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BUSINESS ADVISORS

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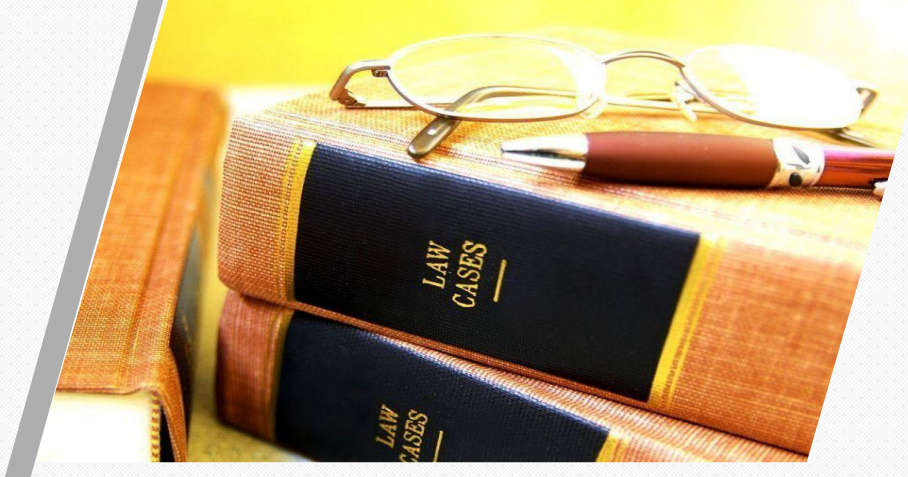
**November - 2020**

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# Direct Tax Case Laws



## Case Law 1:

**Whether management fees are covered/included within the ambit of 'Fees for included services' under the provisions of the tax treaty?**

US Technology Resources Pvt Ltd (the assessee) was a company incorporated in India. The assessee had entered into a management services agreement with US Technology Resources LLC (UST) – a company incorporated in the USA and a tax resident in USA. As per this management services agreement (agreement), UST agreed to provide assistance, advice and support in management, financial, legal, public relations, treasury and risk management services. The assessee claimed that the provisions of the India–US tax treaty provided for definition of Fees for Included Services (FIS). The assessee also contended that UST did not make available any technical knowledge, expertise, etc. and hence there was no income arising in the hands of UST which was taxable in India. Accordingly, it was not liable to withhold any taxes on the payments made to UST.

The High Court noted that the term 'Fees for included services' under the tax treaty entails payment for making available technical knowledge, experience, skill, know-how or processes or consist of development and transfer of a technical plan or technical design. This has to be read along with the MOU. There should clearly be a transfer of technology with the recipient applying it to

its business. The mere fact that the provision of a service may require technical input by the service provider, does not per se mean that the technical knowledge, skills etc., are made available to the person availing such services.

In view of the aforesaid facts of the case and the distinct provisions of the tax treaty, the High Court held that none of the aspects on which UST had promised advice to the assessee, would fall under the 'included services'. Accordingly, the 'fees for included services' would not be taxable in India as per the tax treaty between India and USA in the hands of UST.

**US Technology Resources Pvt Ltd v Income-tax Appellate Tribunal, [dated 12th September 2018]**

## Case Law 2:

**Where assessee gave up its claim of deduction under section 35(1) on account of scientific expenses paid to a research association as admittedly conditions required for claiming such expenditure under said section were not satisfied by assessee, since there was no dispute that said expenditure was incurred in ordinary course of business, Tribunal was right in allowing alternate claim of assessee toward scientific expenses under section 35(1) as revenue expenditure under section 37(1).**

# Direct Tax : Case Laws

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Assessee claimed deduction of Rs. 11,24,32,995/- under the head "scientific expenditure". In the assessment, AO observed that the amount claimed was not allowable since neither the Assessee has not obtained any approval from the scientific authority nor the amount was paid to any university or research organization and hence not eligible for deduction u/s 35(1)(ii) of the Act and disallowed the said amount.

