

SKJ iCAN

Newsletter

September 2022

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COMPLIANCE CALENDAR FOR SEPTEMBER 2022

INCOME TAX

1] CBDT issues circular regarding insertion of rule 17AA

- CBDT notifies new IT Rule 17AA to prescribe the Books of Account and other documents which are required to be kept and maintained in the case of Trusts/ NGOs/ Universities/ Hospitals/ Educational/ Medical Institutions, etc.

[CIRCULAR NO. 94/2022 [F. NO.370142/34/2022-TPL], DATED 10-8-2022]

2] CBDT issues circular regarding Insertion of Rule 40G and Form No. 29D for Refund u/s 239A of Incorrect TDS u/s 195.

- CBDT has notified new IT Rule 40G which prescribes the procedure to get such refund, along with format of new IT Form 29D meant for the purpose. Rule 40G provides that a TDS refund claim in Form 29D has to be made within specified days from the date of payment of TDS incorrectly deducted.
- The claim for refund shall be made by the claimant or duly authorised agent which is to be accompanied by a copy of an agreement or other arrangement referred to in section 239A.

[CIRCULAR NO. 98/2022 [F. NO.370142/33/2022-TPL], DATED 17-8-2022]

3] Central government issues circular that section 206C(1G) shall not apply to an individual who is not a Resident in India:

- Central govt. notifies that the provisions of sub-section (1G) of section 206C of the Act shall not apply to a person (being a buyer) who is a non-resident and who does not have a permanent establishment in India

[CIRCULAR NO. 20/2022 [F. NO.370142/9/2022-TPL], DATED 30-3-2022]

4] Documents to Be Furnished By Employee to Avail Covid-19 Tax Exemptions

- Central govt. specifies documents to be furnished by employee to avail Covid-19 tax exemptions (Salary- Perquisites). All necessary documents of medical diagnosis or treatment are to be submitted within six months from the date of being determined as COVID-19 positive. Also a certification in respect of all expenditure incurred on the treatment of COVID-19 is required to be submitted.
 - This notification shall be deemed to have come into force from the 1st day of April, 2020 and shall apply in relation to the assessment year 2020-2021 and subsequent assessment years.
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[CIRCULAR NO.90/2022[F.NO.370142/31/2022-TPL], DATED 5-8-2022]

5] Documents To Be Furnished By Employee To Avail Covid-19 Tax Exemptions

- Central govt. notifies forms which is to be furnished by an individual to claim exemption of any amount received towards expenditure incurred for treatment of covid-19 illness in Form 1.(IFOS)

[CIRCULAR NO. 91/2022[F. NO.370142/31/2022-TPL], DATED 5-8-2022]

6] Specified form to be furnished and conditions to be satisfied for claiming exemption of amount received due to covid-19 death

- Central govt. notifies form which is to be furnished and conditions are to be satisfied for claiming exemption of amount received due to Covid-19 death in Form A.

[CIRCULAR NO. 92/2022[F. NO.370142/31/2022-TPL], DATED 5-8-2022]

7] CBDT issues circular notifying change in time limit for filing form no. 67 for claiming foreign tax credit

- As per rule 128 of income tax rules, 1962, the statement in Form No. 67 referred to in clause (i) of sub-rule (8) and the certificate or the statement referred to in clause (ii) of sub-rule (8) shall be furnished on or before the end of the assessment year relevant to the previous year in which the income referred to in sub-rule (1) has been offered to tax or assessed to tax in India and the return for such assessment year has been furnished within the time specified under sub-section (1) or sub-section (4) of section 139.
- Provided that where the return has been furnished under subsection (8A) of section 139, the statement in Form No. 67 referred to in clause (i) of sub-rule (8) and the certificate or the statement referred to in clause (ii) of sub-rule (8) to the extent it relates to the income included in the updated return, shall be furnished on or before the date on which such return is furnished."

[CIRCULAR NO. 100/2022 [F.NO.370142/35/2022-TPL], DATED 18-8-2022]

GOODS AND SERVICE TAX**Recent clarifications issued by CBIC****1] Clarifications regarding applicable GST rates and exemptions on certain services**

The following issues have been clarified by the **CBIC vide the Circular No. 177/09/2022-TRU dt. 03.08.2022**

(i) Rate of GST applicable on supply of ice-cream by ice-cream parlours during the period from 01.07.2017 to 05.10.2021

Circular No. 164/20/2021-GST dt. 06.10.2021 has clarified that ice-cream parlours do not have the character of restaurants as they sell already manufactured ice-creams. Hence ice cream sold by such parlours or outlets attracts GST @ 18% with ITC (and not 5% without ITC). It has now been clarified that no refund of GST shall be allowed, if already paid at 18%. With effect from 6.10.2021, the ice Cream parlors are required to pay GST on supply of ice-cream at the rate of 18% with ITC.

