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BUSINESS ADVISORS

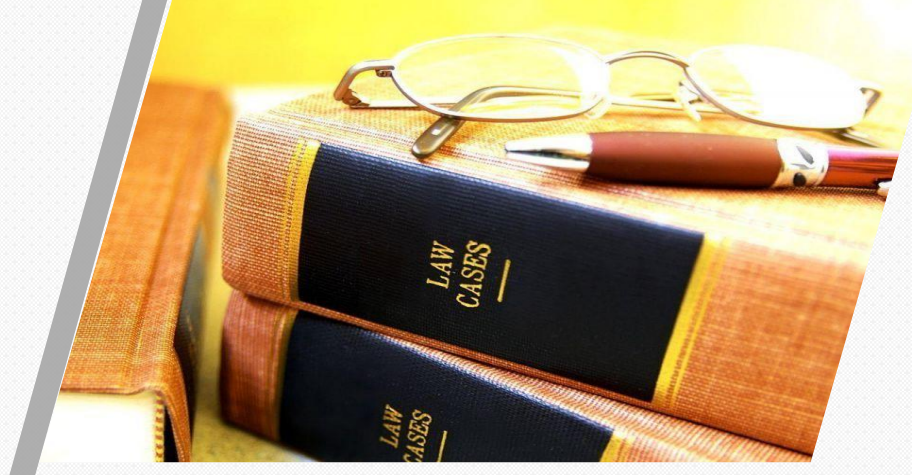
CONNEKT

December - 2021

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Direct Tax Case Laws



Case Law 1:

Issue: Where Assessing Officer passed an order under section 179 against assessee-director of a company to recover tax dues of said company from assessee, since despite all possible efforts made by department only a small part of tax dues could be recovered from company, and there was no other option left for department apart from recovering same from assessee director, impugned order under section 179 passed against assessee was justified.

The assessee was one of the directors of a private company, namely, RGC. A memorandum of understanding (MoU) was executed according to which all the income tax liability of the company would be paid by another director of the company namely, PD. The Assessing Officer finalised assessment of company and raised tax demand. However, PD failed to pay tax liability and the company. Thus, the Assessing Officer passed an order under section 179 against the assessee to recover tax dues of company from him being director for such period for which tax was payable treating the assessee as jointly and severally liable for payment of outstanding tax demands.

During the year 2010-11, allegedly disputes arose amongst the promoters and to settle the said inter se disputes a Memorandum of Understanding (MOU) was executed on 02nd June 2011. In terms of the MOU, the petitioner allegedly resigned as Director

from M/s Vivid Builders (P.) Ltd., M/s. Realtech Construction (P.) Ltd. as well as some other group companies of Realtech group and stopped participating in the management of the Realtech group. It was also allegedly agreed in the MOU that all the income tax liabilities in respect of Realtech Construction (P.) Ltd., Realtech Projects (P.) Ltd., Vivid Builders (P.) Ltd. and Realtech Infrastructure will be borne and paid by Mr. Pankaj Dayal (one of the Directors). Mr. Pankaj Dayal was allegedly separately allocated 17000 sq. ft. in City Emporia Mall, Chandigarh to meet the tax liabilities of Realtech group of companies.

In the meantime, the petitioner was called upon by the income tax authorities to provide details of arrangement for discharge of income tax liability of Realtech group of companies. In response thereto, the petitioner vide its letters dated 10th March 2015 and 18th March, 2015 addressed to CCIT gave details of assets of Realtech group, which were sufficient to discharge the income tax liability and requested the authorities to take appropriate steps as early as possible for recovery of income tax.

The petitioner was served with the impugned order dated 29th January, 2018 under section 179 of the Act wherein it was held that tax dues of a private limited company that cannot be recovered from the company can be recovered from a Director of the said company as the Director is jointly and severally liable for payment of outstanding tax demands of the company.

Direct Tax : Case Laws

But Learned senior counsel for petitioner lastly stated that the impugned orders were bad in law as the petitioner had not been given a fair and reasonable opportunity to present his case.