This expenditure was 'product perfection expenses', which are classified by the assessee as 'scientific expenses' in its books, but essentially revenue expenses were incurred by the assessee during the regular course of the existing business of 'automobile component manufacturing'. Hence, these expenses are allowable as normal business expenses, for the purpose of computing the taxable income under the head 'income from business'. The said expenses were actually incurred for the purpose of 'perfecting the process of manufacturing the components' as per the designs and specifications and to the satisfaction of the customers. Hence, these expenses were nothing but "product perfection expenses", which were basically revenue expenses in nature. These expenses were incurred during the ordinary course of business and for running the business.

Moreover, the assessee was not generating any 'capital asset' in any form and hence the expenses cannot be termed as capital expenses plus assessee keeps on changing at frequent intervals, no design/specification is long-lasting. Hence, it is was even difficult to presume that the above expenses have enduring benefits for a number of years  
Nonetheless, the Assessee was entitled to

claim the said expenditure in the "Residuary Provisions" of Section 37 of the Act. Section 37 permits such allowance of "Business Expenditure" incurred in the ordinary course of business, if they are not allowable otherwise by Section 30 to 36 of the Act, Unless the expenditure is of the capital in nature, resulting in creation of assets of enduring nature, the same cannot be disallowed under section 37 of the Act.

**Principal Commissioner of Income Tax v HSI Automotive Ltd [Tax Case (Appeal) No. 11 of 2017, dated 16.09.2020]**

### Case Law 3:

**Where on account of assessee's failure to deduct tax at source, AO raised demand under section 201 and during pendency of appellate proceedings, he initiated penalty proceedings under section 271C, revenue was to be directed that so long as appeal was pending before Tribunal, revenue authorities should be restrained from passing any order imposing penalty on assessee under sections 271C and 206AA.**

The brief facts of the case are that the assessee is a company incorporated under the provisions of the Companies Act, 1956 on 16.08.2013 and is engaged in the business of providing marketing and support services to Uber B.V. a company. During the year, Uber B.V has engaged the appellant to provide various services under Inter-Company Service Agreement. At the registered office of the assessee-company and it was observed that the assessee has not complied with TDS provisions which has resulted in non-compliance of provisions of

# Direct Tax : Case Laws

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Sec. 194C of the act on the payouts/dues to the Driver-Partners. Accordingly, the assessee was treated in default and the above demands were raised on the assessee for two assessment years.

The assessee argued that he is not a “person responsible for paying” u/s 204 of the Act and thus the provisions of section 194C of the Act and submitted the provisions of 194C are not applicable to the assessee. The assessee also submitted all Driver-Partners are residents of India having PANs/bank accounts and most likely earning below the threshold limit as prescribed under Sec. 44AD of the Act and accordingly not liable to tax. Meanwhile, the assessee was granted the stay of penalty proceedings for a period of 180 days.

The assessee has made out a prima facie case that the outcome of the appeal before the ITAT will directly impact the penalty proceedings which are hurriedly being finalized by the authorities which may entail huge liability by way of penalty on the assessee. The Revenue authorities are accordingly restrained from passing any order imposing penalty on the assessee so long as the appeal is pending before the Tribunal. It was held that the revenue authorities directed not to pass orders imposing penalty u/s 271C and 206AA for a period of six months from the date of this order or disposal of appeal whichever is earlier.

