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BUSINESS ADVISORS

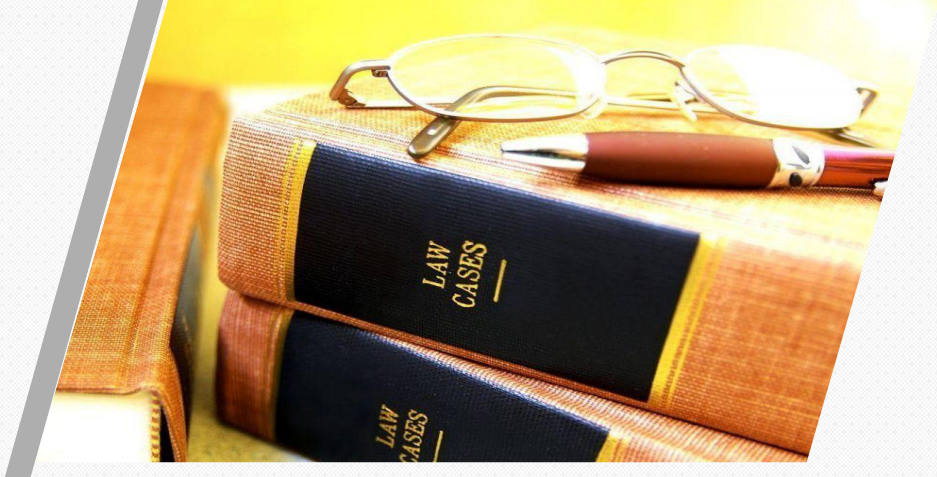
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October 2022

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Direct Tax Case Laws



Case Law 1:

Where Assessing Officer rejected assessee's claim for deduction under section 54F on ground that at time of sale of capital asset, assessee was owner of more than one residential house properties, in view of fact that one residential property was co-jointly owned in name of assessee and his wife and he could not be treated as 'absolute owner' of said property, deduction under section 54F could not be denied to him.

Deduction under section 54F is allowed if the assessee has within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, one residential house and also assessee should not own more than one house in his name at the time of transfer of the asset besides the house which is being purchased or constructed for availing exemption.

Assessee filed his return claiming deduction under section 54F in respect of capital gain arising from transfer of capital assets. Assessing Officer thus rejected assessee's claim for deduction on ground that he was owner of two flats on date of transfer of capital assets and therefore does not satisfy the condition under section 54F. It was submitted that the residential flat situated at Goa was actually purchased jointly in the name of assessee as well as his wife. Assessee also relied upon the case ITO v. Rasiklal N. Satra wherein it was held that

word 'own' appearing in section 54F includes only such residential house which is fully and wholly owned by one person and not a residential house owned by more than one person. Since, the legislature has not amended the provisions of section 54F, it has to be held that the word "own" in Section 54F would include only the case where a residential house is fully and wholly owned by the assessee and consequently would not include a residential house owned by more than one person.

Also, the share of the assessee was transferred /gifted to his daughter Ms Alisha Ashok Chauhan by way of gift deed. Therefore, the assessee cannot be said to be the full owner of the property. Thus even if, as per the provision of section 27(1)(Deemed Ownership) of the Act, the assessee is considered to be a deemed owner of the Goa flat, but even then, assessee would still being a co-owner cannot be termed that Goa flat is fully and wholly owned by him, thus cannot be denied exemption u/s 54F.

Therefore, assessee could not be treated as 'absolute owner' of the residential flat situated at Goa and the exemption under section 54F has been allowed to the assessee.

