taxpayer (such as investment, deposit, payment, acquisition, purchase, construction etc.) till 31 March 2023

Due to the global struggle with pandemic situation in 2021, CBDT had provided various relaxations in timelines for direct tax compliances. One of such relaxations was extension of timeline for certain actions / compliances by taxpayers which made them eligible for capital gains exemptions u/s 54 to 54GB of the Income-tax Act. The said relaxation was provided by CBDT vide Circular no. 12 dated 25 June 2021.

Now, vide Circular no. 1 dated 6 January 2023, CBDT has further extended the above relaxation in timeline as per table below.

Capital gains exemption	Relaxation by CBDT vide	Relaxation by CBDT vide
u/s 54 to 54GB of the	Circular no.12 dated 25	Circular no.1 dated 6 January
Income-tax Act, 1961	June 2021	2023
Action / compliance to be made by taxpayer which entitles it for the tax exemption (such as investment, deposit, payment, acquisition, purchase, construction etc.)	The due date for action / compliance was extended till 30 September 2021  (flatly for all actions / compliances for which last date fell within 1 April 2021 to 29 September 2021, both days inclusive)	The due date for action / compliance has been extended till 31 March 2023  (flatly for all actions / compliances for which last date fell within 1 April 2021 to 28 February 2022, both days inclusive)

Though it is a welcome move by CBDT, there could be certain misalignment due to the fact that the due date of filing Income-tax return for FY 2021-22 has already lapsed. CBDT might like to consider the same and offer some kind of relief to taxpayers in terms of reporting, so that they can take benefit of the extended timeline as per above.

Please Click Here to read Circular no. 1 dated 6 January 2023.

Statement of Financial Transaction (SFT) u/s 285BA of Incometax Act – Reporting by banks / non-banking finance companies (NBFC) of interest income during the year – CBDT abolishes limit of Rs.5,000 prescribed in April 2021

#### **Background**

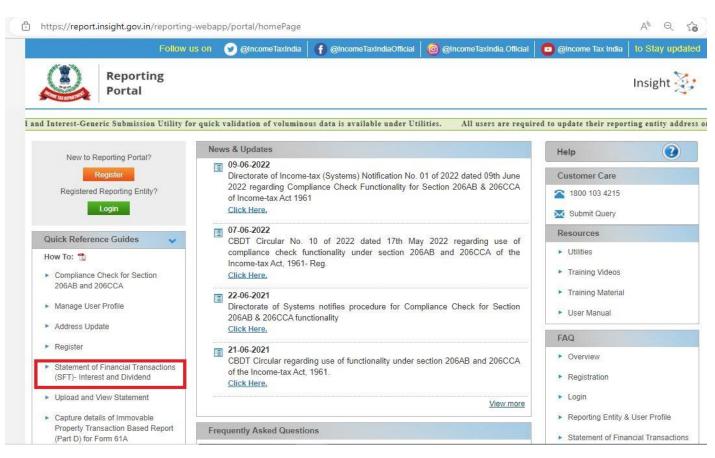
The Income-tax Act requires certain categories of persons (such as government agencies, banks, etc.) to submit an annual SFT to tax authorities containing certain financial transactions undertaken during the year. This reporting is as a valuable source of information for the tax authority for widening the tax base, prefilling of return of income and detection of revenue leakage.

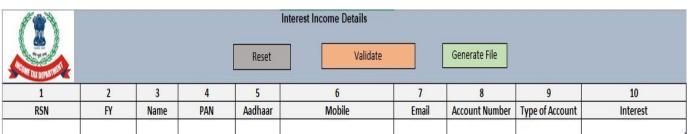
In the past, CBDT had notified some additional categories of persons who are required to submit SFT annually with the tax authorities (by 31 May of every year). By virtue of Notification no. 2 dated 20 April 2021 issued by CBDT, every banking company / NBFC was required to furnish information relating to *interest income* in its SFT. The following remarks were mentioned in the said notification.