This Court is further of the opinion that the MOU, Settlement Deed, and an Arbitral Award govern rights in personam and cannot bind a statutory authority like the respondent-Revenue. It is a settled law that while rights in personam are arbitrable, rights in rem are unsuited for private arbitration and can only be adjudicated by the Courts or Tribunals.

Accordingly, the present writ petition being bereft of merits is dismissed, but with no order as to costs.

Principal Commissioner of Income-tax (Delhi) v/s Rajeev Bhel

Case Law 2:

Issue: Where land was purchased by company in name of company and director for commercial expediency and benefit of company and it was not a case that any loan was given to director, addition in his hands invoking provision of section 2(22)(e) was unjustified.

The assessee-director of company SDCPL, filed return. The case was selected for scrutiny herein it was observed that the assessee had purchased immovable property in the joint name with another person for a total consideration of Rs. 1.56 crores but the payment was made by company SDCPL. The Assessing officer gave findings that the property was in the name of assessee but the same was neither disclosed in the

balance sheet prepared by the assessee nor details of loan was shown from the said company. He sought to make addition of impugned assessment as deemed dividend received by the assessee. The assessee submitted that no loan was received by him from company SDCPL. The said property was purchased by company in the name of the assessee and another person only for commercial benefit of the company such as avoiding payment of stamp duty charges, etc. The said property was accounted in the company's account and it was shown as fixed asset.

Ld. Counsel for the assessee submitted that the said property costing of Rs. 1,46,82,291/- was purchased by the said company, M/s. SDCPL. Payment was made by the said company through banking channel. The said land is shown as fixed asset and accounts are audited. The property was purchased in the name of director to save stamp duty charges to some extent but no advance was given by M/s. SDCPL to its director.

The Ld. Counsel for the assessee submitted that no loan was received by the assessee from the company, M/s. SDCPL. The property was purchased in the name of the assessee and the other person only on behalf of the assessee company and also to save the stamp duty charges. The said property is duly accounted for in the books of account of the company (M/s. SDCPL) and shown as fixed asset consistently.

Department finds that payment of purchase of property was made by the said company through banking channel. The assessee has not shown his share of property in his individual balance sheet, Land & Building (KCT) Ledger Account in the books of

Direct Tax : Case Laws

M/s. SDCPL, placed at page-4 of the paper book is showing all the details of payments made to acquire the said property.

In view of the above facts and circumstances as well as respectfully following the decision of the Tribunal, we are of the considered view that in the instant case since no land/advance was given to the assessee from the said company, in which the assessee is a director and, therefore, the Id.AO erred in invoking the provisions of section 2(22)(e) of the Act.

As a result, the case was in favour of the assessee and the appeal of assessee stands allowed.

Manoj Pati v/s ACIT

Direct Tax Notifications



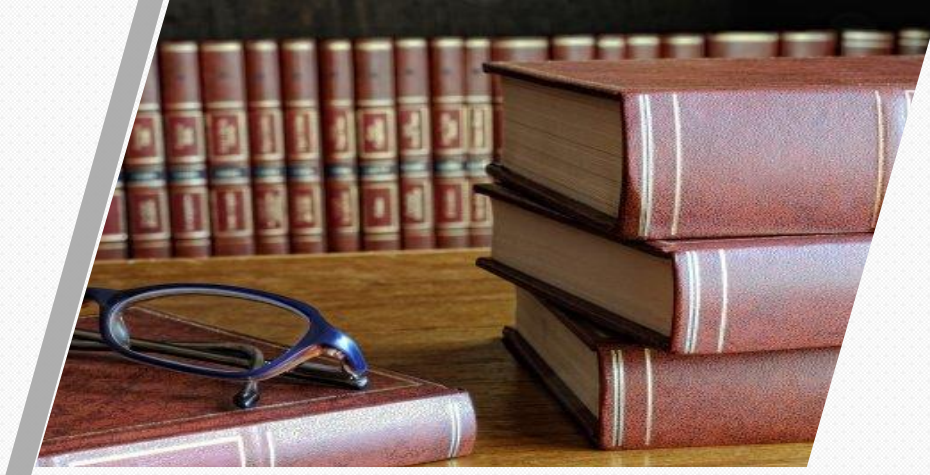
- 1. Recent guidelines issued (vide circular number 20 of 2021) by CBDT for removing certain difficulties that were arising in the implementation of the provisions of TDS and TCS under Section 194O, 194Q, and 206C(1H) of the Income Tax Act, 1961 ('the Act'). A summary of the said guidelines is as under :**

