



**HAPPY  
NEW YEAR**

**2025**

**SBGCo Connect - January 2025**

**S B Gabhawalla & Co | Chartered Accountants**



Greetings to all our readers and a very Happy New Year 2025!

As one phase ends, another begins. While GST compliances for FY 2023-24 have officially concluded, the focus now shifts to the adjudication process for FY 2020-21 and, to some extent, FY 2021-22. Our readers are advised to regularly monitor their GST portal for any departmental communications. Notably, the deadline for issuing orders under Section 73 for FY 2020-21 is February 28, 2025. Therefore, it is crucial to address notices for replies to SCNs and personal hearings promptly and avoid leaving them unanswered.

For Goods Transport Agencies, important to note that:

1. Reverting to RCM Mechanism: GTAs wishing to revert to issuing invoices under the RCM for FY 2025-26 can now file Annexure VI on the GST portal.
2. Opting for Forward Charge: GTAs opting to charge tax under the forward charge mechanism for FY 2025-26 can now file Annexure V.
3. No Change in Tax Position: GTAs who have already filed declarations in the previous year and do not wish to change their tax position are not required to submit a new declaration for FY 2025-26.

LUT Update: Taxpayers making export supplies without payment of IGST can now file LUT applications for FY 2025-26 as the same has been enabled on the common GST portal.

The press release following the recently held 55<sup>th</sup> GST Council Meeting announced an important update for hotels with room rents exceeding Rs. 7,500 per day that include restaurant services. These hotels must choose between two GST options for restaurant services: either 18% with ITC or 5% without ITC. This compliance will take effect from FY 2025-26. Consequently, hotels falling under this category based on their room rents in the preceding financial year must ensure timely submission of their chosen option for FY 2025-26 once this facility is made available on the common portal.

Through this month's newsletter, we bring to you a summary of recent developments in GST, divided into the following sections:

- A. [What's New?](#)
- B. [Recent decisions from the Judiciary](#)
- C. [GST Compliance Chart for the month of January 2025](#)

We look forward to hearing from you for any feedback or suggestion.

Team SBGCo



## **A. What's New?**

### **I. Notifications issued during the month**

- **Extension for GSTR 3B due date for Murshidabad.**

- Taxpayers having principal place of business in the district of Murshidabad (in the state of West Bengal) were giving relief in filing of Form GSTR 3B for the month of October 2024. The GSTR 3B due date was extended from 20.11.2024 to 11.12.2024.

*Notification no. 30/2024 - Central Tax dated 10.12.2024.*

### **II. Circulars issued during the month**

- **Clarification in respect adjudication of SCNs issued by DGGI**

- The present circular is like an addendum to the previous Circular No. 31/05/2018-GST dated 09.02.2018 substituting certain paragraphs to empower a greater number of Additional/ Joint Commissioners of Central Tax of specified Central Tax Commissionerate to adjudicate SCNs issued by the officers of DGGI in line with Notification No. 27/2024 - Central Tax dated 25<sup>th</sup> November 2024.
- The circular also clarifies that in case where an SCN has been issued to multiple noticees, but having same PAN, then all such SCNs will be adjudicated by the Commissionerate where the noticee has received the highest amount of tax demand.

*Circular No. 239/33/2024 - GST dated 04.12.2024.*

- **Clarification on the availability of ITC for E-Commerce Operators (ECOs)**

- There was confusion in the industry as to whether the ECOs can avail ITC for restaurant services supplied through their online portal wherein, the ECOs are required to pay tax under Section 9(5) of CGST Act via CASH balance only i.e., from Electronic Cash Ledger only.
- In this regard, the present circular clarifies that the ECOs can continue to avail ITC in regards to restaurant services supplied through their online portal. However, since they are discharging the entire liability in cash, they can utilize the ITC availed in this regard, towards their other taxable activities such as supply of own service of providing platform/ commission income, etc.

#### **SBGCO Comments**

The GST law and related circulars previously focused solely on the method of discharging liability by ECOs, without addressing the issue of claiming ITC for services where liability is mandatorily required to be paid in cash. This new circular by the GST Council is, therefore, a welcome development as it clarifies that ITC will be available to ECOs. By issuing this clarification proactively, the Council has ensured that potential disputes or attempts by jurisdictional authorities to exploit ambiguities in the law to issue notices or demand ITC reversals from ECOs shall be avoided.