- (a) The information is to be reported for all account / deposit holders where cumulative interest > Rs. 5,000 per person in the FY
- (b) Tax-exempt interest (such as interest on public provident fund account, foreign currency non-resident account, etc.) need not be reported.
- (c) While reporting the interest amount, tax-deduction of Rs. 10,000 available u/s 80TTA should not be reduced from interest paid / credited
- (d) In case of joint account, interest paid / credited should be assigned to the 1<sup>st</sup> / primary account holder
- (e) In case of minor being the account holder, the information to be reported in the name of legal guardian
- (f) Separate report required to be submitted for each account type (i.e. S savings, T time deposit, R recurring deposit, O others). Interest on same account type is required to be aggregated in the report
- (g) Interest will be the total amount of interest paid / credited during the FY

#### Notification no. 1 dated 5 January 2023 issued by CBDT

CBDT has abolished the limit of Rs. 5,000 mentioned in (a) above, with effect from 5 January 2023 onwards. The revised remark reads as 'the information is to be reported for all account / deposit holders where any interest exceeds 0% in the FY excluding Jan Dhan accounts.'





Please Click Here to read Notification no. 1 dated 5 January 2023.



# Section 269ST of the Income-tax Act prohibiting receipt of Rs. 2 Lakh or more other than through banking channel – CBDT clarifies applicability on dealership / distributorship contract in case of co-operative societies

Section 269ST of the Income-tax Act prohibits any person from receiving an amount of Rs. 2 lakh or more:

- (a) in aggregate from a person in a day; or
- (b) in respect of a single transaction; or
- (c) in respect of transactions relating to 1 event or occasion from a person, otherwise than by way of banking channel.

Reportedly, references have been received by the Government in respect of Milk Producers' Cooperative as to whether u/s 269ST, receipt(s) in cash in a day of bank holiday / closure of bank day within Rs. 2 lakh from a distributor against sale of milk, when payments were through bank on all other days, is to be considered as a single transaction or whether all such receipts in cash in a year would be aggregated in respect of transactions with a distributor to treat it as one single event or occasion for the purpose of (c) above.

CBDT has clarified that in respect of co-operative societies, a dealership / distributorship contract by itself may not constitute an event or occasion for the purposes of (c) above. Receipt related to such a dealership / distributorship contract by the co-operative society on any day in a year, which is within Rs. 2 lakh and complies with (a) and (b) above, may not be aggregated across multiple days for purposes of (c) above.

Please Click Here to read Circular No. 25 dated 30 December 2022.

# Leave Travel Allowance (LTA) - Supreme Court's (SC's) decision (in case of State Bank of India) denying tax exemption if employees undertake domestic travel with a foreign leg

#### What is Leave Travel Allowance (LTA)?

LTA or concession, as the name suggests, is a tax exemption on allowance received by an employee from his employer for travel expenses. LTA forms part of the cost to company and is taxable under the head 'Salary' in the hands of employees. However, tax-exemption can be claimed u/s 10(5) of the Income Tax Act, 1961 upon fulfilment of certain conditions as below:

- Travel should be to any place in India
- Receipt should be from employer / former employer
- The amount entitled for tax-exemption shall be restricted to the expenses actually incurred for the purpose of travel

As per the withholding tax provisions of India, it is the employer's responsibility to estimate the correct taxable of its employees during the coming year and hence, the prime facie responsibility to correctly determine the entitlement and amount of tax exemption also lies with the employer.

#### SC's decision dated 4 November 2022

In the decision of State Bank of India (SBI), the employees had done travel not just within India but their journey involved a foreign leg as well (such as Delhi- Madurai- Columbo - Kuala Lampur-Singapore- Columbo- Delhi). The employee's claim for LTA was fully reimbursed by SBI without deduction of tax at source u/s 192(1) of the Income-tax Act.

Accordingly, the question before SC was, whether SBI should be treated as defaulter or not within the meaning of section 201(1) of the Act for not deducting tax at source while releasing payments to its employees as LTA. The Income-tax department, Tribunal as well as High Court had decided the matter against SBI.

