

IBA INTERNATIONAL
BUSINESS ADVISORS

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Direct Tax Case Laws



Case Law 1:

Ex-gratia incentive payment made by assessee to its employees who were not covered under provisions of Payment of Bonus Act was to be considered for deduction under provisions of section 37(1).

This appeal, by the appellant/Revenue, filed under section 260A of the Income-tax Act, 1961, on 4-9-2014, on the following substantial question of law:

"Whether in the facts and circumstances of the case, the Tribunal was right in holding that the assessee is entitled to deduction in respect of ex-gratia payment made to employees when such payments cannot be treated as business expediency or legal requirement allowable under section 37(1) of the Act?"

While completing the assessment under section 143(3) of the Income-tax Act, 1961, the Assessing Officer found that the assessee had claimed deduction on the ex-gratia payment made to employees who were not covered by the provisions of the Payment of Bonus Act. The assessee contended that it was a type of incentive given to those employees, who did not fall under the provisions of the Payment of Bonus Act. The claim of the assessee was rejected holding that the same could not be treated as one falling under business expediency referred to under section 37(1)

of the Income-tax Act, 1961 specifically excluding the expenditure covered under sections 32 to 36 of the Act and more so, in particular, when Section 36(1)(ii) specifically deals with payment of bonus as a head of deduction. The Assessing Officer held that the assessee was not entitled to have the deduction considered under section 37(1) of the Act. Aggrieved by this, the assessee went on appeal before the Commissioner of Income-tax (Appeals), who confirmed the order of the Assessing Officer. Hence, the assessee went on further appeal before the Income-tax Appellate Tribunal. The Tribunal pointed out that the payment in the instant case was made to those employees who did not fall within the purview of the Payment of Bonus Act. The provisions under section 36(1)(ii) of the Income-tax Act, 1961 covered specific instances stated therein and that ex-gratia payment made to employees in excess of statutory limit was considered as a head of deduction. In this the Tribunal referred to the decision of the Calcutta High Court reported in (1994) 208 ITR 1002 (Cal) [CIT v. National Engineering Industries Ltd.]. The Tribunal further considered that the payment was a matter of business expediency. Even assuming for a moment that the amount paid was in excess of what is prescribed in the Payment of Bonus Act, the same would merit consideration as a deduction and that being the case, the Tribunal held that the payment made by the assessee to its employees who were not covered under the provisions of the Payment of Bonus Act was in the nature of ex-gratia payment as an incentive to the employees to be considered for deduction under the

Direct Tax : Case Laws

provisions of Section 37(1) of the Income-tax Act, 1961.

We agree with the view expressed by the Tribunal that there being no restriction or prohibition under section 37 of the Income-tax Act, 1961 on the claim for deduction on the ex-gratia payment given in the form of an incentive to the workman out of business expediency and the payment being a business expenditure, the Revenue's case deserves to be dismissed at the admission stage itself.

Accordingly, the tax case appeal is dismissed and the substantial question of law is answered against the Revenue.

Commissioner of Income-tax v/s Karur Vysya Bank Ltd

Case Law 2:

The assessee was a pilot by profession and was an employee of Kingfisher Airlines (the employer). The Airlines deducted TDS in case of assessee, however, since amount had not been deposited by the Airlines in the Central Government Account, the credit when claimed by the assessee was not given by the department and the demand had been raised with interest. The assessee filed rectification applications under section 154 and asked for cancellation of demand. These were ignored and recovery notice was issued to assessee by respondent Income-tax Department.

The assessee, who is a pilot by profession and was an employee of M/s. Kingfisher Airlines. The Kingfisher Airlines deducted the TDS on his salary to the tune of Rs. 7,20,100/- for the Assessment Year 2009-10

and Rs. 8,70,757/- for the Assessment Year 2011-12. It is averred that the assessee had filed the return of income for the assessment years 2009-10 and 2011-12 and he claimed the TDS credit of the above amount. The amount since had not been deposited by the Airlines in the Central Government Account, the credit when claimed by the assessee, the same was obviously not given, the department had raised the demand of the said amount and on 12-12-2019, the amount of Rs. 89,960/- had been adjusted against the demand for the assessment year 2019-2020, this was informed to the assessee by State Bank of India.