(ii) Applicability of GST on application fee charged for entrance or the fee charged for issuance of eligibility certificate for admission or for issuance of migration certificate by educational institutions

The amount or fee charged for admission or entrance, or amount charged for application fee for entrance, or the fee charged from prospective students for issuance of eligibility certificate to them in the process of their entrance/admission to the educational institution is exempt under entry no 66 of Notification No. 12/2017-CT(R) dt. 28.06.2017. Further, services supplied by an educational institution by way of issuance of migration certificate to the leaving or ex-students are also exempt under Sl. No. 66 of Notification No. 12/2017-CT(R) dated 28.06.2017.

(iii) Whether exemption under Sl.No. 9B of Notification No. 12/2017- CT(R) dt. 28.06.2017 covers services associated with transit cargo both to and from Nepal and Bhutan?

It has been clarified that exemption under Sl. No. 9B of the exemption notification shall cover services associated with transit cargo **both to and from** Nepal and Bhutan. It has been further clarified that movement of empty containers from Nepal and Bhutan, after delivery of goods there, is a service associated with the transit cargo to Nepal and Bhutan and is therefore covered by the exemption. It has been provided that the cargo has to be transhipped / transited to Nepal and Bhutan, as per Regulations under the Customs Act read with the Treaties for Trade & Transit with Nepal & Bhutan in addition to ensuring that an electronic track and trace facility is in place.

(iv) Whether the activity of selling of space for advertisement in souvenirs published in the form of books by different institutions/organizations

like educational institutions, social, cultural and religious organizations including clubs etc., is eligible for concessional rate of 5%?

As per serial number (i) of entry 21 of notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 selling of space for advertisement in print media attracts GST @ 5%. The term 'print media' has been defined in clause (zt) of notification No.12/2017-Central Tax (Rate) dated 28.06.2017 to mean *“book as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867 (25 of 1867), but does not include business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes.”* Accordingly, it has been clarified that sale of space for advertisement in souvenir book is covered under serial number (i) of entry 21 of notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 and attracts GST @ 5%.

(v) Whether location charges or preferential location charges (PLC) collected in addition to the lease premium for long term lease of land constitute part of the lease premium or of upfront amount charged for long term lease of land and are eligible for the same tax treatment?

It has been clarified that location charges or preferential location charges (PLC) paid upfront in addition to the lease premium for long term lease of land constitute part of upfront amount charged for long term lease of land and are eligible for the same tax treatment, and thus eligible for exemption under Sl. No. 41 of notification no. 12/2017-Central Tax (Rate) dated 28.06.2017.

(vi) Applicability of GST on services in form of Assisted Reproductive Technology (ART)/ In vitro fertilization (IVF)

Health care services provided by a clinical establishment, an authorized medical practitioner or paramedics are exempt under Sl. No. 74 of notification No. 12/2017-Central Tax (Rate) dated 28.06.2017. It has been clarified that abnormality/disease/ailment of infertility is treated using ART procedure such as IVF and accordingly services by way of IVF are also covered under the definition of health care services for the purpose of exemption notification.

(vii) Whether sale of land after levelling, laying down of drainage lines etc., is taxable under GST?

It has been clarified that sale of a land after some development such as levelling, laying down of drainage lines, water lines, electricity lines, etc., is also a sale of land and is covered by Sr. No. 5 of Schedule III and thus, does not attract GST. However, it may be noted that any service provided for development of land, like levelling, laying of drainage lines (as may be received by developers) shall attract GST at applicable rate for such services.

(viii) When services are provided by a non-body corporate to a body corporate by way of renting of any motor vehicle for transport of passengers, whether RCM is applicable on service of transportation of passengers (Heading 9964) or on renting of motor vehicle designed to carry passengers (Heading 9966)?