The SC upheld the decision of lower courts and also decided the matter against SBI. While pronouncing its decision, SC observed the following:

- For entitlement of tax exemption, the travel must be done from 1 designated place in India to another designated place within India. In other words, LTA is not allowed for a foreign travel. Further, LTA is given for the shortest route between the 2 places.
- The employees of SBI had done their travel not just within India but their journey involved a
  foreign leg as well. It was also not the shortest route. Hence, the bank should have deducted
  tax at source, while making the payment
- Contention of the taxpayer that there is no specific bar u/s 10(5) for a foreign travel and therefore a foreign journey can be availed as long as the starting and destination points remain within India, is without merits. The moment employees undertake travel with a foreign leg, it is not a travel within India and hence not covered u/s 10(5) of the Act
- A foreign travel also frustrates the basic purpose of LTA. The basic objective of the LTA scheme was to familiarize a civil servant or Government employee to gain some perspective of Indian culture by traveling in this vast country. It is for this reason that the 6<sup>th</sup> Pay Commission rejected the demand of paying cash compensation in lieu of LTA and also rejected the demand of foreign travel
- SBI cannot claim ignorance about the travel plans of its employees. During settlement of LTA bills, the complete facts were available before SBI about the details of its employees' travels

Please Click Here to read the complete ruling dated 4 November 2022 pronounced by SC.

## **International Tax**





### **International Tax**

## Australia – India Economic Cooperation & Trade Agreement enters into force from 29 December 2022 onwards

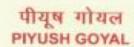
The Australia – India Economic Cooperation and Trade Agreement was signed between the 2 nations (India and Australia) on 2 April 2022. It was ratified on 21 November 2022 and has come into force with effect from 29 December 2022 onwards.

Amongst others, the Agreement ensures that payments or credits paid to Indian residents by Australian customers for technical services provided are not subject to tax in Australia, for FYs which will start after 29 December 2022 i.e. 2023-24 onwards. Earlier, these payments were considered to be taxable in Australia as Australian sourced income by virtue of Article 23 of Australia-India double taxation avoidance agreement, following the decision in Tech Mahindra Ltd vs. Commissioner of Taxation (2016) FCAFC 130.

The amendment is a welcome move, likely to result in elimination of double taxation on IT services giving India more competitive edge by creating more job opportunities.



### **International Tax**





वाणिज्य एवं उद्योग, उपमोक्ता गामले, खाद्य और सार्वजनिक वितरण तथा यस्त्र मंत्री, मारत सरकार MINISTER OF COMMERCE & INDUSTRY, CONSUMER AFFAIRS, FOOD & PUBLIC DISTRIBUTION AND TEXTILES, GOVERNMENT OF INDIA

02 April, 2022

H.E. Dan Tehan Minister for Trade, Tourism and Investment of Australia Government of Australia

Excellency,

In connection with the signing of the India-Australia Economic Cooperation and Trade Agreement ("the Agreement") between the Government of Australia and the Government of the Republic of India ("the Parties"), and your letter dated 02 April 2022, which reads:

"In connection with the signing of the Australia-India Economic Cooperation and Trade Agreement ("the Agreement"), I have the honour to confirm the following understandings reached between the Government of Australia and the Government of the Republic of India ("the Parties"):

- The Government of Australia has agreed to amend Australian domestic taxation law to stop the taxation of offshore income of Indian firms providing technical services to Australia. This would resolve the issue that the Indian Government has raised about the Double Taxation Avoidance Agreement between the Government of the Republic of India and the Government of Australia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, done at Canberra on 25 July 1991.
- Australia will implement the amendments to its taxation legislation referred to in paragraph 1 in a similar time period as the Agreement.

I have the honour to propose that this letter and your letter in reply confirming that your Government shares these understandings, which will come into effect on the date on which the Agreement enters into force, shall constitute an integral part of the Agreement."

I have the honour to confirm that my Government shares these understandings, which shall constitute an integral part of the Agreement.

Sincerely yours.