Through the circular issued, the CBDT has clarified that the TDS provisions of Section 194O of the Act shall not be applicable in the case of e-auction. The CBDT has explained that in the case of e-auction, the e-auctioneer is only responsible for price discovery. The actual sale of goods or services happens between the buyer and seller and the price is renegotiated between them without providing the knowledge to the e-auctioneer. Therefore, the TDS as per Section 194O of the Act shall not be applicable upon fulfilment of certain conditions.

Link: <https://incometaxindia.gov.in/communications/circular/circular-20-2021.pdf>

Indirect Tax :

Case Laws



Case Law 1:

Recovery of notice-period pay, parents mediclaim premium, canteen charges from employee “Taxable”

The applicant is a company registered under the Companies Act, 1956 with Registrar of Companies, Gwalior and is carrying on the business of refining of crude oil in the refinery located at Village Agasod, Bina, District Sagar, Madhya Pradesh. The applicant has sought advance ruling upon the following:

- Whether GST is applicable on payment of notice pay by an employee to the applicant i.e., employer in lieu of notice period under clause 5(e) of Schedule II of GST Act?
- Whether GST is applicable on the amount of premium of Group Medical Insurance Policy recovered at actuals from non-dependent parents of employees and retired employees those who are covered under the said policy?
- Whether GST is applicable on recovery of nominal amount for availing the facility of Canteen at the Refinery at Bina when it is not a supply as per clause I of Schedule III of GST Act? etc.,

In the instant case, the ruling authority observes that GST is applicable on payment

of notice pay by an employee to employer basis clause 5(e) of schedule II of the CGST Act, 2017 as the employer is tolerating the act or situation whereby the employee is not giving the notice for the agreed period of 30 days before leaving for service. Further, it adds that “schedules are part of GST Act” which contain specific provision/exclusions, and therefore, they prevail over other general provisions of the GST Act; Moreover, derives that section 7(1) of the CGST Act, 2017 is defining supply in an inclusive manner. Therefore, there can be other activities also which can be covered in supply even if they may not be a supply as per provisions of Section 7.

In respect of premium of Group Medical Insurance Policy recovered from the non-dependent parents of employees & retired employees at actuals, the ruling authority notices that had these services been provided by the applicant as a pure agent as per rule 33 of the CGST Rules, 2017 then no GST would have been payable, but, since the applicant has not provided such service in the capacity of an agent of the insurance company, Hence, GST is payable on the amount collected in form of premium of Group Medical Insurance Policy from the non-dependent parents of employees and retired employees.

Eventually, the ruling authority upholds applicability of GST on nominal amount recovered for availing canteen services by employees while rejecting applicant’s interpretation that said transaction is

Indirect Tax : Case Laws

covered by clause I of Schedule III. It clarifies that herein “employee is not providing any service rather employer is providing services to employees”. Perusing section 15(1) of the CGST Act, 2017 the value of supply of goods or services or both shall be the transaction value which is the price actually paid or payable for the said supply where the supplier and the recipient of the supplier are not related; the ruling authority explains that since employer and employee are related persons, therefore, the valuation of canteen facility provided by applicant to its employees shall be as per Rule 28 and not at the nominal amount recovered by applicant from its employees.