**Uber India Systems (P.) Ltd. V. Joint Commissioner of Income-tax [Writ Petition No. 73 of 2019, dated 17.01.2019]**

# Direct Tax Notifications



## **Extension of due dates for the AY 2020-21**

### **1. Extension in due dates for ITR :**

#### **The due date for furnishing of return of income in respect of:**

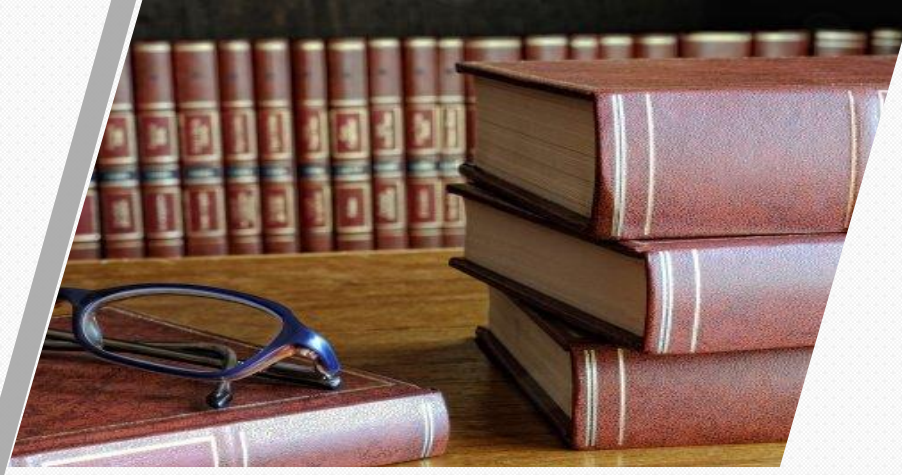
- Assessee liable for the compulsory tax audit, shall stand extended to the 31st day of January 2021
- Other assessee, shall stand extended to the 31st day of December 2020.

### **2. Extension in due date for filing Audit reports :**

The due date for furnishing of such report of audit under any provision of that Act, shall stand extended to the 31st day of December 2020.

[https://www.incometaxindia.gov.in/communications/notification/notification\\_88\\_2020.pdf](https://www.incometaxindia.gov.in/communications/notification/notification_88_2020.pdf)

# Indirect Tax : Case Laws



## Case Law 1:

### **Whether the professional service for maintenance of accounts and allied items of work a taxable service?**

The applicant is engaged in providing services in auditing, accounting, taxation etc. The applicant has been appointed for its professional service in respect of maintenance of Accounts and allied items of work in Segment III of M/s. Sardar Sarovar Narmada Nigam Ltd. (hereinafter called as "SSNNL"). The applicant further submitted that SSNNL is incorporated under the Companies Act 1956 wherein 100% equity is owned by the Government of Gujarat. The applicant sought an advance ruling on whether the professional service for maintenance of accounts and allied items of work taxable under section 9(1) of the CGST Act 2017.

The applicant submitted that the services provided to SSNNL is not covered by the entry prescribed at Sr. No. 3 of Notification No. 12/2017 – CT (Rate) dated 28.06.2017. The applicant submitted that they understand pure services as prescribed in the said Notification is available in relation to an activity/function entrusted to a Panchayat or a Municipality under Article 243G and 243W of the constitution. The applicant further submitted that service of maintenance of Accounts provided by applicant is not related to main function of the Company like water providing activity

and to prepare the structure of Dam, Canal and other irrigation network of the Company. Hence, they do not provide any services in relation to the functions prescribed in clause 243G and 243W of the Constitution of India.

The ruling authority in the instant case observed that for a service to be covered under Sr. No.3 of Notification No. 12/2017 must satisfy the following three conditions. Firstly, it must be a pure service not involving any supply of goods. Secondly, it must be provided to the Central Government or State Government or Union Territory or Local Authority or a Governmental Authority or a Government Entity. And lastly, it must be activity in relation to function entrusted to a Panchayat under Article 243G or Municipality under Article 243W of the Constitution.

Thus the ruling authority held out that the activity of providing auditing, accounting, taxation to SSNNL is not covered under Entry No.3 of Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017 and hence liable to GST under section 9(1) of the CGST Act 2017.

**AUTHORITY FOR ADVANCE RULINGS –  
GUJARAT IN M/s DHIRUBHAI SHAH & CO.  
LLP (Advance Ruling No.  
GUJ/GAAR/R/31/2020 Dated 02nd July  
2020)**

# Indirect Tax : Case Laws

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## Case Law 2:

### **Whether the applicant is eligible to file application for advance ruling?**

The applicant is incorporated with the sole objective of development of “Multifunctional Complex” (hereinafter referred to as “MFC”) at Erode Railway Station, a project of Rail Land Development Authority (hereinafter referred to as “RLDA”) for furtherance of business. The applicant has been awarded lease of land at the Erode Railway Station for a long-term lease of 45 years for development of MFC for the usage of railway passengers. The offer by RLDA involves the payment of Rs. 3.08.27.800/- towards upfront Lease premium and Rs. 7,80,000/- towards annual rent. The applicant sought an advance ruling on whether GST is exempted on One Time Lease Premium paid/payable by the said applicant to RLDA.

