



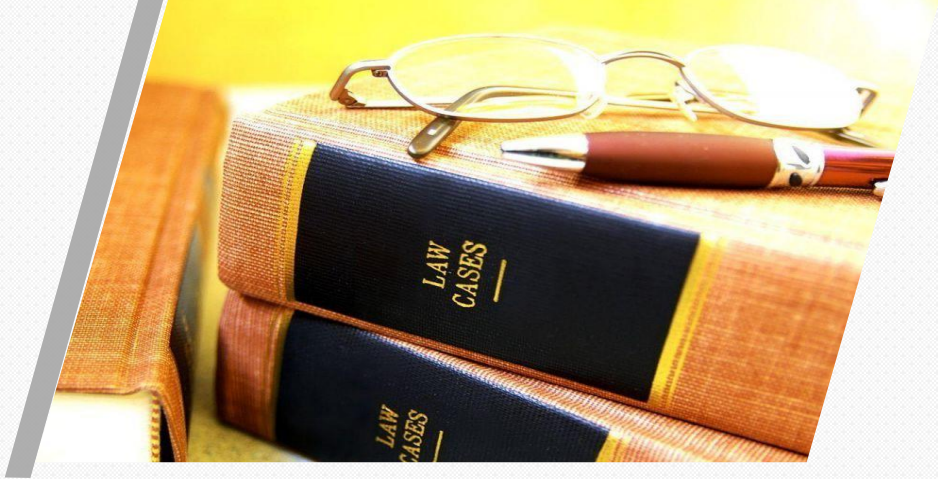
**June 2023**

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# Direct Tax Case Laws



## Case Law 1:

**Where a charitable trust applied for issuance of registration under section 12A within a short time span (nine months, in this case) after its formation, can registration be denied by the concerned authority on the ground that no charitable activity has been commenced by the trust?**

The High Court observed that, with the moneys available with the trust, it cannot be expected to carry out activity of charity immediately after its formation.

Consequently, in such a case, it cannot be concluded that the trust has not intended to do any activity of charity.

In such a situation, the objects of the trust as mentioned in the trust deed have to be taken into consideration by the authorities for satisfying themselves about the genuineness of the trust and not the activities carried on by it.

Later on, if it is found from the subsequent returns filed by the trust, that it is not carrying on any charitable activity, it would be open to the concerned authorities to withdraw the registration granted or cancel the registration as per the provisions of Income Tax Act 1961.

The registration cannot be denied on the ground that the trust has not carried out any charitable activity so far in the short span of time after its formation.

**DIT (Exemptions) v. Meenakshi Amma Endowment Trust (2013) 354 ITR 219 (Kar.)**

## Case Law 2:

**CA can't be prosecuted under PMLA for certificate issued in Form 15CB based on non-genuine documents submitted by client.**

Petitioner, a Chartered Accountant, was approached by his client for the issuance of Form 15CB. The client was required to make payments for imports. The petitioner issued Form 15CB on his client's request after going through all the required information.

Subsequently, an investigation was carried out on the client and found that it was involved in money laundering. The allegations indicated opening fictitious bank accounts, forged bills of entry, parking huge funds in the bank account and transferring funds to various overseas parties. During the investigation, the Enforcement Directorate (ED) discovered the petitioner's involvement as Form 15CB was filed in his name and overseas payments were made through bank accounts using such forms.

After the investigation, the Enforcement Directorate filed a supplementary complaint on the petitioner, contending his involvement in the generation of proceeds of crime.

Aggrieved by the order of the Enforcement Directorate, a petition was filed before the trial court but with no success. Thereafter, a petition was filed before the Madras High Court.

# Direct Tax : Case Laws

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## **High Court Held :**

The Madras High Court held that petitioner being a Chartered Accountant, in the course of his professional duties, gave Form 15CB after scrutinizing the documents that were presented by his client. Petitioner didn't have any reason to suspect the genuineness of the import transaction made by his client. He has only received the remuneration for issuance of such Form 15CB and nothing more.

Further, a Chartered Accountant is only required to examine the nature of remittance and nothing beyond that. There is no requirement to dig deep into the genuineness of the documents submitted by his clients.