**AUTHORITY FOR ADVANCE RULINGS –
MADHYA PRADESH IN M/s BHARAT OMAN
REFINERIES LIMITED (ORDER NO. 02/2021
Dated 07th June 2021)**

Indirect Tax

Notifications & Circulars



S. No Notification

- 1. Seeks to make amendments (Ninth Amendment, 2021) to the CGST Rules, 2017**
CBIC vide Notification No.37/2021 -Central Tax dated 01st December 2021 has made some changes to the format of FORM GST DRC-03 in the following manner: -
 - ❖ In the heading, after the words “or statement”, the words, letters and figures “or intimation of tax ascertained through FORM GST DRC-01A” shall be inserted – (FORM GST DRC-01A is used to give “Intimation of tax ascertained as being payable under section 73(5)/74(5) of the CGST Act, 2017”. Section 73(5) & 74(5) cover provisions concerning determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any willful-misstatement or suppression of facts.
 - ❖ Against “Cause of payment” column in the FORM GST DRC-03, for the options listed in the drop down i.e., “Audit, investigation, voluntary, SCN, annual return, reconciliation statement, others (specify)”, the following options i.e., “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 Form GSTR-3B), others (specify)” shall be substituted.

Link: <https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-37-central-tax-english-2021.pdf>

Indirect Tax

Notifications & Circulars



S. No Circulars

1. Clarification on refund related issues:

CBIC vide Circular No. 166/22/2021-GST dated 17th November 2021 has majorly clarified issues regarding refund of excess balance in electronic cash ledger in the following manner:

- ❖ The provisions of section 54(1) of the CGST Act, 2017 regarding time period, within which an application for refund can be filed, would not be applicable in cases of refund of excess balance in electronic cash ledger.
- ❖ Furnishing of certification/ declaration under rule 89(2)(l) or 89(2)(m) of the CGST Rules, 2017 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 under the provisions of section 51/52 of the CGST Act, as the case may be, and credited to electronic cash ledger of the registered person, is not mandatorily to be utilized for the purpose of discharging tax liability.

Link: <https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular-166-22-2021-GST.pdf>

2. Clarification in respect of applicability of Dynamic Quick Response (QR) code on B2C invoices

CBIC vide Circular No. 165/21/2021-GST dated 17th November 2021 has clarified that wherever an invoice is issued to a recipient located outside India, for supply of services, for which the place of supply is 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.

Link : <https://www.cbic.gov.in/resources//htdocs-cbec/gst/circular-final-165-21-2021.pdf>

Legal & Regulatory Notifications



S. No Notifications

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

(MCA notification dated November 09, 2021)

MCA vide its notification dated November 09, 2021 has amended the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 through the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2021. This amendment provides for reduction of compliance burden with respect to documentation etc. and the threshold value of the securities per issuer company requiring such filings is increased from Rs. 2 Lakhs to Rs. 5 Lakhs.

Link:

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



Capital Gains arising out of Joint Development Agreement

By – Lagan Gulati

IBA

Joint Development Agreement, hereinafter referred as, 'JDA' is a legal agreement wherein, the owner of immovable property and a developer comes into an arrangement of developing land or a building. Here, the owner transfers the land to the developer and the developer undertakes the responsibility of developing the property. After the construction of the project under JDA, the said property is then apportioned between the parties involved according to the mutually agreed share in the agreement.

Introduction to section 45 (5A) :

In the ordinary course of capital gain tax determination, taxable event is triggered in the previous year in which any agreement related to the transfer of the asset is signed resulting into capital gain tax liability in the hands of the owner in the particular year.

In such a case, execution of Joint Development Agreement attracts the capital gain tax liability in the hands of the owner in the year in which the agreement is entered into against the fact that the owner, in real, never received any consideration at that point of time.

Thus, with a view to mitigate the genuine hardships faced by the landlords, a new sub-section 5A was inserted under section 45 of IT Act, 1961. The same was made effective from 01st April 2018 onwards.