*Circular No. 240/34/2024-GST dated 31.12.2024.*



- **Clarification regarding claim of ITC by the recipient where goods have been delivered by the supplier at his own place of business under Ex-Works Contract**

- The circular has addressed the issue of fulfilment of Section 16(2)(b) of the CGST Act which requires receipt of goods by the recipient, specifically in the cases of “Ex-Work contracts.”
- The circular clarifies that Section 16(2)(b) of the CGST Act emphasises that goods must be “received” by the recipient to claim ITC, but does specify where the “receipt” must happen. Hence, placing reliance on the explanation to Section 16(2)(b) of the CGST Act, it is now clarified that delivery happens through transfer of documents of title to goods at the place of business of the supplier and the risk of transportation is also borne by the recipient. Hence, the recipient shall be considered to have “received” the goods for the purposes of Section 16(2)(b) of the CGST Act when supplier delivers the goods at his place under Ex-Work contracts.
- Further, the circular also provides caveats that ITC shall be available to recipients subject to fulfilment of other conditions of Section 16(2) and Section 17 of the CGST Act.

**SBGCO Comments**

The circular provides much-needed clarity on the fulfilment of the condition in Section 16(2)(b) of the CGST Act for ex-works contracts. It also indirectly addresses any uncertainties regarding the determination of the place of supply for such contracts. When interpreted alongside Section 10 of the IGST Act and Section 16(2)(b) of the CGST Act, the circular clarifies that the place of supply for ex-works contracts is the location of the recipient. Accordingly, the recipient is eligible to claim ITC upon the delivery of goods at the supplier's place of business, provided all other conditions under Sections 16 and 17 of the CGST Act are satisfied.

*Circular No. 241/35/2024 - GST dated 31.12.2024.*

- **Clarification regarding capturing and recording place of supply for online services to unregistered recipients.**

- The circular emphasises that all the service providers of online services, such as online money gaming, OIDAR, subscription of e-newspapers and e-magazines, OTT services, online telecom services, digital services through mobile applications, etc should devise suitable mechanism to ensure collection of names of the State of the recipient of such services to ensure compliance with Rule 46(f) of the CGST Rules.
- The circular clarifies that if the above requirements of Rule 46(f) of the CGST Rules (capturing correct state name to ensure correct place of supply) are not complied by such service providers of online services, then in such cases, penal action u/s 122(3)(e) of the CGST Act may be attracted.

**SBGCO Comments**

The above circular seems to have been issued on the insistence of the State Governments wherein, the revenue of B2C transactions has not been flowing to them because the



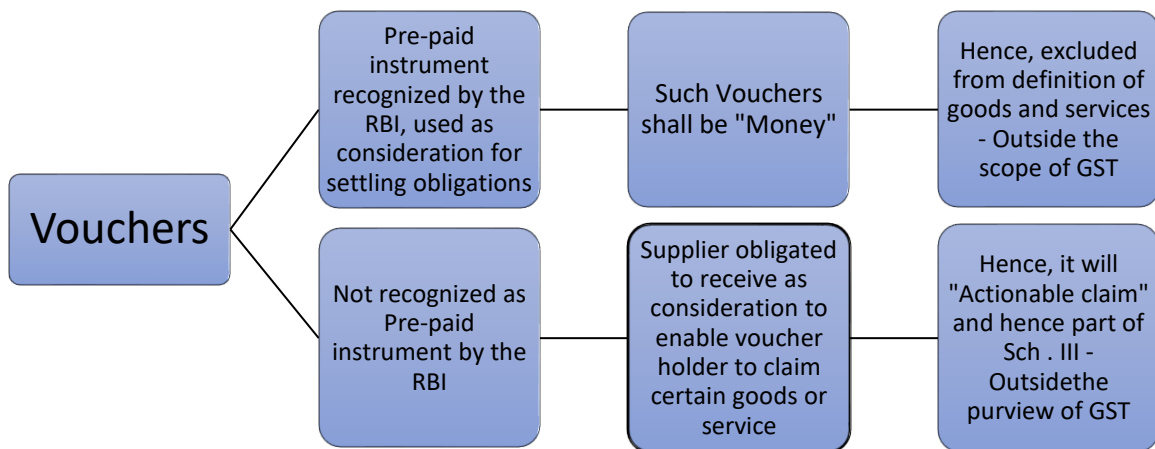
service providers of online service providers have failed to capture the location of the unregistered recipients of such service.