Since the petitioner issued Form 15CB after scrutinising the documents furnished to him by the client, he discharged his duties following the professional behavior expected from him. Therefore, the Court discharged the petitioner from the prosecution and enlisted him as a witness.

# Direct Tax Circulars & Notifications



## S. No Notification & Circulars

### NOTIFICATION :

Omitted Rule 7 of the Foreign Exchange Management

Credit cards spend in forex to come under RBI's remittance scheme.

Earlier, the usage of international credit cards (ICCs) for making payments for fulfilling expenses during travel outside India was not included in the LRS limit.

### CIRCULARS :

#### Circular No 07/2023

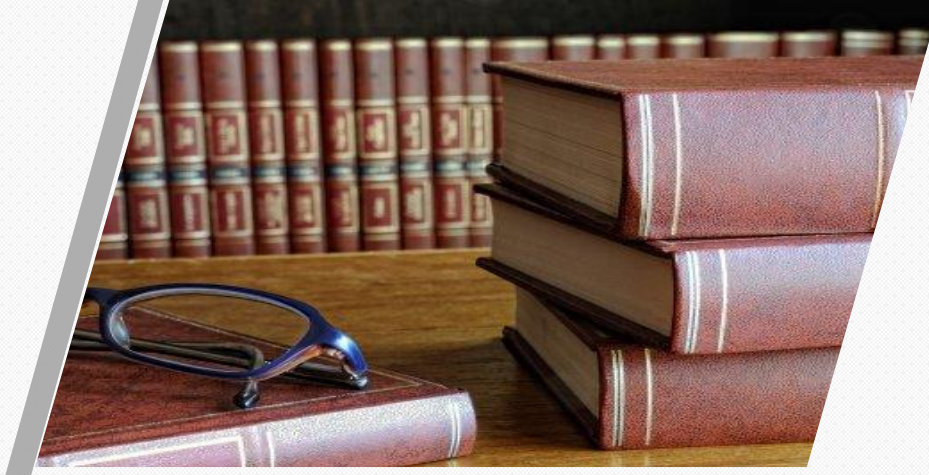
CBDT revises monetary limits for condonation applications for claiming refund or carry forward of losses and set-off for application filed on or after June 01, 2023.

On consideration, the monetary limits specified in Para No 2 of the Circular are modified as under:

- The Principal Commissioners/Commissioners of Income-tax shall be vested with the powers of acceptance/rejection of such applications/claims if the amount of such claims is not more than Rs.50 lakhs for any one A.Y.
- The Chief Commissioners of Income-tax shall be vested with the powers of acceptance/rejection of such applications/claims if the amount of such claims exceeds Rs.50 lakhs but is not more than Rs.2 crores for any one A.Y.
- The Principal Chief Commissioners of Income-tax shall be vested with the powers of acceptance/rejection of such applications/claims if the amount of such claims exceeds Rs.2 crores but is not more than Rs.3 crores for any one A.Y.
- The applications/claims for amounts exceeding Rs.3 crores shall be considered by the Board.



# Indirect Tax : Case Laws



## Case Law 1:

### Brief Facts of case :

M/s. Duet India Hotels (Hyderabad) Private Limited, has filed an application in FORM GST ARA-01 under Section 97(1) of TGST Act, 2017 for seeking an Advance Ruling.

An agreement has been entered between the Duet India Hotels (lessor) and The Curry House Food's Private Limited (lessee). As per the terms of the agreement, the lessor has granted licence to the lessee to use the specified area of the hotel for operating a restaurant and the lessee agreed to pay the monthly license fee along with other charges. Further lessor is collecting electricity and water charges as per the actual meter readings as reimbursement. The lessor is charging GST @ 18% on license fee Space Rental. Common charges, electricity charges and water charges payable by the lessee.

The lessee denied to pay the GST on electricity and water charges on the ground that electricity and water charges are reimbursement of expenses, and these do not qualify as a supply under GST. Further, the lessee has also contended that even if these qualify as supply, the supply of electricity and water are specifically exempted from payment of GST as per Notification No. 2/2017 - Central Tax (Rate) dated 28.06.2017.