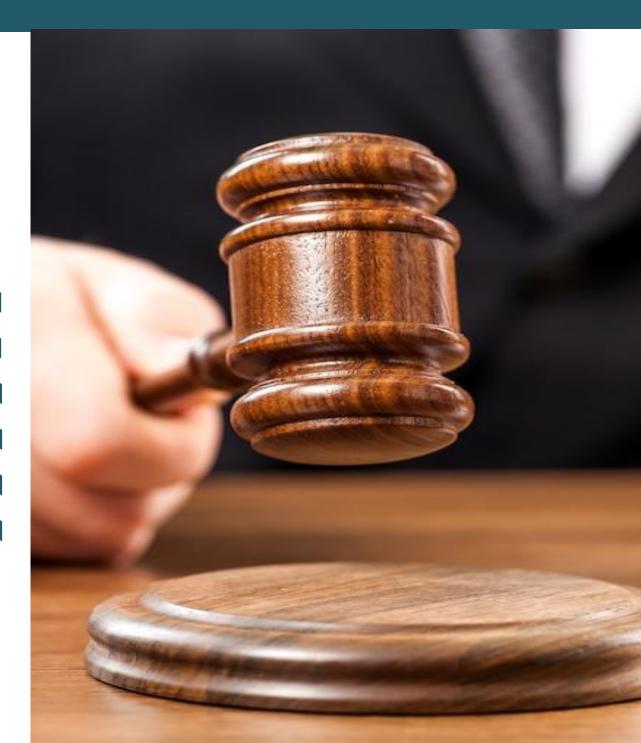
Piyush Goyal

Minister of Commerce and Industry

Government of India

Please Click Here to read the press release dated 29 December 2022.

Please <u>Click Here</u> to read official text of the Agreement.





Requirement to intimate grounds for disqualification of directorship to Registrar of Companies (RoC) in Form DIR-8 – Ministry of Corporate Affairs (MCA) expands requirement for disclosure to include grounds of disqualification u/s 164(1) of Companies Act, 2013

Section 164 of the Companies Act, 2013 provides various grounds for disqualification of directors in a company as below:

#### Grounds for disqualification u/s 164(1) (related to individual)

- Director is
  - ✓ declared by court to be of unsound mind, or
  - ✓ an undischarged insolvent, or
  - convicted by court for any offence involving moral turpitude and has been imprisoned for the said offence for more than 6 months, or
  - ✓ convicted of any offence with respect to related party transactions u/s 188 of Companies
    Act during last 5 years, or
  - ✓ holding directorships in more than 20 companies at the same time
- · A court order is in force disqualifying the individual to be appointed as director in a company
- Non-payment of share application money due on the shares held by a director for more than 6
  months from the due date for payment
- Director fails to obtain Director Identification No. (DIN) as per the Companies Act

#### <u>Grounds for disqualification u/s 164(2)</u> (related to company in which the individual is a director)

If the individual is a director in a company that has defaulted in:

- Filing its financial statements / annual returns for 3 continuous FYs
- Repayment of deposits and debentures (including interest thereon) continuously for more than a
  year
- · Payment of declared dividend to shareholders continuously for more than a year

Earlier, if an individual at the time of his / her appointment (or reappointment) as director in a company would be disqualified u/s 164(2) of the Companies Act, 2013, he / she had to intimate the same to the company in Form DIR-8, at the beginning of each FY.

MCA vide notification dated 20 January 2023 has now included *section 164(1)* as well within the above requirement for intimation to the company. Form DIR-8 has been suitably amended to incorporate the said disclosure requirement.

Once the company receives the intimation / disclosure from the director in Form DIR-8, the company shall report the same to RoC in e-Form DIR-9 within 30 days from the date of receiving such intimation from the director.

	Form DIR - 8		
	Intimation by Directo	ŕ	
Pursuant to Section 164(1) or 164	(2) and rule 14(1) of the Companies (Appoint	ment and Qualification of Directors) Rules	, 2014]
Registration No. of Company			
Nominal Capital Rs.	_		
aid-up Capital Rs.	<del></del>		
lame of Company	20 20 20		
ddress of its Registered Office			
o			
he Board of Directors of			
son/ daughter/ wit	fe ofresident of	director/ managing director/	manager
ne company hereby give notice th	at I am / was a director in the following comp	panies during the last three years: -	
Name of the Company	Date of Appointment	Date of Cessation	
2			
further confirm that I have not inc	curred disqualification under section 164(1) of	or section 164(2) of the Companies Act, 20	13 in any
	ous financial year, and that I, at present, stan		
	or		
further confirm that I have incurre	ed disqualification -		
	ne following ground(s) in the previous financi	al year or	
(M) diliber section 204(2) on th	ie ronownik Broanafs) in are previous initialie.		
<ul><li>(B) under section 164(2) of the present stand disqualified</li></ul>	ne Companies Act, 2013 in the following cor from being a director :	npany(s) in the previous financial year, ar	nd that I, a
	Date of Appointment	Date of Cessation	
Name of the Company	pare or reproductions		
Name of the Company	base of appearment		
103	pare or appointment		