Ashok G. Chauhan v Assistant Commissioner of Income-tax

Direct Tax

Circulars



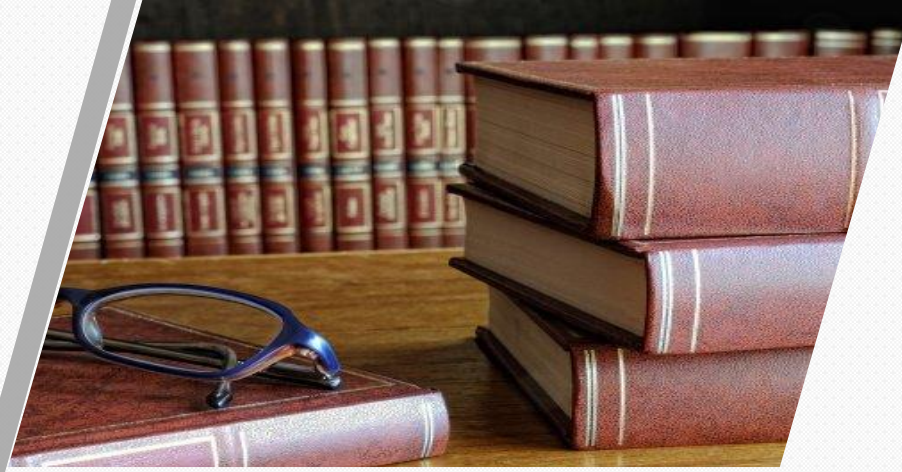
S. No Notification

1. Circular No 18/2022

CBDT issued circular no 18/2022 to provide clarification on additional issues which will help to remove difficulties in implementation of section 194R.

- It clarified that one-time loan settlement with borrower or waiver of loan granted will not be subject to TDS under section 194R.
- It is clarified that if out of pocket expenses (reimbursement) are already part of the consideration in the bill on which tax is deducted under the relevant provisions of the Act, other than section 194R, in accordance with the Circular No 715 dated 8th August 1995, it is clarified that there will not be further liability for tax deduction under section 194R of the Act.
- It is clarified that if benefit/perquisite is provided in a group activity in a manner that it is difficult to match such benefit/perquisite to each participant using a reasonable allocation key, the benefit/perquisite provider may at his option not claim the expense, representing such benefit/perquisite, as deductible expenditure for calculating his total income. If he decides to opt so, he will not be required to deduct tax under section 194R on such benefit/perquisite and therefore he will not be treated as assessee in default under section 20 I of the Act. Thus, in such a case he must add back the expenditure, representing such benefit/perquisite, to calculate his total income if such expenditure is debited in the account.
- It is clarified that Once Company "A" has deducted tax on gifting of car in accordance with section 194R of the Act (or released the car after dealer "8" showed him payment of tax on such benefit) and dealer "8" has included this benefit as income in his income tax return, it would be deemed that the "actual cost" of the car for the purposes of section 32 of the Act shall be the amount of benefit included by dealer "8" as income in his income-tax return. Hence, dealer "8" can get depreciation on fulfillment of other conditions for claiming depreciation.
- It is clarified that the provision of section 194R is not applicable on benefit/perquisite provided by, an organization in scope of The United Nations (Privileges and Immunity Act) 1947, an international organization whose income is exempt under specific Act of Parliament (such as the Asian Development Bank Act 1966), an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign state.
- It is clarified that the tax under section 194R of the Act is not required to be deducted on issuance of bonus or right shares by a company in which the public are substantially interested as defined in clause (18) of section 2 of the Act, where bonus shares are issued to all shareholders by such a company or right shares are offered to all shareholders by such a company, as the case may be.

Indirect Tax : Case Laws



Case Law 1:

Facts of the case :

M/S DM Net technologies has filed an appeal under section 100 of the CGST Act, 2017 against the advance ruling No. GUJ/GAAR/R/75/2020 dated 17.09.2020.

The appellant has raised the question “whether the services provided by the applicant in affiliation to/partnered with Gujarat University and providing education for degree courses to students under specific curriculum as approved by the Gujarat university, for which degrees are awarded by the Gujarat University are exempt from GST vide entry no. 66 of the notification No. 12/2017- Central tax dated 28th June’2017.

The appellant has submitted that they are engaged in providing education in partnership with Gujarat University, the appellant helps in designing the courses and degree shall also be provided by Gujarat University. It has been observed that appellant is an educational consultant and a professional which uses their experience in teaching to help Gujarat university. The appellant does not have any specific curriculum and does not conduct any examination. Hence, the appellant does not qualify as educational institution. And decided that the services provided by the appellant are not exempt under entry no. 66 of the notification No. 12/2017- Central tax dated 28th June’2017.

