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# THE NEWSLETTER

*Knowlegde with an edge*



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***In the case of ITO vs. Rajeev Suresh Ghai, ITAT Mumbai has held that***

Unexplained investments by Non-resident as On money cannot be taxed under section 69 of the Act-DTAA India - UAE. [S. 132(4), Art. 22]. Where the assessee is a non-resident Indian, the assessee had paid cash amounts, as 'on money' to certain Builders in India. This amount was treated as an "unexplained investment" under section 69 of the Act.

It was held that as per Article 22 of DTAA between India and UAE, as the unexplained investments are not made out of incomes generated in India, they have to be taxed in the Resident jurisdiction. Order of CIT(A) deleting the addition was affirmed.

<https://itatonline.org>

***TDS credit to be given to Employee even when Employer has deducted but not paid the tax***

In the case of Kartik Sonavane Vs DCIT Circle-8, Gauhati High Court has held that an employee is entitled to get credit for the TDS deducted on salary even when the employer has defaulted in the payment of the TDS so deducted.

The Gauhati High Court in this case was considering the case of an employee of the defunct airline Kingfisher airlines which had deducted tds of Rs 7.20 lacs and Rs 8.70 lacs for AY 2009-10 and AY 2011-12 respectively and the same having not been deposited by the employer, the department initiated recovery proceedings against the employee. The department while opposing the Writ petition inter alia contended that the Appellant having not pleaded Kingfisher Airlines as a respondent, the petition should be rejected. It was also contended that the system does not allow the credit without the necessary deposit of the TDS by the employer. The court however relying on Gauhati High Court's earlier decision in the case of Omprakash Gattani and the provisions of Section 205 which clearly provides that an assessee shall not be called upon to pay himself to the extent to which tax has been deducted from that income, allowed the Writ and directed the department to allow the credit for the TDS and start recovery proceedings if any against the Kingfisher airlines.

<https://itatonline.org>

***Hon. Apex Court turns down Govt's plea to Transfer Cases relating to S. 148 Notices Issued After 31st March 2021 pending before various HC's to Itself***

The Hon. Supreme Court has turned down the government's plea to transfer cases relating to Section 148 notices issued after 31st March 2021 issued by the income tax department pending before various Hon. High Court to the Supreme Court.

The three judge bench of Chief Justice NV Ramana, Justice Surya Kant and Justice Hima Kohli said "Is it a matter of convenience for the Union government to bring all matters to the Supreme Court? You want all the cases to come here and, in the process, you ensure no other court can proceed. Aren't the high courts also constitutional courts?"

The Learned additional solicitor general (ASG) Balbir Singh appearing for the Central Board of Direct Taxes (CBDT), had requested the Supreme Court to transfer to itself several hundreds of petitions pending before the high courts of Bombay and Calcutta on the validity of notices issued to several entities under the old provisions of Section 148 of the Income Tax Act, 1961.

The ASG emphasised there are more than one lakh notices issued under Section 148 of the old Act. Mr. Singh submitted that the high courts have stayed the revenue department's notices in all these cases and that an authoritative ruling by the top court could help the situation since different high courts may end up laying down different judgments.

"You withdraw this and seek your remedies before the high court. We will not entertain it here. We will rather have the advantage of the high court judgment," said the bench, compelling the ASG to withdraw the transfer petition.

<https://itatonline.org>

**Amendment in Form  
GST DRC-03**

Form GST DRC-03 is a voluntary tax payment form in which a taxpayer can pay the GST by raising its liability voluntarily or in response to the show-cause notice (SCN). Following amendments are made in Form DRC-03:

- In the heading, after the words 'or statement', the words, letters and figures 'or intimation of tax ascertained through FORM DRC-01A' has been inserted
- Against item 3, in column (3), for the word and letters "Audit, investigation, voluntary, SCN, annual return, reconciliation statement, others (specify)", the words, letters, figures and brackets "Audit, inspection or investigation, voluntary, SCN, annual return, reconciliation statement, scrutiny, intimation of tax ascertained through FORM GST DRC- 01A, Mismatch (Form GSTR-1 and Form GSTR-3B), Mismatch (Form GSTR-2B and GSTR-3B ), others (specify)" has been substituted
- Against item 5, in column (1), after the word and figures "within 30 days of its issue", the words, letters, figures and brackets " , scrutiny, intimation of tax ascertained through Form GST DRC-01A, audit, inspection or investigation, others (specify)" has been inserted
- Fee column has been added under Table 7

[Notification No.37/2021 – Central Tax dated December 1, 2021]

**Clarification in respect  
of applicability of  
Dynamic Quick  
Response (QR) Code on  
B2C invoices in case of  
recipient located  
outside India**

It has been clarified that, wherever an invoice is issued to a recipient located outside India, for supply of services, for which the place of supply is in India, as per the provisions of IGST Act 2017, and the payment is received by the supplier, in convertible foreign exchange or in Indian Rupees wherever permitted by the RBI, such invoice may be issued without having a Dynamic QR Code, as such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier.

[Circular No.165/21/2021 –GST dated November 17, 2021]

**Clarification on certain  
GST refund related  
issues**

The Central Board has provided following clarifications related to GST Refund

- Time limit of filing refund application prescribed in sub-section (1) of section 54 of the CGST Act would not be applicable in cases of refund of excess balance in Electronic Cash Ledger
- Certification/declaration for not passing the incidence of tax to any other person is not required in cases of refund of excess balance in Electronic Cash Ledger.
- The amount deducted / collected as TDS / TCS by TDS / TCS deductors and credited to Electronic Cash Ledger of the registered person is equivalent to cash deposited in Electronic Cash Ledger. Accordingly, the refund of TDS/ TCS deposited in Electronic Cash Ledger which remains unutilized can be claimed as refund of excess balance in cash ledger
- As the tax on supply of goods, in case of deemed export, would be paid by the supplier in his return, therefore the relevant date for the purpose of filing the refund claim for refund of tax paid on such supplies would be the date of filing of the return related to such supplies by the supplier

[Circular No.166/22/2021 –GST dated November 17, 2021]

**India and USA agree  
on a transitional  
approach on  
Equalisation Levy 2020**

India and United States, on October 8, 2021, joined 134 other members of the OECD/G20 Inclusive Framework (including Austria, France, Italy, Spain, and the United Kingdom) in reaching agreement on the Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy.

On October 21, 2021, the United States and Austria, France, Italy, Spain, and the United Kingdom reached an agreement on a transitional approach to existing Unilateral Measures while implementing Pillar 1.

India and United States have agreed that the same terms that apply under the October 21 Joint Statement shall apply between the United States and India with respect to India's charge of 2% equalisation levy on e-commerce supply of services and the United States' trade action regarding the said Equalisation Levy. However, the interim period that will be applicable will be from 1st April 2022 till implementation of Pillar One or 31st March 2024, whichever is earlier.

The impact of this Press release, in over view, could be that India will not be required to withdraw 2% EL until Pillar One takes effect and will allow a credit of the portion of 2% EL chargeable on non-resident e-commerce operator belonging to a multinational enterprise (MNE) during "interim period" against that MNE's future "Pillar One Amount A" tax liability, when Pillar One rules are in effect. Further, the US will terminate its proposed trade actions against India regarding the 2% EL.

India and United States will remain in close contact to ensure that there is a common understanding of the respective commitments and endeavor to resolve any further differences of views on this matter through constructive dialogue. The final terms of the Agreement shall be finalised by 1st February 2022.

(Press release dated 24 NOV 2021 6:01PM by PIB Delhi)

***The Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2021***

- **Original Rule:** The Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016.
- **Date of Notification:** 9th November, 2021.
- **Effective date of Amendment:** 9th November, 2021.
- **Amendment:** To amend The Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 to amend Sub – Rule 7 (Refund to claimants from Fund) and Schedule II (Useful lives to compute Depreciation Part 'A'), III (General Instructions for preparation of Balance Sheet and Statement of Profit and Loss of a Company) and IV (Code for Independent Directors) of Principle Rules and to substitute Form IEPF – 5 (Application to the Authority for claiming unpaid amounts and shares out of Investor Education and Protection Fund (IEPF)).