TELANGANA STATE AUTHORITY FOR ADVANCE RULING (TSAAR) held that lessor is acting as a pure agent for lessee therefore expenditure or costs incurred by a supplier

as a pure agent of the recipient of supply shall be excluded from the value of supply as per Rule 33 of the CGST Rules, 2017, subject to the adherence to conditions mentioned in the said Rule.

The lessor has satisfied all the conditions and states that electricity and water expenses collected by the lessor are reimbursement of expenses which are incurred by the lessor as a pure agent of the lessee and contends that these are not incidental expenses for providing renting of immovable property service by the lessor.

Therefore, Section 15(2)(c) of the CGST Act would not apply in this case. Accordingly, the said expenses would not be includible in the value of supply of renting of immovable property service being provided by the lessor to the lessee.

### Ruling:

In view of the written submissions filed by the applicant and the submissions made, the following findings were issued against the rulings:

Questions	Ruling
1. Whether GST is applicable on electricity and water charges which are being collected at actual by the Lessor from the Lessee?	No, GST is not applicable.
2. If answer to Q.No.1 is yes, then what is the nature of supply and applicable rate of GST?	Does not arise.

# Indirect Tax : Case Laws

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## Case Law 2 :

### Brief Facts of case :

2B Tradelinks (The petitioner) registered under GST has approached the court being aggrieved by order cancelling the registration. The petitioner was served with show cause notice proposing to cancel the registration of the petitioner for non-filing of returns for a period of six months in Form GST Reg 31.

The petitioner was served with Ext. show cause notice on 02.09.2021 proposing to cancel the registration of the petitioner for non-filing of returns for a period of six months. and he had filed all the returns for the defaulted period but did not file any appeal under section 107 and application for revocation under section 30. The learned counsel for the petitioner relies on the judgment in Suguna Cut Piece Centre vs. Appellate Dy. Commissioner and on Aggarwal Dyeing and Printing Works v. State of Gujarat & 2 Other(s).

The court has held that the department had issued the SCN in GST REG 31 instead of the form GST REG 17 and the notice is vague, as it is not clearly specified with any clarity, the reasons for proposing cancellation. The Court directed that If the Officer wishes to initiate proceedings for cancellation of registration, he must issue a notice as specified in Rule 21 of the CGST Rules and in form GST REG-17 and not in form GST REG-31.

### Findings Of the Case :

With reference to above reason the court held that order for GST registration cancellation stands quashed. The court has directed the petitioner to file all defaulted returns together with tax, late fee, interest,

penalty etc., within a period of two weeks from the date on which the registration of the petitioner is restored in compliance with this judgment.

# Indirect Tax

## Notifications & Circulars



### S. No      Notifications

- 1. Seeks to implement e-invoicing for the taxpayers having aggregate turnover exceeding Rs. 5 Cr from 1st August 2023.**

CBIC vide Notification No. 10/2023- Central Tax Dated 10.05.2023 has reduced the threshold limit for E-invoicing with effect from 1st August 2023, every registered taxable person whose aggregate annual turnover exceeds Rs. 5 Crores in any of the financial year since 2017-18 shall be liable to issue E-Invoice. Earlier the limit was Rs. 10 Crores.

**Link:** <https://taxinformation.cbic.gov.in/view-pdf/1009732/ENG/Notifications>

- 2. Seeks to extend the due date for furnishing FORM GSTR-1 for April 2023 for registered persons whose principal place of business is in the State of Manipur.**

CBIC vide Notification No.11/2023-Central tax dated 24th May 2023, has extended the due date till the 31st May 2023 for filing GSTR-1 for the registered person filing return under section 39(1) in the state of Manipur w.e.f. 11th May 2023.

**Link :** <https://taxinformation.cbic.gov.in/view-pdf/1009740/ENG/Notifications>

- 3. Seeks to extend the due date for furnishing FORM GSTR-3B for April 2023 for registered persons whose principal place of business is in the State of Manipur.**

CBIC vide Notification No.12/2023-Central tax dated 24th May 2023, has extended the due date till the 31st May 2023 for filing GSTR-3B for the registered person filing return under section 39(1) in the state of Manipur w.e.f 20th May 2023.