After that the appellant has submitted that the ruling is bad in law and required to be

quash and set aside and filed a withdrawal application by mail on 24/08/2020 and in hard copy on 25/08/2020. As the services provided by the appellant is also covered by entry no. 3 of Notification 12/2017. After the change in members, the appellant has given a fresh hearing on 28.07.2022 and submissions are reiterated in the appeal dated 02/11/2020. But the appellant has informed the authority that he has filed a withdrawal application and has not received any findings to their withdrawal application before the hearing. And the decision was made by ignoring the withdrawal application and by violation of principles of natural justice on 17/09/2020.

Findings of the case :

The court finds that the appellant has submitted that they are willing to withdraw their application and has submitted an application on 09/10/2020 against GAAR for rectification of order passed as the GAAR has failed to follow the principles of natural justice as the order was passed before providing the necessary documents. In the view of findings of the case appellate authority for advance ruling remanded the matter to GAAR for fresh decision. The GAAR will taken into the consideration all aspects of the matter and the case is remanded back to the Gujarat Authority for advance ruling to issue necessary ruling after hearing the appellant afresh.

Indirect Tax

Circulars & Notifications



S. No Circulars

1. DGFT Notification No. 37/2015-2020 dated 29th September'22

In exercise of powers conferred by section-5 of Foreign Trade (Development & Regulation) Act,1992 of FTP 2015-2020, the Central government makes an amendment in Para 1.01 the phrase “shall remain in force up to 30th September’22 unless otherwise specified” to “shall remain in force up to 31st March’22 unless otherwise specified”.

2. Public Notice No. 26/2015-2020 dated 29th September’22 in relation to DTP policy 2015-2020.

- In exercise of powers conferred in FTP 2015-2020 , DGFT makes the following amendments:
- In para 3.20 the phrase “or 30th June’22, whichever later” is substituted by “or 31st March’23, whichever later”.
- In para 4.12(vi) the date “or 30th September’22’ I substituted by “31st March’23”, appearing in the first sentence.

3. Seeks to notify 01.10.2022 as the date on which provisions of sections 100 to 114, except clause (c) of section 110 and section 111 of Finance Act, 2022 shall come into force.

As per notification No. 18/2022- central tax dated 28 September’22, seeks to notify the following amendment:

- Section 16(2) (ba) inserted to restrict the ITC to the extent available in section 38 a last date to claim ITC extended up to 30th November’22 in place of September GSTR-3B return due date i.e.,20th October’22.
- According to Section 37(3) any rectification can be made up to 30th November in respect of outward supplies.
- Section 34 – Time limit to issue credit/debit note can be declared up to 30th November’22.
- Section 39(5) clarifies that due date for filing GSTR-5 for non-resident taxable person reduced from 20 days to 13 days.
- Section 29 extended the cancellation of registration period from 3 months to 6 months for non-filing of return.

Indirect Tax Notifications & Circulars

- According to section 41 the ITC availed by the registered person, but the taxpayer has not made the payment of tax shall be reversed with applicable interest and after the payment of tax, registered person can re-avail the credit of ITC.
- Section 47 of the CGST Act, after the words 'section 39 or section 45' the words "section 52" shall be inserted.
- Section 52(6) seeks that any rectification in TCS for FY 21-22 can be declared up to 30th November'22 instead of 10th October'22.

4. Seeks to make amendments (Second Amendment, 2022) to the CGST Rules, 2017.

As per notification No. 19/2022- central tax dated 28 September'22, seeks to notify that in exercise of the powers conferred by section 164 of the CGST Act,2017 the following amendment has been made:

- In rule 21, after clause (g) following clause inserted:
 - (h) being a registered person required to file return under subsection (1) of section 39 for each month or part thereof, has not furnished returns for a continuous period of six months.
 - (i) being a registered person required to file return under proviso to subsection (1) of section 39 for each quarter or part thereof, has not furnished returns for a continuous period of two tax periods."
- In rule 36(2) the words "and the relevant information, as contained in the said document, is furnished in the form GSTR-2 by such person shall be omitted and in rule 36(4)(b) after the words, "the details of", the words, 'input tax credit in respect of' shall be inserted.
- In rule 38(a)(ii) the word, letters, and figure, "in form GSTR-2" shall be omitted, in rule 38(c) for the words, letter and figure, 'and shall be furnished in form GSTR-2, the words', letter and figure, and the balance amount of input tax credit shall in reversed in form GSTR-3B" shall be substituted and rule 36(d) shall be omitted.
- In rule 42 (1) (g), the words "at the invoice level in form GSTR-2 and" shall be omitted.
- In rule 43 (1) the words "GSTR-2 and shall be omitted.
- In rule 60(7) the word "auto draft" shall be substituted with "auto generated".
- Rule 69, 70, 71, 72, 73,74,75,76,77 and 79 shall be omitted.