The applicant in its written submission stated that GST is exempted on One Time Upfront amounts for Government Infrastructure project on long term lease of 30 years or more by way of notification No. 12/2017 – Central Tax Rate dated 06.10.2017 as amended vide Notification No. 32/2017 – CT (Rate) dated 13.10.2017 and Notification No.23/2018 – CT (Rate) dated 29.09.2018. In the Notes to written submission the applicant has stated – As far as the applicability of application for advance ruling is concerned though they are recipient of services from RLDA, they are still eligible to apply for rulings. Because the word ‘in relation to the supply of goods or services or both’ in Section 95(a) of the CGST Act 2017, can be interpreted to include, supply of both

inward supply and outward supply. As per section 97(2)(d) of the CGST Act 2017 applicant can ask question on administering of input tax credit of tax paid or deemed to have been paid i.e. the receiver of goods or services or both alone can ask question for his inward supply. Hence their application should be entertained.

The ruling authority in the present case observed that in terms of the Lease agreement signed between the applicant and RLDA, the supplier is RLDA and the recipient is the applicant who is leasing the land from RLDA for a fixed tenure and using it as permitted in the terms and conditions of the lease agreement. And it is evident from reading of section 95(a) of CGST and TNGST Act that ‘advance ruling’ are decisions on questions specified in section 97(2) of the Act in relation to the supply of goods or services undertaken or proposed to be undertaken by the applicant. In the instant case the applicant is not making the supply but RLDA. Also, the contention of applicant that advance ruling can also be seek by the recipient as per section 97(2)(d) of the Act is incorrect. The question in the said sub-section deals with admissibility of ITC on all the inputs/input services/capital goods etc. used by the applicant to make or propose to make the supply in question. Hence the application for advance ruling is not admitted and rejected without going into merits.

**AUTHORITY FOR ADVANCE RULINGS –  
TAMIL NADU IN M/s Erode Infrastructures  
Private Limited (Order No. 31/ARA/2020  
Dated: 12th May 2020)**



# Indirect Tax

## Notifications & Update



### S. No Notifications

1. Seeks to prescribe the due date for furnishing FORM GSTR-1 for the quarters October,2020 to December, 2020 and January, 2021 to March 2021 for registered persons having aggregate turnover of up to 1.5 crore rupees in the preceding financial year or the current financial year.

CBIC vide Notification No. 74/2020- Due date for furnishing GSTR-1 for the Quarter 3 and 4 of FY 2020-21 are :

S. No.	Quarter for which details in FORM GSTR-1 are furnished	Time period for furnishing details in FORM GSTR-1
1	October, 2020 to December, 2020	13th January, 2021
2	January, 2021 to March, 2021	13th April, 2021

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-74-central-tax-english-2020.pdf>

2. Seeks to notify the number of HSN digits required on tax invoice.

CBIC vide Notification No. 78/2020- HSN digits required to be mentioned in Invoice with effect from April 1, 2020

S. No.	Aggregate Turnover in the preceding Financial Year	Number of Digits of Harmonised System of Nomenclature Code (HSN Code)
1	Up to rupees five crores	4
2	more than rupees five crores	6

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-78-central-tax-english-2020.pdf>

3. Seeks to amend notification no. 41/2020- Central Tax dt. 05.05.2020 to extend due date of return under Section 44 till 31.12.2020

CBIC vide Notification No. 80/2020- Central Tax has extended the date of GST Annual Return and GST Audit till 31.12.2020

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-80-central-tax-english-2020.pdf>

# Legal & Regulatory Notifications



## S. No Notifications

### 1. THE COMPANIES AMENDMENT ACT, 2020 ('CAA, 2020')

**(Received president's assent on the September 28, 2020)**

The Ministry of Finance had introduced the Companies Amendment Bill, 2020, which proposes various amendments in the Companies Act, 2013. The Lok Sabha passed the said bill in on September 19, 2020 and Rajya Sabha passed the said bill on September 22, 2020.