**Link :** <https://taxinformation.cbic.gov.in/view-pdf/1009741/ENG/Notifications>

- 4. Seeks to extend the due date for furnishing FORM GSTR-7 for April 2023 for registered persons whose principal place of business is in the State of Manipur.**

CBIC vide Notification No.13/2023-Central tax dated 24th May 2023, has extended the due date till the 31st May 2023 for filing GSTR-7 for the registered person required to deduct tax at source under section 39(6) with rule 66 in the state of Manipur w.e.f 10th May 2023.

**Link :** <https://taxinformation.cbic.gov.in/view-pdf/1009742/ENG/Notifications>

- 5. Seeks to amend notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 so as to extend last date for exercise of option by GTA to pay GST under forward charge**



# Indirect Tax Circulars

## S. No      Circulars

CBIC vide Notification No.9/2023-Central tax-rate dated 9th May 2023, seeks to notify the amendment in Notification No. 11/2017 dated 28th June 2017,

Against serial number 9, in item (iii), in sub-item (b), in the entries under column (5), in condition (2), after the second proviso, the proviso, "Provided also that the option for the Financial Year 2023-2024 shall be exercised on or before the 31st May, 2023"

"Provided also that a GTA who commences new business or crosses threshold for registration during any Financial Year, may exercise the option to itself pay GST on the services supplied by it during that Financial Year by making a declaration in Annexure V before the expiry of forty-five days from the date of applying for GST registration or one month from the date of obtaining registration whichever is later." Shall be inserted.

**Link:** <https://taxinformation.cbic.gov.in/view-pdf/1009728/ENG/Notifications>

# Audit Notifications



## S. No      Notifications

### 1. Audit Trail', Mandatory for Accounting Software

The MCA vide its notification dated 24th March 2021 had introduced the concept of audit trails by inserting proviso to rule 3(1) of the Companies (Accounts) Rules, 2014. It mentioned that “for the F.Y. commencing on or after 1st April, 2021, every company which uses accounting software for maintaining its books of account, shall use only such accounting software which has a feature of recording audit trail of each and every transaction, creating an edit log of each change made in books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled.”

However, the applicability was deferred by 1 year by amending the same vide Companies (Accounts) Second Amendment Rules, 2021. The new date of applicability was 1st April 2022. Yet again, the MCA has amended the proviso vide Companies (Accounts) Second Amendment Rules, 2022 and has deferred the applicability by 1 more year. And therefore, with effect from April 1, 2023, all accounting software's used by Indian Companies must have an audit trail feature

# Legal & Regulatory Notifications



## S. No Notifications

### 1. Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2023

(Notification dated May 15, 2023)

- MCA vide notification dated May 15, 2023, has issued the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2023.
- In the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, for sub-rules (5) and (6) of rule 25, the following sub-rules shall be substituted: “Where no objection or suggestion is received within a period of thirty days of receipt of copy of scheme under sub-section (2) of section 233, from the Registrar of Companies and Official Liquidator by the Central Government and the Central Government is of the opinion that the scheme is in the public interest or in the interest of creditors, it may, within a period of fifteen days after the expiry of said thirty days, issue a confirmation order of such scheme of merger or amalgamation in Form No. CAA.12”.
- The new Rules shall come into force with effect from June 15, 2023.

Link:

<https://www.mca.gov.in/bin/dms/getdocument?mds=1Wyd8lldgilFPq8Dx6A3QA%3D%3D&type=open>

### 2. Companies (Removal of Names of Companies) Second Amendment Rules, 2023

(Notification dated May 10, 2023)

MCA vide notification dated May 10, 2023, has issued the Companies (Removal of Names of Companies) Second Amendment Rules, 2023.

The following provision shall be inserted: “Provided that the Company shall not file an application unless it has filed overdue financial statements under section 137 and overdue annual returns under section 92, up to the end of the financial year in which the Company ceased to carry its business operations.”

Link:

<https://www.mca.gov.in/bin/dms/getdocument?mds=kV7N%2BydDIO%2BwXcp%2BAuuahw%3D%3D&type=open>

# Legal & Regulatory

## **3. Companies (Accounts) Second Amendment Rules, 2023**

(Notification dated May 10, 2023)

The Central Government, exercising its powers under various sections of the Companies Act, 2013, has introduced the Companies (Accounts) Second Amendment Rules, 2023. These rules amend the Companies (Accounts) Rules, 2014.