# Issue of bonus shares – No requirement to annex shareholders' approval with e-Form PAS-3 (return of allotment of shares) to be submitted with RoC

#### What are bonus shares?

Bonus shares are additional shares issued by a company to its existing shareholders. Bonus shares are issued by a company when it is not able to pay dividend to its shareholders due to shortage of funds. In such a situation, the company issues bonus shares to its shareholders instead of paying dividend.

#### Requirement to annex shareholders' approval with e-Form PAS-3 done away with

Currently, Rule 12(6) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 requires mandatorily to annex shareholders' approval with e-Form PAS-3 to be submitted with RoC for issue of bonus shares.

MCA vide notification dated 20 January 2023 has dispensed the above requirement. Rule 12(6) has been omitted.

Please Click Here to read the Notification dated 20 January 2023.

# Conversion of Partnership firm / Limited Liability Partnership (LLP) / Registered Societies / Trusts into Company – MCA relaxes procedural compliances

Section 366 of the Companies Act, 2013 read with Companies (Authorized to Register) Rules, 2014 deal with conversion of:

- · Partnership firms / Limited Liability Partnership (LLPs) into Company; and
- Registered Societies / Trusts into (not-for-profit) Section 8 company

Pursuant to Rule 3 of the above rules, every Partnership firm / LLP / Registered Society or Trust proposing to convert into a company as above, is required to apply to RoC in e-Form URC-1 along with the prescribed documents.

#### Notification dated 19 January 2023 issued by MCA

MCA has notified below changes in the documents / information to be submitted with RoC in e-Form URC-1.

	Conversion of:				
	Partnership firm / LL	P into Company	Registered Societies / Trusts into any (not-for-profit) Section 8 compan		
Parameters	Existing requirement	Amendment	Existing requirement	Amendment	
Requirement to obtain No-Objection Certificate (NOC) from secured creditors and charge- holders	The Partnership firm / LLP is required to obtain NOC only from secured creditors	In addition to secured creditors, NOC needs to be obtained from charge-holders as well	The Society / Trust is required to obtain NOC only from secured creditors	In addition to secured creditors, NOC needs to be obtained from charge-holders as well	
Requirement to obtain written consent from majority of partners / members	The Partnership firm / LLP is required to obtain written consent from majority of partners	requirement has been done away with	The Society / Trust is required to obtain written consent from majority of members	The requirement has been done away with	
Requirement to obtain undertaking for payment of applicable stamp duty	An undertaking is required to be obtained from the proposed directors that they will comply with the applicable provisions for payment of stamp duty		An undertaking is required to be obtained from the proposed directors that they will comply with the applicable provisions for payment of stamp duty		
<ul> <li>Details regarding objects of Section 8 company, and</li> <li>Declaration regarding fulfillment of restrictions applicable on Section 8 company as per Companies Act</li> </ul>	-		The requirement exists		

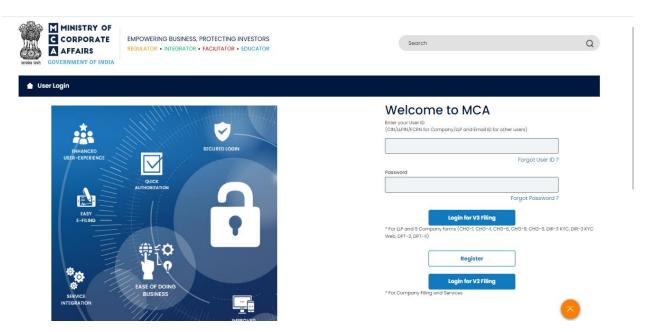
Please Click Here to read the Notification dated 19 January 2023.