Indirect Tax Notifications & Circulars

5. Seeks to rescind Notification No. 20/2018-CT Dated 28th March,2018.

As per Notification No. 20/2022 dated 28th September, the powers conferred by section 148 of the CGST Act,2017 seeks to notified that the notification No. 20/2018- Central tax, dated 28th March,2018 related to claiming of refund under section 55 has been rescind.

Legal & Regulatory Notifications



S. No Notifications

1. Extension of period of “Company Law Committee”

(Notification dated September 05, 2022)

The Ministry of Corporate Affairs (MCA), vide its notification dated September 05, 2022, has notified that the tenure of Company Law Committee has been extended by one (1) year, till September 16, 2023.

Link:

<https://www.mca.gov.in/bin/dms/getdocument?mds=rhzCSk7hQy%252Ff3XOJ3BwBCw%253D%253D&type=open>

2. Amendment in Companies (Specification of Definition Details) Rules, 2014

(Notification dated September 15, 2022)

Ministry of Corporate Affairs (MCA), vide its notification dated September 15, 2022, has amended the Companies (Specification of definition details) Rules, 2014 through the Companies (Specification of definition details) Amendment Rules, 2022.

The definition of small company has now been changed as per the below table:

Particulars	Paid-up share Capital	Turnover
Old definition	INR 50 Lakhs	INR 2 Crores
New definition	INR 4 Crores	INR 40 Crores

Link:

<https://www.mca.gov.in/bin/dms/getdocument?mds=tiMs9IFJ8xuPm%252B%252Ffoxc6fUw%253D%253D&type=open>

3. Amendment in Companies (Corporate Social Responsibility Policy) Rules, 2014

(Notification dated September 20, 2022)

Ministry of Corporate Affairs (MCA), vide its notification dated September 20, 2022, has amended the Companies (Corporate Social Responsibility Policy) Rules, 2014 through Companies (Corporate Social Responsibility Policy) Amendment Rules, 2022.

Legal & Regulatory

Through this amendment a company having any amount in its Unspent Corporate Social Responsibility Account, is required to constitute a CSR Committee and comply with the provisions of sub-section (2) to (6) of section 135 of the Companies Act, 2013

The other key highlights of the amendment are as follows:

- ❖ Earlier, only a section 8 Company or a registered public trust or a registered society, registered under section 12A and 80 G of the Income Tax Act, 1961 were eligible as the implementing agencies for CSR activities but now, any section 8 Company or a registered public trust or a registered society exempted under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of section 10 of the Income Tax Act, 1961, would also be the eligible implanting agencies.
- ❖ Accordingly, the definition of entity for form CSR-1 is also widened adding the abovesaid entities.
- ❖ Companies undertaking impact assessment are allowed to book the expenditure towards CSR for that financial year for an amount that is lower of two percent of the total CSR expenditure or INR 50 Lakhs as against the 5% percent previously.
- ❖ The Companies undertaking Impact Assessment of CSR Projects are also required to provide the executive summary of the projects along with web-link(s) of Impact Assessment of the CSR projects.

Link:

<https://www.mca.gov.in/bin/dms/getdocument?mds=1Wt3uUYzV0rGCr2Vxa8ztQ%253D%253D&type=open>

4. Extension time for filing e-form DIR-3KYC and WEB Form DIR-3 KYC

(Notification dated September 28, 2022)

Ministry of Corporate Affairs (MCA), vide its notification dated September 28, 2022, has allowed filing of e-form DIR-3KYC and WEB Form DIR-3 KYC upto October 15, 2022

Link:

<https://www.mca.gov.in/bin/dms/getdocument?mds=2itVg%252FZQrw%252FU4s9JXtbS1w%253D%253D&type=open>



Inbound Cross Border Merger

By – Manisha Martolia

IBA

Procedure of Inbound Cross Border Merger :

Cross border merger refers to the merger or amalgamation of an Indian Company and a Company incorporated outside India. The term 'cross border merger' has been defined under the Foreign Exchange Management (Cross Border Merger) Regulations, 2018 as "any merger, amalgamation or arrangement between an Indian Company and Foreign Company in accordance with the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 notified under the Companies Act, 2013".