It has been clarified that where the body corporate hires the motor vehicle (for transport of employees etc.) for a period of time, during which the motor vehicle shall be at the disposal of the body corporate, the service would fall under Heading 9966, and the body corporate shall be liable to pay GST on the same under RCM. It may be seen that reverse charge thus would apply on act of renting of vehicles by body corporate and in such a case, it is for the body corporate to use in the manner as it likes subject to agreement with the person providing vehicle on rent.

However, where the body corporate avails the passenger transport service for specific journeys or voyages and does not take vehicle on rent for any particular period of time, the service would fall under Heading 9964 and the body corporate shall not be liable to pay GST on the same under RCM.

(ix) Whether hiring of vehicles by firms for transportation of their employees to and from work is exempt under Sr. No. 15(b) of Notification No. 12/2017-CT(R) transport of passengers by non-air conditioned contract carriage?

Sr. No. 15(b) of Notification No. 12/2017-CT(R) dated 28.06.2017 exempts “transport of passengers, with or without accompanied belongings, by non-air conditioned contract carriage, other than radio taxi, excluding tourism, conducted tour, charter or hire. It is clarified that ‘charter or hire’ excluded from the above exemption entry is charter or hire of a motor vehicle for a period of time, where the renter defines how and when the vehicles will be operated, determining schedules, routes and other operational considerations.

Thus, the said exemption would apply to passenger transportation services by non-air conditioned contract carriage falling under Heading 9964 where according to explanatory notes, transportation takes place over pre-determined route on a pre-determined schedule. The exemption shall not be applicable where contract carriage is hired for a period of time, during which the contract carriage is at the disposal of the service recipient and the recipient is thus free to decide the manner of usage (route and schedule) subject to conditions of agreement entered into with the service provider.

(x) Whether supply of service of construction, supply, installation and commissioning of dairy plant on turn-key basis constitutes a composite supply of works contract service and is eligible for concessional rate of GST prior to 18.07.2022?

It has been clarified that a contract of the nature described here for construction, installation and commissioning of a dairy plant constitutes supply of works contract. Dairy plant which comes into existence as a result of such contracts is an immovable property. It has also been clarified that such works contract services were eligible for concessional rate of 12% GST under serial number 3(v)(f) of notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 prior to 18.07.2022. With effect from 18.07.2022, such works contract services would attract GST at the rate of 18% in view of amendment carried out in notification No. 11/2017-Central Tax (Rate) vide notification No. 03/2022-Central Tax (Rate).

[Circular No. 177/09/2022-TRU dt. 03.08.2022]

2] Clarification on GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law

(i) Liquidated damages

Where the amount paid as 'liquidated damages' is an amount paid only to compensate for injury, loss or damage suffered by the aggrieved party due to breach of the contract and there is no agreement, express or implied, by the aggrieved party receiving the liquidated damages, to refrain from or tolerate an act or to do anything for the party paying the liquidated damages, in such cases liquidated damages are mere a flow of money from the party who causes breach of the contract to the party who suffers loss or damage due to such breach. Such payments do not constitute consideration for a supply and are not taxable.

However, Amounts paid for acceptance of late payment, early termination of lease or for pre-payment of loan or the amounts forfeited on cancellation of service by the customer as contemplated by the contract as part of commercial terms agreed to by the parties, constitute consideration for the supply of a facility, namely, of acceptance of late payment, early termination of a lease agreement, of pre-payment of loan and of making arrangements for the intended supply by the tour operator respectively. Therefore, such payments, even though referred to as fine or penalty, are actually payments that amount to consideration for supply, and are subject to GST, in cases where the principal supply is taxable. Since these supplies are ancillary to the principal supply for which the contract is signed, they shall be eligible to be assessed as the principal supply. Hence, such payments will not be taxable if the principal supply is exempt.

(ii) Cheque dishonour fine/ penalty

The fine or penalty that the supplier or a banker imposes, for dishonour of a cheque, is a penalty imposed not for tolerating the act or situation but a fine, or penalty imposed for not tolerating, penalizing and thereby deterring and discouraging such an act or situation. Therefore, cheque dishonour fine or penalty is not a consideration for any service and not taxable.

(iii) Penalty imposed for violation of laws

Penalties imposed for violation of laws cannot be regarded as consideration charged by Government or a Local Authority for tolerating violation of laws. Laws are not framed for tolerating their violation. They stipulate penalty not for tolerating violation but for not tolerating, penalizing and deterring such violations. There is no agreement between the Government and the violator specifying that violation would be allowed or permitted against payment of fine or penalty. There cannot be such an agreement as violation of law is never a lawful object or consideration. It was also clarified vide Circular No. 192/02/2016-Service Tax, dated 13.04.2016 that fines and penalty chargeable by Government or a local authority imposed for violation of a statute, bye-laws, rules or regulations are not leviable to service tax. The same holds true for GST also.