# Waiver of late filing fee on 45 e-Forms (due for filing between 7 January to 22 January 2023) rolled by MCA on its Version 3 (V3) online portal

Background (launch of 1st phase of company e-forms in July 2022)

Initially, all e-forms were filed on the Version 2 (V2) online portal of MCA. To provide industry with better online filing experience, MCA had launched a separate V3 online portal in July 2022. The 1<sup>st</sup> set (phase) of company e-forms on V3 portal were launched from 31 August 2022 onwards, as below.

- DIR3-KYC Web and DIR3-KYC (director KYC related forms)
- DPT-3 and DPT-4 (return of deposits), and
- CHG-1, CHG-4, CHG-6, CHG-8 and CHG-9 (creation of charge, modification and satisfaction related forms)



#### Launch of 2<sup>nd</sup> set of company e-Forms

MCA vide notice dated 23 December 2022 notified the launch of 2<sup>nd</sup> set of company e-forms on V3 online portal. The 2<sup>nd</sup> set rolled out in 2 phases from 9 January 2023 and 23 January 2023 onwards. The list of e-forms, 10 in nos. rolled out from 9 January 2023 and 45 in nos. rolled out from 23 January 2023 onwards, can be viewed by clicking here.

#### Circular no. 1 released by MCA on 9 January 2023

With respect to the 45 e-forms rolled from 23 January 2023 onwards, MCA vide circular dated 9 January 2023 has clarified the below:

- The said e-forms will be unavailable for filing on V2 online portal of MCA from 7 January 2023 till 22 January 2023, and
- Waiver of late filing fee (for upto 15 days) for the said e-forms where the due date for filing any of these forms falls between 7 January 2023 till 22 January 2023

Please Click Here to read Circular no. 1 dated 9 January 2023.

MCA allows filing of e-Forms GNL-2 (filing of prospectus related documents) & MGT-14 (filing of resolutions for prospectus related documents) in physical mode during 7 January till 22 January 2023, due to non-availability of said forms on online portal on account of migration from V2 to V3

Due to the migration of MCA's online portal from V2 to V3, many e-forms are not available for filing on the MCA portal, including e-Forms GNL-2 and MGT-14. Since both the said forms are required to be filed on frequent basis due to time bound activities, MCA vide circular dated 9 January 2023 has allowed filing of said forms in physical mode during 7 January till 22 January 2023.

The procedure to be followed for physical filing is given below.

- Company shall take print outs of e-Forms GNL-2 and MGT-14, fill all the details manually and obtain physical signatures of the directors / key managerial persons (KMPs) on the hard copy
- Deliver the forms physically to the office of RoC as well as e-mail it to the official e-mail address
  of the RoC. The company shall submit a written undertaking to the RoC that once the e-forms
  are enabled for filing on MCA's portal, the company shall do so electronically along with
  applicable filing fee (no late fee shall be levied for the period during which the filing was
  disabled, as clarified vide Circular no.1 dated 9 January 2023)
- At the time of physical delivery, the company must obtain acknowledgement from RoC in the below format

Acknowle	edgement
----------	----------

No:				
	Office of the	he Registrar of Co	mpanies,	
		espect of (Name of	company) along	es the receipt of (i) GNL-2 (ii) gwith the relevant undertaking
SN	Particulars of Forms	Event date	Filing date (During 07.01.2023 to 22.01.2023 both days are inclusive)	Brief Details of the filing
1.	GNL-2* (filing of prospectus related documents)			
2.	MGT-14* (filing of Resolutions relating to prospectus related	-N		

Note: Strike off whichever is not ap	oplicable.
--------------------------------------	------------

Place:

documents)

Date:

Registrar of Companies

State

Please Click Here to read the Circular dated 9 January 2023.

# Reserve Bank of India ('RBI')







## Prior approval required from RBI in case of acquisition of 5% or more shareholding / voting rights in a banking company

RBI vide notification dated 16 January 2023 has laid down 'Acquisition and Holding of Shares or Voting Rights in Banking Companies, Directions, 2023' with the following objective:

- To ensure that the ultimate ownership and control of banking companies are well diversified;
   and
- The major shareholders of banking companies fulfil the eligibility criteria prescribed by RBI on continuous basis

Pursuant to the above directions, in case any individual / legal entity seeks to acquire 5% or more shareholding / voting rights in a banking company, the proposed acquirer shall be required to obtain prior approval from RBI.