Text of section 45 (5A) :

Notwithstanding anything contained in sub-section (1), where the capital gain arises to an assessee, being an individual or a Hindu undivided family, from the transfer of a capital asset, being land or building or both, under a specified agreement, the capital gains shall be chargeable to income-tax as income of the previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority; and for the purposes of section 48, the stamp duty value, on the date of issue of the said certificate, of his share, being land or building or both in the project, as increased by the consideration received in cash, if any, shall be

deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset :

Provided that the provisions of this sub-section shall not apply where the assessee transfers his share in the project on or before the date of issue of the said certificate of completion, and the capital gains shall be deemed to be the income of the previous year in which such transfer takes place and the provisions of this Act, other than the provisions of this sub-section, shall apply for the purpose of determination of full value of consideration received or accruing as a result of such transfer”.

Explanation :

According to this new provision, the individuals/ HUF who enters registered Joint Development Agreement with the builder/developer are liable to capital gains in the year in which the certificate of completion for the whole or part of the project is issued by the competent authority. This new sub-section (5A) in section 45, overrides the provisions of Section 45(1), therefore, the taxable event arises on the completion certificate date as against the date of transfer. Further the Stamp Duty Value (SDV) of land or building or both, of the owner’s share in the project, on the date of issue of said certificate, as increased by the consideration received in cash, if any, shall be deemed to be the full value of consideration. However, in case where the owner transfers his share in the project on or before the date of issue of said certificate, the capital gains shall be deemed to be the income of the previous year in which such transfer takes place.

Key Points :

- ❖ Applicable in respect of JDA entered on or after 01.04.2017.
- ❖ Applicable only to the Individual and HUF.
- ❖ Applicable only where a registered agreement/deed is executed.
- ❖ Applicable only when capital asset held by the assessee is in the form of land/building
- ❖ Taxability arises in the year of issue of Certificate of Completion (COC).
- ❖ Not applicable where share in the developed area is transferred before completion.
- ❖ Full value of consideration for the owner shall be Stamp Duty Value(SDV) of his share in property as on the date of COC as increased by money consideration received.

Determination of tax liability :

Computation of Capital Gains for owner in the year in which COC is received:

Particulars		Amount
Sale Consideration (SDV of owner’s share in property as on date of COC + Money Consideration received)	A	XXX
Cost of Acquisition*	B	XXX
Taxable Capital Gains	A-B	XXX**

Notes :

- * Cost of Acquisition shall be indexed if the property is more than 24 months old before transferring under JDA
- ** Long term Gains shall be taxed at 20 percent while Short term shall be taxed at Income tax slabs.


It is generally seen that there may be several stages or events arising in a joint development arrangement made between owner of the land and the developer. For the purpose of determining the actual date of transfer of the land by the landowner, all these stages / events needs to be collectively analysed and after evaluating overall effect of the same we can determine the actual date of transfer.

Further, introduction of section 45(5A) have removed the considerable amount of hardship faced by the assessee. This has improved the sentiments of the developers and landowners leading to increase in the supply of land to developers.

Webinar on Forensic Audit organized by Amritsar Branch of NIRC of ICAI




The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)

29th VCM of **360° Learning Series**  8th Dec 2021
Wednesday – Words of Wisdom  5 PM to 8 PM

3 Structured CPE hours
Fee: Nil

VCM on
MOOWR – A New Warehouse Scheme in India’s Trade and Forensics Audit: Tool for Fraud Detection
Organized By - Continuing Professional Education Committee of ICAI
Hosted By - Amritsar Branch of NIRC of ICAI

Speakers

 <p>CA. Mudit Goyal (Chandigarh)</p> <p>Topic MOOWR - The New Customs Scheme to Promote Business Investment in India ⌚ 5 PM – 6.30 PM</p>	 <p>CA. Himanshu Sarpal (New Delhi)</p>	 <p>CA. Puneet Sharma (New Delhi)</p> <p>Topic Introduction of Forensics Audit & Fraud Detection Techniques ⌚ 6.30 PM – 8 PM</p>	 <p>CA. Mohit Jain Moderator (Rewari)</p>
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CA. Jatinder Vansil
Chairman - Amritsar Branch
(NIRC of ICAI)