(iv) Forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period

The provisions for forfeiture of salary or recovery of bond amount in the event of the employee leaving the employment before the minimum agreed period are incorporated in the employment contract. The said amounts are recovered by the employer not as a consideration for tolerating the act of such premature quitting of employment but as penalties for dissuading the non-serious employees from taking up employment and to discourage and deter such a situation. The employee does not get anything in return from the employer against payment of such amounts. Therefore, such amounts recovered by the employer are not taxable as consideration for the service of agreeing to tolerate an act or a situation.

(v) Late payment surcharge or fee

The facility of accepting late payments with interest or late payment fee, fine or penalty is a facility granted by supplier naturally bundled with the main supply. Since it is ancillary to and naturally bundled with the principal supply it should be assessed at the same rate as the principal supply.

(vi) Fixed Capacity charges for Power

The minimum fixed charges/capacity charges and the variable/energy charges are charged for sale of electricity and are not taxable as electricity is exempt from GST. Power purchase agreements which ensure assured supply of power to State Electricity Boards/DISCOMS are ancillary arrangements, the contract is essentially for supply of electricity.

(vii) Cancellation charges

Cancellation fee can be considered as the charges for the costs involved in making arrangements for the intended supply and the costs involved in cancellation of the supply, such as in cancellation of reserved tickets by the Indian Railways. Facilitation supply of allowing cancellation of an intended supply against payment of cancellation fee or retention or forfeiture of a part or whole of the consideration or security deposit should be assessed as the principal supply. For example, cancellation charges of railway tickets for a class would attract GST at the same rate as applicable to the class of travel. The amount forfeited in the case of non-refundable ticket for air travel or security deposit, or earnest money forfeited in case of the customer failing to avail the travel, tour operator or hotel accommodation service or such other intended supplies should be assessed at the same rate as applicable to the service contract, say air transport or tour operator service, or other such services.

However, forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or such forfeiture by Government or local authority in the event of a successful bidder failing to act after winning the bid for allotment of natural resources, is a mere flow of money, as the buyer or the successful bidder does not get anything in return for such forfeiture of earnest money. Such payments being merely flow of money are not a consideration for any supply and are not taxable.

[Circular No. 178/10/2022-GST dt. 03.08.2022]

3] Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 47th meeting

(i) Electric vehicles whether or not fitted with a battery pack attract GST rate of 5%

Electrically operated vehicle including three wheeled electric vehicle means vehicle that run solely on electrical energy derived from an external source or from electrical batteries. Therefore, the fitting of batteries cannot be considered as a concomitant factor for defining a vehicle as an electrically operated. In view of the above, it is clarified that electrically operated vehicle is to be classified under HSN 8703 even if the battery is not fitted to such vehicle at the time of supply and thereby attract GST at the rate of 5% in terms of entry 242A of Schedule I of notification No. 1/2017-Central Tax (Rate).

(ii) Mangoes under CTH 0804 including mango pulp, but other than fresh mangoes and sliced, dried mangoes shall attract GST at 12% rate

It is clarified that mangoes, sliced and dried, falling under 0804 are chargeable to a concessional rate of 5%, while all other forms of dried mango, including Mango pulp, shall attract GST at the rate of 12%. Fresh mangoes, falling under heading 0804, shall continue to remain exempt from GST.

(iii) Treated sewage water attracts Nil rate of GST

In general, water, falling under heading 2201, with certain specified exclusions, is exempt from GST vide entry at S. No. 99 of notification No. 2/2017-Central Tax (Rate), dated the 28th June, 2017. Accordingly, it is clarified that supply of treated sewage water, falling under heading 2201, is exempt under GST. Further, to clarify the issue, the word 'purified' is being omitted from the above-mentioned entry vide notification No. 7/2022-Central Tax (Rate), dated the 13th July, 2022. Treated sewage water was not meant to be construed as falling under "purified" water for the purpose of levy of GST.