Subsequent to the acquisition, if at any point of time, the aggregate shareholding / voting rights of the shareholder falls below 5%, then it will be required to again obtain a fresh prior approval from RBI in case it intends to increase his shareholding / voting rights to 5% or more.

The procedure to obtain prior approval from RBI is given below.

- The applicant shall apply to RBI for prior approval in the prescribed Form A supported by a declaration
- On receipt of the application, RBI may seek comments from the banking company on the proposed acquisition
- The banking company shall furnish its comments along with copy of the board resolution and information in the prescribed Form <u>A1</u> to RBI within 30 days from the date of receiving comments from RBI
- Thereafter, RBI shall undertake due diligence to assess the eligibility criteria of the applicant.
   RBI may seek additional information / documents from the applicant / banking company and make such enquiries with regulators, revenue authorities, investigation agencies, credit rating agencies or any other person it considers appropriate
- Once satisfied, RBI may grant approval to the applicant for acquiring 5% or more shareholding / voting rights in the banking company, subject to such terms and conditions which RBI may consider necessary

Please Click Here to read the Notification dated 16 January 2023.

#### RBI notifies auto-acknowledgement of forms filed on Foreign **Investment Reporting & Management System (FIRMS) portal** of RBI along with online system generated late submission fee

#### **Background**

RBI with the objective of integrating the reporting structures of various types of foreign investment in India, launched a separate online portal 'FIRMS' in 2018. On the FIRMS portal, various foreign investment related forms (some of them mentioned below), are filed as web-based Single Master Form (SMF).

- Form FC-GPR (reporting of receipt of funds against foreign investment)
- Form FC-TRS (reporting of transfer of shares in company between non-resident shareholder and resident shareholder)
- · Form LLP-I (reporting of receipt of contribution from foreign partners in Limited Liability Partnership)
- · Form LLP-II (reporting of transfer of contribution in LLP between non-resident partner and resident partner)

Any delay in filing of the above form(s) attracts late submission fee levied by RBI.

#### Processing of forms on FIRMS portal and computation of late submission fee

To address the issues encountered in previous regime of FIRMS portal, RBI vide notification dated 4 January 2023 has modified the procedure for processing of forms filed on FIRMS portal, and

computation of late submission fee as below.





Particulars	Previous regime	New regime
Processing of Forms	Forms filed on the FIRMS portal of RBI were processed on approval basis by Authorized Dealer (AD) banks and in case of delayed reporting by RBI. The process usually took 1-2 weeks (approx.) and during that time, all subsequent filing of forms were put on hold as FIRMS portal allowed filing of a single form at a point of time  Once the form was approved by the AD bank / RBI, only then the subsequent forms could be filed on the FIRMS portal. This caused inconvenience to the stakeholders having multiple forms in the queue	Forms filed on FIRMS portal will be auto-acknowledged with a time stamp. An auto-generated e-mail will be sent to the applicant company. This will enable the applicant company to file multiple forms on the FIRMS portal simultaneously.  AD banks shall verify the forms filed within 5 working days based on the uploaded documents.  FIRMS portal would identify the delay in reporting, if any. Forms filed with a delay of up to 3 years, will be approved by the AD banks subject to payment of late submission fee.  Forms filed with a delay of more than 3 years, will be approved by the AD banks subject to compounding of contravention. The applicant company may thereafter approach RBI with their application for compounding.
Computation and payment of late submission fee	Delayed reporting of forms on the FIRMS portal, attracts late submission fee. The late submission fee was computed and levied by RBI through offline mode and had to be paid by the defaulting company via physical modes such as submission of demand draft to the office of RBI. Hence, there was no online mode of computation or payment of late submission fee levied by RBI on delayed reporting.	Late submission fee will be computed online by the FIRMS portal. An e-mail will be sent to the applicant company and the concerned regional office of RBI specifying the amount and the timeline within which late submission fee is to be paid to the concerned regional office of RBI. Once the late submission fee payment is received by RBI, the concerned regional office will update the status in the FIRMS portal. The updated status will be communicated to the applicant company through a system generated e-mail, which can also be viewed on the FIRMS portal.