Further, on September 28, 2020, the Companies Amendment Act, 2020, received the consent of President of India. The key highlights of the CAA, 2020 are mentioned below:

#### **Key highlights of the CAA, 2020:**

- i. Decriminalization of certain offences under the Companies Act, 2013 ('Act').
- ii. Re-categorisation of fines into penalty under various sections of the Act.
- iii. Reduction of timelines for applying for rights issues under section 62 of the Act.
- iv. Exempting any class of persons from complying with the requirements of section 89 of the Act, relating to declaration of beneficial interest in shares.
- v. Exemptions under section 117 of the Act to such non-banking financial companies (NBFCs) and housing finance companies (HFCs) from filing certain resolutions passed to give guarantee, grant loans or to provide securities in respect of loan in the ordinary course of business.
- vi. Introduction of new section i.e. section 129A for specified classes of unlisted companies to prepare and file their periodical financial results along with the approval of the Board of Directors and completion of audit or limited review of such periodical financial results in such manner as may be prescribed.
- vii. Insertion of the provisions relating to set off of excess amount against the requirement to spend under section 135 of the Act for such number of succeeding financial years.

**Link:** [http://www.mca.gov.in/Ministry/pdf/AmendmentAct\\_29092020.pdf](http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf)

### 2. EXTENSION OF RELAXATION IN MINIMUM RESIDENCY REQUIREMENTS OF 182 DAYS IN INDIA BY AT LEAST ONE DIRECTOR IN EVERY COMPANY

**(MCA circular dated October 20, 2020)**

# Legal & Regulatory

MCA in continuation of its previous circular no. 11/2020 dated March 21, 2020 has further issued circular no. 36/2020 dated October 20, 2020 which clarifies that the non-compliance of minimum residency in India for a period of at least 182 days in year, by at least one director in every company, under section 149 of the Companies Act,2013 shall not be treated as non-compliance for the financial year 2020-2021.

**Link:** [http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.36\\_20102020.pdf](http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.36_20102020.pdf)

### **3. THE COMPANIES (PROSPECTUS AND ALLOTMENT OF SECURITIES) AMENDMENT RULES, 2020 (MCA notification dated October 16, 2020)**

MCA vide its notification dated October 16, 2020 has amended the Companies (Prospectus and Allotment of Securities) Rules, 2014 through the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2020.

The said amendment provides that a single special resolution passed prior to any offer or invitation to qualified institutional buyers (QIBs) once a year, is sufficient for all the allotments made to QIBs during the year.

**Link:** [http://www.mca.gov.in/Ministry/pdf/SecuritiesAmendmentRules\\_16102020.pdf](http://www.mca.gov.in/Ministry/pdf/SecuritiesAmendmentRules_16102020.pdf)



## Aadhaar Authentication – Under GST ACT

By – Kailash Rajput

IBA

The GST Council in its 39th meeting held on March 14, 2020 approved operationalisation of Aadhaar authentication for new taxpayers. The implementation of the same was postponed keeping in view the imposition of nationwide lockdown on account of widespread COVID-19. Eventually, the facility has been rolled out with effect from 21st August 2020 through Notification No. 62/2020 – Central Tax dated 20th August 2020. A person opting for Aadhaar authentication for New GST Registration would get it within three working days, if no notice is issued and would not need to wait for physical verification.