The assessee preferred rectification under section 154 of the Income-tax Act, and urged for cancellation of demands, his essential plea was that the obligation of the employer cannot be thrust upon him however, paying no head to such a request, the department raised demand vide several demand notices with interest and initiated recovery proceedings. The assessee then decided to approach Hon'ble High Court of Gujarat.

The Hon'ble Gujarat High Court then relied on the decision in case of `Devarsh Pravinbhai Patel v. Assistant Commissioner of Income Tax` wherein it was held that if the deductor has deducted TDS and issued Form 16A, the deductee has to be given credit even if the deductor has defaulted in his obligation to deposit the TDS with the Government revenue.

It was also observed that, a perusal of Section 205 of the IT Act clarifies that where tax is deductible at source, the assessee shall not be called upon to pay the tax himself to the extent to which tax has been deducted from that income. Further, if the

Direct Tax : Case Laws

amount has been deducted but not paid to the Central Government, that is taken care of by Section 201 of the Income Tax Act. It is not permissible to proceed against the assessee even after deduction of TDS.

Held that, the Department is precluded from denying the benefit of the TDS by the employer during the relevant financial years to the Assessee.

Kartik Vijaysinh Sonavane v/s Deputy Commissioner of Income Tax

Direct Tax Notifications



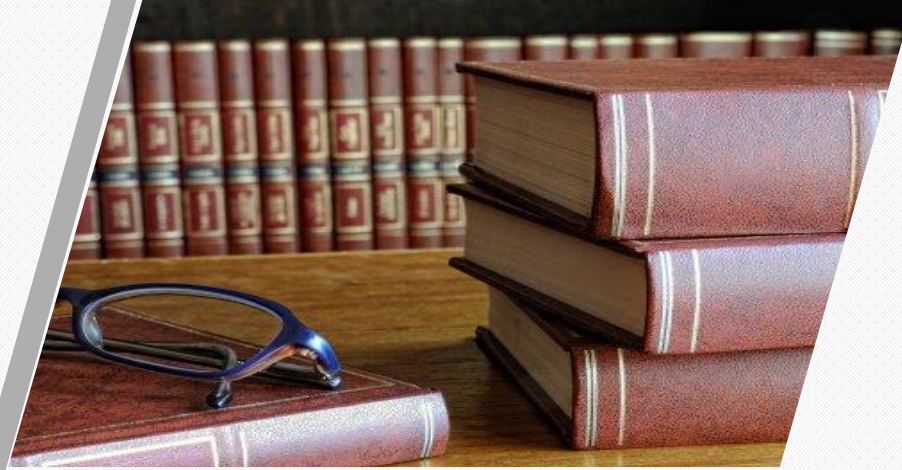
1. Central Board of Direct Taxes (CBDT) has notified the Faceless Appeal Scheme 2021, effective from 28-12-2021. The new scheme is notified in supersession of the earlier Faceless Appeal Scheme, 2020. We have identified the below mentioned key changes in the new Faceless Appeal Scheme:

- It would be mandatory for the Commissioner (Appeals) to allow a personal hearing if the taxpayer requests it during e-proceedings.
- No draft appeal order to be sent to another Appeal Unit for review. Commissioner shall prepare an appeal order and sent it to National Faceless Appeal Centre for communicating the same to appellant.
- Role of Regional Faceless Appeal Centre is removed, and the appeal is directly assigned to the Commissioner of a specific Appeal Unit by National Faceless Appeal Centre.
- The Commissioner (Appeals) has been authorized to send a notice to the appellant through the NFAC to initiate any penalty proceedings for non-compliance with any notice, direction or order.
- Under the new Faceless Appeal Scheme, all the orders (appeal order, penalty order, or rectification order) shall be signed digitally by the Commissioner (Appeals) before sending to National Faceless Appeal Centre.

Link:

https://www.incometaxindia.gov.in/communications/notification/notification_no_139_2021.pdf

Indirect Tax : Case Laws



Case Law 1:

Electricity/ Water charges collected by Landlord part of “Renting Service” – Rejects pure agency plea

The Indiana engineering works Bombay, the applicant, is the owner of “Indiana House” who entered into a leave and license agreement with M/s Capri Global Capital Ltd vide which it licensed 4th Floor for a license fee payable monthly with applicable GST. Applicant has installed electricity meters for use and consumption of power by licensees. As per the agreement, applicant pays electricity charges and then raises debit notes for electricity and bill of supply for water charges and collect at actual on reimbursement basis. Applicant feels that electricity/water charges paid by them to service provider and reimbursement of same from licenses do not attract GST, stating it to be a case of Pure agency governed by Rule 33 of CGST rules 2017. So, applicant has sought an advance ruling whether electricity/water charges paid as per meter reading and collected from recipients at actual are liable to GST.