*Circular No. 242/36/2024-GST dated 31.12.2024.*

- **Clarification on various issues pertaining to GST treatment of vouchers**

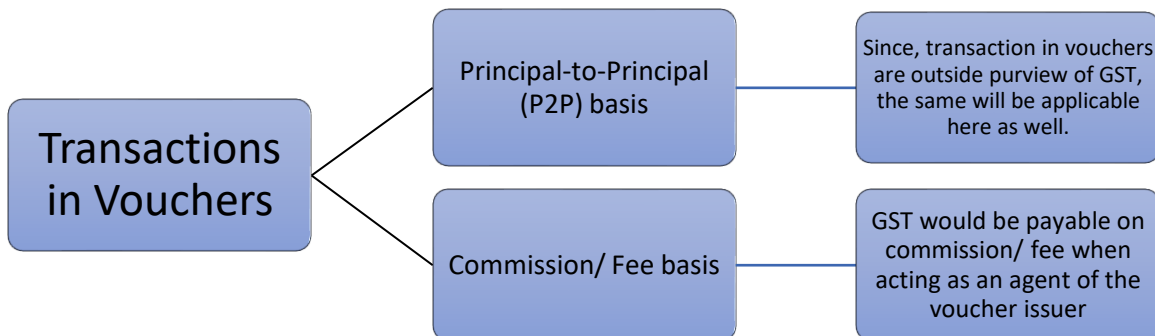
The clarification issued by the circular can be summarized as under:

- Q1. Whether “transactions in vouchers” falls under the category of supply of goods or supply of service?



➔ Therefore, the circular clarifies that irrespective of whether voucher is covered as a pre-paid instrument recognized by RBI or not, the transactions in voucher themselves cannot be considered either as a supply of goods or as a supply of service.

- Q2. What would be the GST treatment of transactions in vouchers by distributors/ sub-distributors/ agents etc.?



➔ GST would be payable by distributor/sub-distributor/agent when acting as an agent of voucher issuer on the commission/ fee charged to voucher issuer.



- Q3. What would be GST treatment of additional services such as advertisement, cobranding, marketing & promotion, customization services, technology support services, customer support services etc.?
- ➔ The service fee/ service charge/ affiliate charge or other amount for supply of such additional services to the voucher issuer as per the terms of contract/agreement would be liable to GST at the applicable rate in the hands of the said service provider.
- Q4. What would be the GST treatment of unredeemed vouchers (breakage)?

Where the voucher is issued for the purpose of redemption in respect of a supply of goods and/or services and there is no express or implied agreement, oral or written, between the issuer of voucher and redeemer for payment of any amount or charges by the redeemer to the voucher issuer in case of non-redemption of the voucher then in all such cases, non-redemption of voucher by the redeemer would not tantamount to any supply of services. Hence, no GST would be payable on any amount attributable to non-redemption of voucher (breakage).

#### **SBGCO Comments**

Nearly eight years after the introduction of GST, assessees dealing in vouchers can finally breathe a sigh of relief. This circular offers a comprehensive clarification on the GST implications for various aspects of voucher-related transactions. By addressing ambiguities that have been the root of unnecessary disputes, this clarification is expected to significantly reduce litigation and bring much-needed clarity and consistency to the treatment of such transactions.

*Circular No. 243/37/2024 - GST dated 31.12.2024.*

### **III. 55<sup>th</sup> GST Council Meeting – important take-aways (*notified date yet to be announced/ notifications yet to be issued*)**

- Proposed rate changes:
  - Sponsorship services provided by the body corporates to be brought under FCM.
  - If value of supply of providing room rent by hotels, exceeds Rs. 7,500/-, then from FY 2025-26, such hotels having restaurants will have to opt for “18% with ITC” or “5% without ITC” for restaurant services.
  - Increase in GST rate from 12% to 18 % on sale of all old and used vehicles
- Proposed clarifications
  - RBI regulated Payment Aggregators are eligible for the exemption relating to ‘acquiring bank’ at Sr. No 34 of notification No. 12/2017-CT(R) dated 28.06.2017
  - No GST is payable on the ‘penal charges’ levied and collected by banks and NBFCs from borrowers for non-compliance with loan terms



- Trade Facilitation measures
- Late Fee applicable for delay in furnishing of Form GSTR 9C to be clarified and waiver of late fee on delayed furnishing of Form GSTR 9C for the period from 2017-18 to 2022-23
- Other measures
- Propose retrospective amendment from 01.07.2017 to Section 17(5)(d) of CGST Act to replace the phrase “plant or machinery” with “plant and machinery” (direct effect of the Safari Retreats’ recent Supreme Court judgement)
- Propose amendment in section 107 and section 112 of CGST Act to provide for payment of pre-deposit for filing an appeal in respect of an order passed which involves only penalty amount
- Propose amendment in provisions pertaining to ISD mechanism under CGST Act and CGST Rules to specifically include inter-state RCM transactions under the ISD mechanism.
- Propose amendment in CGST Act and CGST Rules to give Invoice Management System (IMS) a proper legal backing.