On the other hand, applicants not opting for Aadhaar authentication would be granted GST registration only after physical verification of the place of business or documentary verification, which may take up to 21 working days or more if notice is issued

### **Following is a step by step guide for those opting Aadhaar Authentication for GST Registration :-**

- At the time of applying for GST registration, the applicant is given an option to select if he wishes to authenticate Aadhaar.
- The applicant can either select a YES or a NO for Aadhaar Authentication.
- If s/he clicks YES, an authentication link will be shared on GST registered mobile number and e-mail IDs of the Promoters/ Partners and Authorized Signatories.
- Upon clicking the authentication link, a screen will come with a declaration where the applicant needs to enter an Aadhaar number and click on “validate”.
- On successful matching of the details in registration form with the UIDAI, an OTP will be sent on their email and mobile registered with the Aadhaar that has been entered by the applicant. On entering the OTP in the box provided on the screen, validation will be complete, and a message of successful e-KYC authentication will be shown.
- It is important to ensure that a user's Aadhaar has an updated registered mobile number and email for expeditiously completing the process.
- OTP for Aadhaar authentication would be sent on the mobile number and e-mail address registered with Aadhaar. Mobile numbers registered with Aadhaar can be verified at

<https://resident.uidai.gov.in/verify> where the last three digits of the registered mobile number are shown.

The facility of quick approval of GST registration through Aadhaar authentication can be availed by all Indian citizens. However, it is not required for tax deductors, tax collectors, Online Information Database Access and Retrieval services (OIDARs), taxpayers having Unique Identification Number (UIN) and non-resident taxpayers.

Where the applicant for GST registration chooses not to go through the process of Aadhaar authentication, he may choose NO for this step. The GST registration application would then be sent to the jurisdictional tax authority that may carry out necessary documentary and/or physical site verification before approving registration. Where no action is initiated by the Tax Authority within 21 days, the registration application shall be deemed as approved.

In both cases, the officer concerned needs to act within a specified time - 3 days for a person opting for Aadhaar authentication and 21 days for those opting not to undergo Aadhaar authentication. If the registration application has neither been accepted, nor a notice for rejection has been issued, after the specified period, the application shall be deemed to be approved.

**Conclusion: -**

Aadhaar authentication for new registration is expected to substantially enhance ease of doing businesses for genuine businesses. With linkage of Aadhaar with GST and PAN (permanent account number), there would be a centralised database available with the government which will facilitate data analytics and help in checking tax evasion.



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Periodical Articles' Meet to ensure their effective learning and development & career guidance.

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## Recognizing & Celebrating Success



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A run under the starry night in the clean and green environs on the outskirts of Gurgaon. Our one of the partners, Mr. Kapil Nayyar participated and completed the 12 hours night run.

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## Webinar in association with Max Healthcare



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Organized an informative and educative webinar in association with Max Healthcare to discuss and understand corona facts and myths

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# Upcoming Compliances

Date	Compliance
November 11, 2020	Due Date for furnishing of Form GSTR-1 for the taxpayers having aggregate turnover of more than 1.5 Crore in the preceding financial year or the current financial year.
November 13, 2020	Due Date for furnishing of Form GSTR-6 for Input Service Distributor for the month of October 2020.
November 14, 2020	Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194-IB, 194M in the month of September 2020*
November 15, 2020	Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending September 30, 2020*
November 20, 2020	Due date for filing consolidated return in the Form GSTR-3B for the taxpayers having aggregate turnover of more than 5 Crore in the previous financial year
November 22, 2020	Due Date for filing consolidated return in the Form GSTR-3B for the taxpayers having aggregate turnover up to 5 crore in the previous financial year and principal place of business in the state of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep.
November 24, 2020	Due Date for filing consolidated return in the Form GSTR-3B for the taxpayers having aggregate turnover up to 5 crore and principal place of business in the state of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi
November 30, 2020	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB, 194M in the month of October, 2020*

# Editorial Team

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IBA is a leading financial and legal advisory company with specialization in Assurance, Risk Consulting, Legal, Direct Tax, Indirect Tax(GST) and Corporate Advisory for midsize, SMEs and start-up firms. IBA constitute a young team of path breaking professionals, who believe in creating value through innovation and creativity to provide ultimate client satisfaction. Clients benefit from our fresh thinking, constructive challenge and practical understanding of the issues they face. We aim to alloy a perfect blend of professionalism with high standards of service, in our pursuit of excellence.

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