AAR holds that above mentioned charges are liable to GST referring to section 15 – Value of supply, AAR reiterates that value of supply includes incidental expenses incurred for the supply of main service. In the given case, supply of electricity and other utilities is mandatory for the betterment of principal supply i.e, renting of property hence variable charges received become part of

consideration for supply of rent of property. Further, AAR explains that concept of Pure agency does not stand valid as the pre-defined conditions under rule 33 are not satisfied by the applicant. AAR states that firstly, tenant has not directed applicant for supply of electricity service and not authorized him to make payment to third party in agreement. Further, Applicant holds meter in his own name so its his primary responsibility to make the payment as per meter reading hence applicant is not making payment on behalf of tenant.

In the light of above, Electricity/water charges will be taxable as a part of renting service.

Indiana Engineering Works (Bombay) Pvt Ltd vs Maharashtra AAR ARA-120/2019-20/B-114

Indirect Tax

Notifications & Circulars



S. No Notification

1. Seeks to exempt/reduce rate of CGST on specified medicines used in Covid-19

CBIC vide Notification No. 40/2021 – Central Tax dated 29.12.2021 has notified following provisions:

- ❖ Substituted sub-rule 4 of rule 36, to provide that No Input tax credit shall be available unless details of such supplies has been furnished by supplier in GSTR-1 and same is reflected to recipient in GSTR-2B.
- ❖ Inserted sub-rule (1A) after sub-rule (1) of rule 80 to extend due date of Annual return (GSTR-9) to 28th February 2022.
- ❖ Inserted sub-rule (3A) after sub-rule (3) of rule 80 to extend due date of self-certified reconciliation statement (GSTR-9C) to 28th February 2022.
- ❖ In rule 95(3)(c), proviso has been inserted, effective from 1st April 2021, to provide that if UIN is not mentioned on tax invoice then while claiming refund, copy of invoice duly attested by the authorized representative shall be submitted.
- ❖ Inserted rule 144A after rule 144 to provide for Recovery of penalty by sale of goods or conveyance detained or seized in transit.
- ❖ **Substituted following forms with new formats:**
 - ✓ FORM GST DRC – 10 – Notice for auction under section 79(1)(b) or section 129(6)
 - ✓ FORM GST DRC – 22 – Provisional attachment of property u/s 83
 - ✓ FORM GST DRC – 22A – Application for filling objection against provisional attachment of property.

Link: <https://cbic-gst.gov.in/pdf/central-tax/notfctn-40-central-tax-english-2021.pdf>

2. Seeks to notify 01.01.2022 as the date on which provisions of section 108, 109 and 113 to 122 of the Finance Act, 2021 shall come into force

CBIC vide Notification No. 39/2021 – Central Tax dated 21.12.2021 has notified following provisions:

- ❖ Inserted clause (aa) after clause (a) of sub-section 1 of section 7, effective from 1st day of July 2017, to bring activities or transactions by a person to its members or constituents for cash or any other consideration under the purview of supply and omit paragraph 7 from schedule II

Indirect Tax Notifications & Circulars

- ❖ Inserted clause (aa) after clause (a) of sub-section (2) of section 16 to bring an additional condition to avail Input Tax Credit that Input Tax Credit shall not be available unless details of invoices are uploaded by supplier in Form GSTR-1 under Section-37 of CGST Act, 2017 and are communicated to the recipient (i.e., reflected in GSTR 2A/2B). Margin of 5% will no more be available under rule 36(4).