# Securities Exchange Board of India ('SEBI')



#### **SEBI**

# Relaxation up to 30 September 2023 from the requirement of sending physical copy of annual reports to the shareholders of listed companies

Pursuant to regulation 36(1)(b) of SEBI Listing Obligations and Disclosure Requirements (LODR), every listed company is required to send physical copies of its annual reports to all the shareholders who have not registered their email addresses with the company.

Considering the representations received from listed companies seeking dispensation from the said requirement, SEBI vide circular dated 13 May 2022 had provided the said relaxation to all the listed companies till *31 December 2022*. Now, vide circular dated 5 January 2023, SEBI has once again extended the said relaxation till *30 September 2023*.

Listed companies are required to ensure compliance with the following.

- Listed companies are required to send physical copy of full annual report to those shareholders who request for the same
- Notice of the Annual General Meeting (AGM) of the shareholders published by advertisement in terms of regulation 47 of SEBI LODR regulations, shall contain a link to the annual report, so as to enable shareholders to have access to the full annual report

Please Click Here to read the Circular dated 5 January 2023.





# Introduction of 'Investor Risk Reduction Access' (IRRA) platform in case of disruption of trading services provided by trading members to investors

In recent times, with increasing dependence on technology in securities market, there is a rise in instances of glitches in trading members' systems, some of which lead to disruption of trading services and investor complaints. In such instances, investors are at risk of non-availability of options to close their trading, particularly if markets are volatile. To address this issue, SEBI had extensive consultations with stock exchanges, clearing corporations and trading members.

Vide circular dated 30 December 2022, SEBI has notified that trading members shall provide IRRA service to its investors, giving them an opportunity to square off / close their trading and / or cancel pending orders in case of disruption of trading services. IRRA shall be developed by the stock exchanges and will support multiple segments across multiple exchanges.

The working mechanism of the IRRA platform is given below.

- Trading members upon facing technical glitches which lead to disruption of trading services, may request the stock exchange for enablement of the IRRA services. IRRA shall be enabled by the stock exchange on receipt of such requests
- Once the IRRA service is enabled, investors will be informed by the stock exchange of the availability of such service through email / sms along with a public notice on stock exchange and trading member's website
- Investors may login to the IRRA service using either their Unique Client Code (UCC) or PAN which shall be further authorized by a one-time password (OTP) sent to their registered mobile numbers and e-mail ids
- Once successfully authorized, the investors may:
  - √ Square off / close the open positions across segments and stock Exchanges; and / or
  - ✓ Cancel the orders across segments which are pending at the stock exchange(s)
- IRRA service shall not permit any action that increases the risk of the investor
- Trading member shall continue to be responsible for all the activities on the IRRA platform with respect
  to all obligations including settlement and margin requirements
- Stock exchanges shall ensure that credible and periodic testing of the IRRA platform is carried out from time to time for smooth functioning of the service;

Stock exchanges and clearing corporations shall put in place appropriate systems to ensure compliance of the aforesaid provisions on or before 1 October 2023.

Please Click Here to read the Circular dated 30 December 2022.

## Compliance Calendar

#### Compliance calendar for the month of February 2023

Compliance Due Date	Concerned (Reporting) Period	Compliance Detail	Applicable To
7 <sup>th</sup> February	January 2023	TDC/TCS deposit	Non-Government Deductors
		Equalization Levy deposit	All Deductors
10 <sup>th</sup> February		a) GSTR-7 (TDS return under GST)	a) Person required to deduct TDS under GST
		b) GSTR-8 (TCS return under GST)	b) Person required to collect TCS under GST
11 <sup>th</sup> February		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 <sup>th</sup> February		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 <sup>th</sup> February		Deposit of PF & ESI contribution	All Deductors
	Oct-Dec 2022	Issue of TDS Certificate (other than salary)	
20 <sup>th</sup> February	January 2023	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).	a) Non-resident taxable person
		b) GSTR-5A [Online Information Database Access and Retrieval (OIDAR) services return]	b) OIDAR services provider
25 <sup>th</sup> February		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

## 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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