(iv) Nicotine Polacrilex Gum attracts a GST rate of 18%

It is clarified that Nicotine Polacrilex gum which is commonly applied orally and is intended to assist tobacco use cessation is appropriately classifiable under tariff item 2404 91 00 with applicable GST rate of 18% [Sl. No. 26B in Schedule III of notification no. 1/2017-Central Tax (Rate), dated the 28th June, 2017].

(v) Fly ash bricks and aggregate - condition of 90% fly ash content applied only to fly ash aggregate, and not fly ash bricks

Hitherto, as per entry at S. No. 176B of the Schedule II the items of description "Fly ash bricks or fly ash aggregate with 90% or more fly ash content; Fly ash blocks" attracted a GST rate of 12%. It is clarified that the condition of 90% or more fly ash content applied only to Fly Ash Aggregates and not to fly ash bricks and fly ash blocks. Further, with effect from 18th July, 2022 the condition is omitted from the description.

RERA

- 1] Submission of proforma of the allotment Letter and agreement for sale at the time of registration of a real estate Project in compliance of Clause (g) of Sub-section 2 of Section 4 of the Real Estate (Regulation and Development) Act, 2016.**

As per MahaRERA order, every promoter to upload along with the application made to MahaRERA for registration of a real estate project, the proforma of the allotment letter (as per prescribed format in Annexure I), and model agreement for sale. The order states in case of deviation in proforma and model agreement, such deviations/modifications shall be highlighted in different colour along with deviation sheet. In case of non-compliance, the application shall be liable to rejected subject to compliance mandate.

[Order No. 35/2022 dated August 12, 2022]

COMPANY LAW

- 1] Companies (Removal of Names of Companies form the Register of Companies) Second Amendment Rules, 2022. Amendment to Companies (Removal of Names of Companies form the Register of Companies) Rules 2016.**

MCA has notified on August 24, 2022 the Companies (Removal of Names of Companies form the Register of Companies) Second Amendment Rules, 2022. Amendment to Companies (Removal of Names of Companies form the Register of Companies) Rules 2016.

As per Section 12 (9) of the Companies Act, 2013 if the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may cause a physical verification of the registered office of the company in such manner as may be prescribed and if any default is found to be made in complying with the requirements of sub-section (1), he may without prejudice to the provisions of sub-section (8), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.

Through the above amendment MCA has added an option in this regard in forms STK-1, STK-5 and STK-5A. These forms relate to striking off a company's name from the Register of Companies.

- 2] Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2022.**

MCA has notified new e-Form DIR-3-KYC and web-form DIR-3 –KYC on August 29, 2022. There is a new requirement wherein directors are required to provide additional information with respect to **Jurisdictional Police Station** in the address section of the form.

COMPLIANCE CALENDAR FOR SEPTEMBER 2022

Due Date	Particulars
	INCOME TAX
7	TDS/TCS Deposit - for the month of August, 2022
14	Issue TDS Certificate for tax deducted u/s 194-IA/194-IB/194M in July, 2022
15	Second instalment of advance tax for the assessment year 2023-24
30	Due date for filing of audit report under section 44AB for the assessment year 2022-23 for assessee who is required to submit his/its return of income on October 31, 2022
30	Due date for furnishing of challan-cum-statement in respect of tax deducted u/s 194-IA/194-IB and 194M for the month of August, 2022
	PF/ESI
15	PF Contribution & ECR filing August 2022
15	ESI Contribution for August 2022
	MVAT
21	Due date for filing and payment of MVAT dues (periodicity- monthly) for August-2022
	GOODS & SERVICE TAX
10	GSTR-7 (by the person who are required to deduct TDS under GST) for August 2022
10	GSTR-8 (by the e-commerce operator who are required to collect TCS under GST) for August 2022.
11	GSTR 1 for the month of August 2022 for taxpayer who has not opted QRMP scheme
13	GSTR 6 (to be filed by Input Service Distributor) for the month of August 2022.
13	Invoice Furnishing Facility (IFF) for the month of August 2022 who have opted for QRMP scheme
20	GSTR 3B for the month of August 2022 for taxpayer having turnover more than INR 5 Crore and for taxpayer who has not opted for QRMP scheme having turnover less than INR 5 Crore
20	GSTR 5 & 5A by Non-resident taxable person for August 2022.
22	GSTR 3B for the month of August 2022 for taxpayer having turnover less than INR 5 Crore and has not opted for QRMP scheme
25	Deposit of GST in Form PMT-06 for the month of August 2022 for taxpayer who has opted for QRMP scheme