Link : <https://cbic-gst.gov.in/pdf/central-tax/notfctn-39-central-tax-english-2021.pdf>

3. Seeks to notify CGST (Eighth Amendment) Rules, 2021 into force w.e.f 01.01.2022

CBIC vide Notification No. 38/2021 – Central Tax dated 21.12.2021 has notified the 1st day of January 2022 as the date from which following provisions shall come into force

- ❖ Inserted rule 10B which provides for Aadhar authentication of registered person and in case Aadhar number is not assigned to registered taxpayer, such registered person shall provide Aadhar enrollment ID along with prescribed documents.
- ❖ Amended rule no. 23, 89 and 96 to provide that application for revocation of cancellation of registration under rule 23, application for refund under rule 89 and 96 can be filed subject to newly inserted rule 10B which provides for Aadhar authentication of registered person.
- ❖ Amended rule 59(6) to provide that a registered person shall not be allowed to furnish details of outward supply in FORM GSTR-1 if he has not furnished return in FORM GSTR-3B for preceding month as opposed to earlier two months.

Link : <https://cbic-gst.gov.in/pdf/central-tax/notfctn-38-central-tax-english-2021.pdf>

4. Seeks to make Ninth amendment (2021) to CGST Rules, 2017

CBIC vide Notification No. 37/2021 – Central Tax dated 01.12.2021 has notified following:

- ❖ Amended Rule 137 to increase tenure of National Anti-profiteering authority from current 4 years to 5 years.
- ❖ Amended FORM DRC – 03.

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

Indirect Tax

Notifications & Circulars



S. No Circulars

1. Clarification on compliance to GST law in respect of supply of restaurant service through E-commerce operator (ECO)

CBIC vide Circular No. 167/23/2021-GST clarifies the following:

- ❖ ECOs will no longer be required to collect TCS (tax collected at source) and file GSTR-8 in respect of Restaurant services on which it pays tax on reverse charge.
- ❖ However, on other supplies not yet notified under section 9(5), ECOs will continue to collect TCS in terms of section 52.
- ❖ ECOs will be required to pay tax on any restaurant service whether supplied through them by a registered person or unregistered person.
- ❖ A person supplying restaurant service through ECOs shall include such services in his aggregate turnover for any threshold consideration or any other purpose in the act.
- ❖ ECOs will not report such supply as inward supply liable to reverse charge in GSTR-3B as ECOs are not the recipient of restaurant service rather for the time being they shall report such supply under “Outward Taxable supplies” in GSTR-3B.
- ❖ Further, ECOs may also furnish details of such supplies of restaurant service u/s 9(5) in table 4A or table 7A(1) of GSTR-1.
- ❖ Invoice for restaurant service supplied through ECO under reverse charge mechanism will be issued by ECO.
- ❖ Liability of payment of tax by ECO as per 9(5) shall be discharged in cash only.
- ❖ ECO shall continue to claim Input tax credit without any change. Further, it is clarified that ECO are not required to reverse any ITC on account of payment of tax liability on restaurant service under reverse charge mechanism even if credit on restaurant service is not available,

Legal & Regulatory Notifications



S. No Notifications

1. CLARIFICATION OF HOLDING OF ANNUAL GENERAL MEETING (AGM) THROUGH VIDEO CONFERENCING (VC) OR OTHER AUDIO-VISUAL MEANS (OAVM)(MCA notification dated November 09, 2021)

(MCA circular dated December 08, 2021)

The Ministry of Corporate Affairs (MCA) vide its circular number 19/2021 dated December 08, 2021, in continuation with its General Circular number 20/2020 dated May 05, 2020 and General circular number 02/2021 dated January 13, 2021 has allowed the companies to hold Annual General Meeting (AGM) on or before June 30, 2022 whose AGMs were due in the year 2021.

Link: [getdocument \(mca.gov.in\)](https://mca.gov.in)

2. CLARIFICATION ON PASSING OF ORDINARY AND SPECIAL RESOLUTIONS BY THE COMPANIES UNDER THE COMPANIES ACT, 2013 READ WITH RULES MADE THEREUNDER ON ACCOUNT OF COVID-19-EXTENSION OF TIMELINE

(MCA circular dated December 08, 2021)

- The Ministry of Corporate Affairs (MCA) vide its circular number 20/2021 dated December 08, 2021 has allowed the Companies to hold and transact business at Extra-ordinary General Meeting (EGM) through postal ballot till June 30, 2022 through video conferencing or other audio-visual means.
- All other requirements regarding the EGM remain same.