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NDA5OTA=&docCategory=Notifications&type=open>

## Due dates for the Month of January, 2022#

Regulation	Due Date	Compliance	Description
Employees' State Insurance Act, 1948 - (ESIC)	15-Jan-22	ESIC Payment	ESIC Payment for the month of December, 2021.
Goods and Service Tax (GST)	10-Jan-22	GSTR 7	Summary of Tax Deducted at Source (TDS) and deposited for the month of December 2021
	10-Jan-22	GSTR 8	Summary of Tax Collected at Source (TCS) and deposited by E-Commerce Operator for the month of December 2021
	11-Jan-22	GSTR-1	Return of outward supplies of taxable goods and/or services for the Month of December 2021 (for Assesses having turnover exceeding 1.5 Cr.)
	13-Jan-22	GSTR 6	Return for Input Service Distributors for the month of December 2021
	13-Jan-22	GSTR-1	Return of outward supplies of taxable goods and/or services for the Quarter Oct to Dec 2021 under QRMP Scheme
	20-Jan-2022 or 22-Jan-2022 or 24-Jan-2022	GSTR-3B	Simple GSTR return for the Month of December 2021 (based on category of taxpayer)
	22-Jan-2022 or 24-Jan-2022	GSTR-3B	Simple GSTR return for the quarter October to December 2021 under QRMP Scheme (based on category of taxpayer)
	31-Jan-2022	GSTR-1	Quarterly return of outward supplies of taxable goods and/or services for registered persons with aggregate turnover up to Rs. 1.50 Crores for the quarter October to December 2021
Income Tax Act, 1961	07-Jan-2022	TDS/TCS	Due date for deposit of Tax deducted/collected for the month of December, 2021.
	15-Jan-2022	TDS/TCS	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA/194IB/194IM in the month of November, 2021
	15-Jan-2022	TCS	Quarterly statement of TCS deposited for the quarter ending December 31, 2021
	15-Jan-2022	Tax Audit	Filing of Tax Audit report in Form 3CA 3CD / 3CB 3CD under section 44AB for the AY 2021-22
	30-Jan-2022	TDS/TCS	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA/194-IB/194IM in the month of December, 2021
	30-Jan-2022	TDS/TCS	Quarterly TCS certificate (in respect of tax collected by any person) for the quarter ending December 31, 2021
	31-Jan-2022	TDS/TCS	Quarterly statement of TDS deposited for the quarter ending December 31, 2021
	31-Jan-2022	TP Audit	Filing of Transfer Pricing Audit report in Form 3CEB under section 92E for the AY 2021-22
PT Act 1975 (Employee)	15-Jan-22	PT Employees	PF Payment for the month of Dec, 2021
Employees' Provident Funds & Miscellaneous Provisions Act, 1952	15-Jan-22	PF Payment	PF Payment for the month of Dec, 2021

# The above due date calender contains compliances generally applicable to taxpayers and this calender has been compiled by HSCo on basis of data available on various portals and other sources. One should always check applicable compliances based on their business needs and should also check updated due dates, if any, on the government portal before making the compliance.

**35+**  
Years of  
Operation

**6**  
Partners

**60+**  
Team  
Members

**5**  
Offices across  
India

**60+**  
International  
Clientele

**700+**  
National  
Clients

**SSAE<sub>18</sub>**  
Compliant

**ICAI<sup>Certified</sup>**  
Peer Reviewed  
Firm

**IBBI<sup>Certified</sup>**  
Registered  
Valuer



Truly Indian. Serving Globally.

<b>India Setup</b>	<b>Business Support</b>	<b>Audit &amp; Assurance</b>	<b>Tax Advisory</b>
<b>Accounting &amp; Reporting</b>	<b>Regulatory Compliance</b>	<b>Payroll Processing</b>	<b>Corporate &amp; Secretarial</b>

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