CA. Shashi Pal
Vice-chairman - Amritsar Branch
(NIRC of ICAI)

CA. Sumit Jaitley
Secretary - Amritsar Branch
(NIRC of ICAI)


Key Takeaways

- Overview of the MOOWR licence & what makes the licence attractive?
- Understand Key regulations and compliance requirements of MOOWR
- Making the cost benefit analysis & Process to obtain permission under MOOWR licence
- Understand and analyse the concept of Corporate Fraud and Forensics Audit in the contemporary world
- Know what is fraud detection and Identify different fraud detection techniques

Target Audience
All members of ICAI
Including Practicing Members

How to claim CPE hours?
CPE hours shall be credited by the CPE Committee on successful participation in the VCM

Register here: <https://live.icaai.org/cpe/vcm/08122021/>
Registrations are open till 1 PM on 8th Dec 2021
Members may access ICAI-ICE on <https://ice.icaai.org> by entering 6 digits ICE ID of the event i.e. **164337** and may key in their questions



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⌚ <http://cpeicaai.org/> | ☎ 0120-3045981 | ✉ chairmancpe@icaai.in, ajeet@icaai.in, cpeadmin@icaai.in

Puneet Sharma, partner at IBA, was one of the eminent speaker in the webinar organized by Amritsar Branch of NIRC of ICAI on the topic “ A New Warehouse Scheme in India’s Trade and Forensic Audit: Tool for fraud detection”

Upcoming Compliances

Date	Compliance
December 11, 2021	Due Date for filing of FORM GSTR-1 for the month of November 2021 for the registered taxpayers who have opted for monthly filing of GST Returns.
December 13, 2021	Due Date for filing of IFF (Invoice furnishing facility) for the month of November 2021 for the registered taxpayers who have opted QRMP scheme.
	Due Date for filing of FORM GSTR-6 for the month of November 2021 for the registered taxpayers who have taken Input Service Distributor (ISD) registration.
December 15, 2021	Third instalment of advance tax for the assessment year 2022-23.
	Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194-IB, 194M in the month of October 2021.
December 20, 2021	Due Date for filing of FORM GSTR-3B for the month of November 2021 for the registered taxpayers who have opted for monthly filing of GST Returns.
December 25, 2021	Due Date for making Payment for the month of November 2021 for the registered taxpayers who have opted QRMP scheme and having 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.
	Due Date for making Payment for the month of November 2021 for the registered taxpayers who have opted QRMP scheme and having 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.

Upcoming Compliances

Date	Compliance
December 30, 2021	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB, 194-IA and 194M in the month of November 2021
	Report in Form No. 3CEAD by a constituent entity of an international group for the accounting year 2020-21
December 31, 2021	Due Date for filing of FORM GSTR-9 (Annual Return) and GSTR-9C (Reconciliation Statement) for the financial year 2020-2021
	The due date for furnishing of return of income for Assessment Year 2021-22 has been further extended from September 30, 2021, to December 31, 2021, vide Circular no. 17/2021, dated 09-09-2021.
	Quarterly statement in respect of foreign remittances (to be furnished by authorized dealers) in Form No. 15CC for quarter ending September 2021
	The due date for furnishing of Equalisation Levy statement has been further extended from August 31, 2021, to December 31, 2021, vide Circular no. 16/2021, dated 29-08-2021.
	Upload declarations received from recipients in Form No. 15G/15H during the quarter ending September 2021.
	Intimation on behalf of an international group, which is required to be made on or before 30-11-2021, in Form no. 3CEA. The due date for such intimation has been extended to December 31, 2021, vide Circular no. 16/2021, dated 29-08-2021

Editorial Team



About us:

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.

Founded in the Year 2003, the company witnessed immense growth from 2 members to currently a 100 members team, with its offices in Delhi, Mumbai and Bengaluru and its clients from across states. IBA continues to offer wholesome service experience to boost highly valued client relationships by combining the technical and industry expertise at par with well-placed firms together with a personal commitment to optimize client service.

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