Link: [getdocument \(mca.gov.in\)](https://mca.gov.in)

3. CLARIFICATION OF HOLDING OF ANNUAL GENERAL MEETING (AGM) THROUGH VIDEO CONFERENCING (VC) OR OTHER AUDIO-VISUAL MEANS (OAVM)

(MCA circular dated December 14, 2021)

- The Ministry of Corporate Affairs (MCA) vide its circular number 21/2021 dated December 14, 2021 has allowed the Companies who will be holding the Annual General Meeting (AGM) through video conferencing or other audio-visual means on or before June 30, 2022 to conduct the same in accordance with Para 3 and Para 4 of the General Circular No. 20/2020 for the year 2022.

Legal & Regulatory

- The Companies that contravene the timeline regarding the AGM will be liable to legal action under the Act.

Link : [getdocument \(mca.gov.in\)](#)

4. RELAXATION ON LEVY OF ADDITIONAL FEES IN FILING OF E-FORMS AOC-4, AOC-4 (CFS), AOC-4 XBRL, AOC-4 NON-XBRL AND MGT -7/MGT-7A FOR THE FINANCIAL YEAR ENDED ON 31.03.2021 UNDER THE COMPANIES ACT, 2013.

(MCA circular dated December 29, 2021)

The Ministry of Corporate Affairs (MCA) vide its circular number 22/2021 dated December 29, 2021, in continuation with its General Circular Number 17/2021 dated October 29, 2021 has provided the relaxation to all the Companies in filing e-forms AOC-4, AOC-4 (CFS), AOC-4 XBRL, AOC-4 NON-XBRL till February 15, 2022 & MGT -7/MGT-7A for the financial year ended as on 31.03.2021 without levying additional fee till February 28, 2022.

Only normal fees will be levied for filing the aforementioned e-forms till 31.12.2021.

Link: [getdocument \(mca.gov.in\)](#)



An Insight into Haryana State Employment of Local Candidates Act, 2020

By – Surbhi Sharma

IBA

The Government of Haryana notified the Haryana State Employment of Local Candidates Act, 2020 (“Act”) on November 06, 2021, the Act will come into effect from January 15, 2022.

Applicability of the Act: The Act shall be applicable to all private companies, societies, partnership firms, trusts, any person employing ten or more persons in Haryana, or any other entity as may be notified by the Government. The Act requires private sector employers to reserve 75% of job posts that offer a salary of less than INR 30,000 for individuals who are domiciled in Haryana. The Government of Haryana has also made the residency (domicile) requirement to 5 years for a person to obtain a residency certificate.

Following are the salient features of the Act:

- 1. Registration:** Every employer shall be required to register its employees receiving gross monthly salary or wages of less than INR 30,000 on the designated portal within 3 months of the commencement of the Act. Further, no new employees shall be engaged in such posts by any employer until such registration is completed. No local candidate shall be able to avail benefits under the Act until she/he is registered on the designated portal.
- 2. Obligations on Employer:** Every employer shall be required to recruit 75% of local candidates (i.e., individuals domiciled in the State of Haryana) with respect to such posts where the gross monthly salary or wages is less than INR 30,000. The local candidates can be from any district in Haryana. However, an employer can restrict the recruitment of local candidates from a particular district to 10% of the total local candidates.
- 3. Exemption:** An employer may claim exemption from the Act by applying to the Designated Officer (an officer of Government not below the rank or equivalence of the Deputy Commissioner as may be designated by notification in Official Gazette) under the Act, if an adequate number of local candidates of the desired skill, qualification or proficiency are not available. The Designated Officer may, pursuant to an inquiry, either accept or reject the employer's application for exemption or direct the employer to train local candidates to achieve the desired skill, qualification, or proficiency.

4. Compliances: The employers shall be required to submit a quarterly report detailing the local candidates employed and appointed during that quarter on the designated portal. The designated officer shall have the right to call for any additional information about the quarterly reports from an employer and also visit the employer's premise to examine any record if they have reason to believe that an offence under this Act has been committed by the employer

5. Penalties:

- a) In the event, employer fails to register employment posts on the designated portal, the same may attract a penalty ranging from INR 25,000 to INR 1,00,0000, and a further penalty of INR 500 per day in case of a continuing offence after conviction.
- b) Further, if employer fails to recruit local candidates as per the Act can attract a penalty ranging from INR 50,000 to INR 2,00,000, and a further penalty of INR 1000 per day in case of a continuing offence after conviction. In addition, the general penalty for contravention of the provisions of the Act or the rules made thereunder ranges from INR 10,000 to INR 50,000, and a further penalty of INR 100 per day in case of a continuing offence after conviction.
- c) In the event of commission of an offence by a company, every director, manager, secretary or person concerned with the management of the company will be deemed guilty of the offence, unless they are able to prove that the offence in question was committed without their knowledge or consent.