The Cross Border Merger can either be inbound or outbound merger. 'Inbound Merger' means a cross border merger where the resultant Company is an Indian Company whereas 'Outbound Merger' means a cross border merger where the resultant Company is a Foreign Company.

Applicable Provisions :

- Chapter XV: Compromises, Arrangements and Amalgamations: Section 230, 231, 232 and 234 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
- Foreign Exchange Management (Cross Border Merger) Regulations, 2018

Procedure for Inbound Merger :

Step 1- Conduct a meeting of Board of Directors to pass the following resolutions:

- Discussion on the proposal of Merger of the Company;
- Alteration of objects clause of the Memorandum of Association for addition of a clause for merger and amalgamation as one of the ancillary objects of the Company; if the same is not already present; and
- Fixation of date of the extra ordinary general meeting for approval of shareholders for alteration of main objects of the Company

Step 2 - Conduct an extra ordinary general meeting of the Company to pass a special resolution for alteration in the main objects of the Company.

Note: Agenda “b” and “c” would not be required in case the objects clause of the company already contains the authorisation for merger and amalgamation.

Step 3 - Conduct another meeting of Board of directors to pass the following resolutions:

- Approval of draft scheme of merger;
- Authorisation to directors, advocates and practicing company secretaries

Step 4 - File the petition for merger before NCLT in form NCLT-1 along with a fee of INR 5,000/- and the following documents of both transferor and transferee company:

- Consent Affidavit from all the directors of the Company in form NCLT-6
- Master data and Signatory details of the Company
- Copy of Memorandum and Articles of Association
- Latest audited financial statements of the Company and provisional if required
- List of Board of Directors
- Extracts of the Board Minutes approving the Scheme of Amalgamation
- List of shareholders
- List of creditors both secured and unsecured
- Certificate from the Director, Bani Singh of confirming the compliance with the provisions of the Foreign Exchange Management (Cross Border Merger) Regulations, 2018
- Vakalatnama/ MOA
- Copy of proof of payment of ₹5,000 in favour of “The Pay and Accounts Officer, Ministry of Corporate Affairs, New Delhi,” payable at New Delhi, towards the requisite fee
- Scheme of Amalgamation
- Pendency of any investigation or proceedings against the Company
- Auditor certificate on accounting treatment

Step 5 - Thereafter, the NCLT shall call for hearing and provide the directions for the meeting of the creditors/ members.

Step 6 - Notice of meeting to creditors/ members in form CAA-2

The Company shall provide with notice in form CAA-2 for meeting of the creditors/ members along with a copy of the scheme, a statement depicting all the details of the directions for meeting and an explanatory statement disclosing the details of the scheme at least one month before the date of meeting fixed by the NCLT and the notice in form CAA-2 also be advertised in one English newspaper and in one vernacular newspaper having wide circulation in the state of the registered office and also on website of the Company, if any. Further, the company can jointly advertise in case separate meetings are being held for the creditors or members.

Step 7-Notice to Statutory Authorities in form CAA-3.

The Company shall send the notice of the meeting to the ROC, Income Tax and such other authorities as may be required along with the copy of the scheme and statement depicting the details of the order as afore mentioned, after sending the notice to the members/ creditors in form CAA. 3.

Step 8 - Conduct the meeting of members/ creditors on the date fixed by the NCLT.

Step 9 - Representation from the Statutory Authorities and report of result of the meeting by Chairperson to NCLT in form CAA-4

The statutory authorities can make representations within 30 days of receipt of the notice to the NCLT and same shall also be sent to the concerned companies. The NCLT shall make representation within 30 days of receipt of notice, if any and the Chairperson appointed shall submit an affidavit of service stating that the directions regarding issue of notices and the advertisement have been complied with. The appointed Chairperson shall report on the result of the meeting in form CAA. 4 to the NCLT.

Step 10 - Confirmation of petition in form CAA-5

The Company shall file a petition in form CAA. 5 stating that the scheme is approved by its members/ creditors within seven days of filing of report by the chairperson for sanction of the scheme and the petition shall also pray for appropriate orders and directions.