The amendment specifically focuses on Rule 12 and introduces a new proviso in sub-rule (1B). According to the new proviso, for the financial year 2022-2023, Form CSR-2 must be filed separately by 31st March 2024, after filing Form No. AOC-4, Form No. AOC-4- NBFC (Ind AS), or Form No. AOC-4 XBRL, depending on the requirements specified in the rules.

## **RESERVE BANK OF INDIA**

**Reserve Bank of India (RBI) vide circular dated April 26, 2023, has issued amendment to Remittances to International Financial Services Centres (IFSCs) under the Liberalised Remittance Scheme (LRS)**

(RBI Circular April 26, 2023)

- RBI vide circular dated April 26, 2023, has issued amendment to Remittances to International Financial Services Centres (IFSCs) under the Liberalised Remittance Scheme (LRS).
- It has been decided to amend the directions under para 2 (ii) of the aforementioned A.P. (DIR Series) Circular dated February 16, 2021, as – “Resident Individuals may also open a Foreign Currency Account (FCA) in IFSCs, for making the above permissible investments under LRS.” Thus, the condition of repatriating any funds lying idle in the account for a period up to 15 days from the date of its receipt is withdrawn with immediate effect, which shall now be governed by the provisions of the scheme as contained in the aforesaid Master Direction on LRS.

Link: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12494&Mode=0>



## Restriction on Cash Transaction

By –Neha Srivastava

IBA

Transactions in cash often go unaccounted and this is very common practice in India. The government has come up with various measures to curb the same in order to minimize the menace of black money.

Various new provisions have been enacted and amendments have been made to the existing provisions to put an end to or minimize cash transactions. The taxpayer who violates any such provisions are also liable to steep penalties upto 100% of the amount involved.

We will discuss such provisions through this article however before that lets understand the objective of the lawmakers behind enacting these provisions:

- To curb money laundering and tax evasion;
- Encouraging transparent business practices;
- Providing enabling environment for growth of transparent business
- Easing of Audit and Investigation.

Some of the provisions under Income Tax Act which has been enacted with the above objectives are discussed here in:

### 1. Taking or accepting certain loans, deposits and specified sum:

Provisions	Consequences of Violation
<ul style="list-style-type: none"><li>✓ <b>No person is allowed to accept an amount or aggregate of amount of INR 20,000 or more in cash for any loan or deposit or any specified sum.</b></li><li>✓ <b>“Specified sum” means any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not the transfer takes place.</b></li><li>✓ <b>There are certain exception to this provision</b></li></ul>	<ul style="list-style-type: none"><li>✓ <b>Penalty of a sum equal to the amount taken in cash will be levied on recipient of cash.</b></li></ul>



## 2. Other cash transaction:

Provisions	Consequences of Violation
<ul style="list-style-type: none"><li>✓ No person is allowed to receive in cash an amount of INR 2,00,000 or more:<ul style="list-style-type: none"><li>a) In aggregate from a person in a day; or</li><li>b) In respect of a single transaction; or</li><li>c) In respect of transactions relating to one event or occasion from a person.</li></ul></li><li>✓ This provision does not apply to:<ul style="list-style-type: none"><li>1. Any receipt by government or any banking company, post office savings bank or co-operative bank</li><li>2. Transactions of nature referred in point 1.</li></ul></li></ul>	<ul style="list-style-type: none"><li>✓ Penalty of a sum equal to the amount of such sum received in cash will be levied on recipient of cash.</li></ul>

## 3. Acceptance of payment through prescribed Electronic Mode:

Provisions	Consequences of Violation
<ul style="list-style-type: none"><li>✓ Every person, carrying on business and having total sales/ turnover exceeding INR 50 crores in immediately preceding financial year is mandatorily required to provide facility for accepting payment through prescribed electronic modes in addition to facility for the other electronic modes, provided by such person.</li></ul>	<ul style="list-style-type: none"><li>✓ Penalty of INR 5,000 for every day for every day during which such failures continues.</li></ul>