6. Time Period: The Act shall operate for 10 years from its effective date.

7. Limitation of prosecution and cognizance of offence: Cognizance of an offence can be taken by a court only within a period of 6 months from the date on which the alleged commission of the offence came to the knowledge of the Designated Officer or the Authorised Officer.

Conclusion:

The Act is being perceived as limiting by employers across several industries. The Act allows exemptions from recruiting local candidates. However, in such cases, the Designated Officer can direct employers to train candidates who are unsuitable for available posts. This may impose an additional onerous burden on employers leading to a financial outlay.

During a recent press conference held by the Deputy Chief Minister of Haryana, it was communicated that IT companies and start-ups that were set up after the commencement of the Act would be exempted from complying with it for a period of 2 years which may provide some respite. However, a written clarification / notification in this respect is awaited.

The Act does not provide for the definition of the term 'salary or wage'. Since the premise of the Act is based on the domicile of an individual and the salary or wage earned by such individual, it is imperative for the Act or the rules framed thereunder to provide for an explanation.

The Act has also been challenged before Punjab and Haryana High Court stating that it violates Articles 14 (Equality before Law), 15 (Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth) and 19 (Protection of certain rights regarding freedom of speech etc) of the Constitution. The matter has been posted for further hearing on January 12, 2022.

X-Mas Celebration



We enjoyed Christmas with great enthusiasm. It was a fun to have Secret Santa; people were excited to give and get gifts. It was a wonderful experience

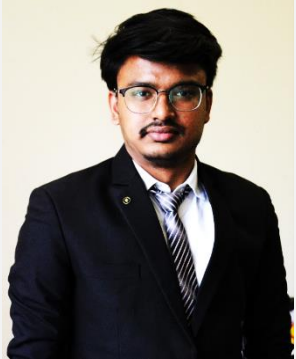
Upcoming Compliances

Date	Compliance
January 11, 2022	Due Date for filing of FORM GSTR-1 for the month of December 2021 for the registered taxpayers who have opted for monthly filing of GST Returns.
January 13, 2022	Due Date for filing of GSTR-1 for the Quarter ending December 2021 for the registered taxpayers who have opted QRMP scheme.
	Due Date for filing of FORM GSTR-6 for the month of December 2021 for the registered taxpayers who have taken Input Service Distributor (ISD) registration.
January 14, 2022	Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194-IB, 194M in the month of November 2021
January 15, 2022	Due date for filing of audit report under section 44AB for the assessment year 2021-22 in the case of a corporate-assessee or non-corporate assessee (who was required to submit his/its return of income on October 31, 2021)
	Quarterly statement of TCS for the quarter ending December 31, 2021
	Quarterly statement in respect of foreign remittances (to be furnished by authorized dealers) in Form No. 15CC for quarter ending December 2021
	Due date for furnishing of Form 15G/15H declarations received during the quarter ending December 2021
January 20, 2022	Due Date for filing of FORM GSTR-3B for the month of December 2021 for the registered taxpayers who have opted for monthly filing of GST Returns
January 22, 2022	Due Date for filling of FORM GSTR-3B for the Quarter ending December 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.

Upcoming Compliances

Date	Compliance
January 24, 2022	Due Date for filling of FORM GSTR-3B for the Quarter ending December 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.
January 30, 2022	Quarterly TCS certificate in respect of quarter ending December 31, 2021
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB, 194M in the month of December, 2021
January 31, 2022	Quarterly statement of TDS for the quarter ending December 31, 2021.
	Quarterly return of non-deduction at source by a banking company from interest on time deposit in respect of the quarter ending December 31, 2021
	Intimation under section 286(1) in Form No. 3CEAC, by a resident constituent entity of an international group whose parent is non-resident
	Audit report under section 44AB for the assessment year 2021-22 in the case of an assessee who is also required to submit a report pertaining to international or specified domestic transactions under section 92E

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Contact Us



S-217, Panchsheel Park,
New Delhi -110017



Mail Us
info@ibadvisors.co



Call Us
+91-11-40946000



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www.ibadvisors.co

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