Step 11 - Final Hearing and order by NCLT in form CAA-6

The Tribunal shall fix a date for hearing of petition and the notice of the hearing shall be advertised in the same newspapers as previously advertised and the Notice of hearing shall also be sent to the statutory authorities by NCLT. The order sanctioned by the NCLT in form CAA.6.

Step 12 - Intimation of order to Registrar of Companies (ROC) in form INC-28 and payment of stamp duty

File form INC-28 for intimating about the order of NCLT sanctioning scheme of merger to ROC and payment of stamp duty on the order as per the respective state stamp laws.

Step 13 - Statement of compliance of merger

The Company shall file a statement in form CAA-8 within two hundred ten days from the end of the financial year until the scheme is fully implemented.

Step 14 - The Company, any creditor or member, may apply to the NCLT for determination of any question in relation to the scheme, and the Tribunal may give such directions as it may think fit including any modifications in the scheme. Further, the NCLT may also order to file evidence, information, affidavit as it may require at any time during the proceedings.

Training Session - RBI Compliance



Thanks Tripti Sharma for imparting training on RBI Compliance. The session was useful to enhance our knowledge on Foreign Direct Investment.

Upcoming Compliances

Date	Compliance
October 11, 2022	Due Date for filing of Form GSTR-1 for the period September 2022 for the registered taxpayers who have opted for monthly filing of GST Returns
October 13, 2022	Due Date for submission of invoices through IFF under QRMP scheme for the period September 2022 for the registered taxpayers who have opted for quarterly filing of GST Returns
	Due Date for filing of Form GSTR-6 for the period September 2022 for the registered taxpayers who have obtained Input Service Distributor (ISD) registration
October 15, 2022	Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194-IB & 194M in the month of September 2022.
	Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of September 2022 has been paid without the production of a challan.
	Quarterly statement of TCS deposited for the quarter ending September 30, 2022.
	Upload declarations received from recipients in Form No. 15G/15H during the quarter ending September 2022
	Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of September 2022
October 20, 2022	Due Date for filing of Form GSTR-3B for the period September 2022 for the registered taxpayers who have opted for monthly filing of GST Returns
October 24, 2022	Due Date for Challan Payment along with filing for the period September 2022 for the registered taxpayers who have opted for QRMP scheme
October 30, 2022	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB, 194M in the month of September 2022

Upcoming Compliances

Date	Compliance
October 30, 2022	Quarterly TCS certificate (in respect of tax collected by any person) for the quarter ending September 30, 2022
October 31, 2022	Intimation by a designated constituent entity, resident in India, of an international group in Form no. 3CEAB for the accounting year 2021-22
	Quarterly statement of TDS deposited for the quarter ending September 2022
	Due date for furnishing of Annual audited accounts for each approved programmes under section 35(2AA)
	Quarterly return of non-deduction of tax at source by a banking company from interest on time deposit in respect of the quarter ending September 2022
	Due date for filing of return of income for the assessment year 2022-23 if the assessee (not having any international or specified domestic transaction) is (a) corporate-assessee or (b) non-corporate assessee (whose books of account are required to be audited) or (c) partner of a firm whose accounts are required to be audited or the spouse of such partner if the provisions of section 5A applies
	Audit report under section 44AB for the assessment year 2022-23 in the case of an assessee who is also required to submit a report pertaining to international or specified domestic transactions under section 92E
	Report to be furnished in Form 3CEB in respect of international transaction and specified domestic transaction
	Due date for e-filing of report (in Form No. 3CEJ) by an eligible investment fund in respect of arm's length price of the remuneration paid to the fund manager (if the assessee is required to submit return of income on October 31, 2022).
Statement by scientific research association, university, college or other association or Indian scientific research company as required by rules 5D, 5E and 5F (if due date of submission of return of income is October 31, 2021).	

Upcoming Compliances

Date	Compliance
October 31, 2022	Application in Form 9A for exercising the option available under Explanation to section 11(1) to apply income of previous year in the next year or in future (if the assessee is required to submit return of income on October 31, 2022).
	Due date for claiming foreign tax credit, upload statement of foreign income offered for tax for the previous year 2021-22 and of foreign tax deducted or paid on such income in Form no. 67. (If due date of submission of return of income is October 31, 2022).

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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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