## 4. Threshold limit for audit of accounts increased if cash transactions don't exceed 5%:

Provisions	Consequences of Violation
<ul style="list-style-type: none"><li>✓ Threshold limit for tax audit for business is INR 10 Crore provided that:<ul style="list-style-type: none"><li>a) Aggregate of all cash receipts during the year does not exceed 5% of total receipts; and</li><li>b) Aggregate of all cash payments during the year does not exceed 5% of the total payments.</li></ul></li><li>✓ Normal tax audit threshold limit for business is otherwise INR 1 Crore.</li></ul>	<ul style="list-style-type: none"><li>✓ Not applicable</li></ul>

## 5. Deduction in respect of Health Insurance Premia:

Provisions	Consequences of Violation
<ul style="list-style-type: none"><li>✓ Deduction is allowed in case of health insurance premium paid by the tax payer.</li><li>✓ The payment, however, has to be made by any mode other than cash.</li><li>✓ An exception is provided in case of any sum paid on account of preventive health check up</li></ul>	<ul style="list-style-type: none"><li>✓ Not applicable</li></ul>

## **6. TDS on payment of certain amount in cash:**

- TDS @2% is applicable on cash withdrawals above INR 1 crore.
- However, in case of a person who has not file return of income for the past assessment years relevant to three previous years for which time limit to file return has expired ,the applicable TDS rate is 2% on cash withdrawals in excess of INR 20 lakhs and upto INR 1 Crore and 5% on the withdrawals above INR 1 crore.

All these provisions would help in achieve the mission of the government to move towards a cash less economy to reduce generation and circulation of black money.

Disclaimer: All the above stated provisions of law are applicable on the date of publishing this article but are subject to amendments in law. Thus, you are requested to correlate the same with provisions prevailing for the time being in force before applying the same to any practical situation.

## Training : How To Generate E-invoice



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Thanks Sakshi Sachdeva who shared concept and guidelines of E-Invoicing in the training session.

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# Upcoming Compliances

Date	Compliance
June 13, 2023	Due Date for submission of invoices through IFF under QRMP scheme for the period May 2023 for the registered taxpayers who have opted for quarterly filing of GST Returns
	Due Date for filing of Form GSTR-6 for the period May 2023 for the registered taxpayers who have obtained Input Service Distributor (ISD) registration
June 14, 2023	Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194-IB and 194M, 194S in the month of April 2023
June 15, 2023	Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of May, 2023 has been paid without the production of a challan
	Quarterly TDS certificates (in respect of tax deducted for payments other than salary) for the quarter ending March, 2023
	First instalment of advance tax for the assessment year 2024-25
	Certificate of tax deducted at source to employees in respect of salary paid and tax deducted during Financial Year 2022-23
	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 May, 2023.
	Furnishing of statement (in Form No. 64D) of income paid or credited by an investment fund to its unit holder for the previous year 2022-2023
June 20, 2023	Due Date for filing of Form GSTR-3B for the period May 2023 for the registered taxpayers who have opted for monthly filing of GST Returns
June 25, 2023	Due Date for Challan Payment for the period May 2023 for the registered taxpayers who have opted for QRMP scheme.

# Upcoming Compliances

Date	Compliance
June 29, 2023	Due date for e-filing of a statement (in Form No. 3CEK) by an eligible investment fund under section 9A in respect of its activities in financial year 2022-23
June 30, 2023	Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194-IB and 194M, 194S in the month of
	Return in respect of securities transaction tax for the financial year 2022-23
	Quarterly return of non-deduction of tax at source by a banking company from interest on time deposit in respect of the quarter ending March 31, 2023
	Statement to be furnished (in Form No. 64C) by Alternative Investment Fund (AIF) to units holders in respect of income distributed during the previous year 2022-23
	Report by an approved institution/public sector company under section 35AC(4)/(5) for the year ending March 31, 2023
	Due date for furnishing of statement of income distributed by business trust to its unit holders during the financial year 2022-23. This statement is required to be furnished to the unit holders in form No. 64B
	Furnishing of Equalisation Levy statement for the Financial Year 2022-23
	Deadline for linking PAN with Aadhaar to avoid PAN becoming inoperative



# Editorial Team



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