#### **IV. Portal updates**

- **Biometric-Based Aadhaar Authentication and Document Verification for Arunachal Pradesh, Haryana, Manipur, Meghalaya and Tripura:**
- Certain taxpayers in the above-mentioned states, identified through data analysis and risk parameters, will be required to undergo Biometric-Based Aadhaar Authentication, including photograph capture and verification of original documents at the time of applying for fresh GST registrations. This process is managed by the GSTN and involves the following steps:
  - a. The applicant will receive a link for either OTP-based Aadhaar Authentication or for booking an appointment. The message will include details of the designated GST Suvidha Kendra (GSK) and jurisdiction for Biometric-Based Aadhaar Authentication and document verification.
  - b. During the visit to the GSK, the applicant must bring:
    - A copy of the appointment confirmation email.
    - Details of the jurisdiction as mentioned in the notification email.
    - Original Aadhaar Card and PAN Card.
    - Original documents that were uploaded with the application.
- Biometric authentication and document verification will be conducted at the GSK for all individuals as required by the GST application.

*The above GSTN advisory is issued on 08.12.2024 for assessees of Haryana, Manipur, Meghalaya and Tripura & on 31.12.2024 for the assessees of Arunachal Pradesh.*

- **Mandatory sequential Filing of GSTR-7 Returns.**
- The GST portal has clarified that, in accordance with Notification No. 17/2024 - CT dated 27.09.2024, it is now mandatory to file GSTR 7, sequentially. Also, if there is no deduction made in any month, then the tax deductor would need to file a NIL return for GSTR 7 for that month before filing returns.



*GST Portal advisory dated 04.12.2024*

- **Entry of RR No./eT-RRs in EWB system:**

- The GSTN has intimated that EWB portal (GSTN system) and FOIS (Indian Railways) have been integrated and hence, taxpayers must follow the correct process for entering Railway Receipt no (RR No.)/ eT-RRs while generating EWBs.
- The advisory highlights that EWB system will validate the RR No./eT-RRs against the data received from the FOIS and in case of a mismatch, an alert will be generated. Such mismatches, may result in future discrepancies.

*GST Portal advisory dated 18.12.2024*

- **Updates to E-Way Bill and E-Invoice Systems:**

- The following updates are announced for EWB and E-invoice portals by the GSTN:
  - i. Multi-Factor Authentication will become mandatory for all taxpayers having aggregate turnover greater than INR 5 Crore (both websites)
  - ii. The generation of E-Way Bills will be restricted to documents dated within 180 days from date of generation (i.e., no EWB will be allowed to be generated for documents older than 180 days from the date of EWB generation date)
  - iii. The extension of EWBs will be limited to 360 days from their original date of generation.

*GST Portal advisory dated 17.12.2024*





**B. Recent Decision from the Judiciary:**

**Category: Bonafide Errors/ Mistakes**

**1. Nivriya India Pvt Ltd vs. Asst. Commissioner of State Tax [2024-TIOL-2082-HC-KOL-GST]**

**Background facts:**

The petitioner inadvertently filed Form GSTR 1 showing exports transaction as “without payment of IGST” instead of “with payment of IGST.” While filing Form GSTR 3B, the transaction was correctly reported and IGST was also discharged. The mistake in GSTR 1 was realised only after partial refund was processed thus restricting amendment of balance transactions. Further, refund was not processed by the State respondents and Customs authorities despite payment of IGST in Form GSTR 3B.

**Key Issue Raised:**

Whether the refund can be claimed for such mistakes in GST returns?

**Gist of the Decisions:**

The Hon’ble HC took cognizance of the fact that when the petitioner wrote letter requesting revision/ updation of correct details of Form GSTR 1, neither the state authorities nor the customs authorities doubted the genuineness of the petitioner but simply replied stating that they do not have such control over the common portal.

The court permitted manual submission of corrected details of Form GSTR 1 and also ordered GSTN to accept the same. Hence, merely because of some procedural lapse, the petitioner should not be prejudiced from claiming legitimate benefits available.

**2. Excellent Polycon Pvt Ltd vs. State Tax Officer [2024-TIOL-2065-HC-KOL-GST]**

**Background facts:**

Goods were being transported with a Tax invoice (with IRN) and EWB. However, the EWB expired on midnight of 01.07.2023 and the truck was intercepted on 02.07.2023. On account of Sunday, the communication of expiry of EWB could not be relayed to the driver. After interception, SCN was issued demanding penalty for movement on the basis of expired EWB. The demand was confirmed in the Order and on appeal as well, the said demand of penalty was upheld.

**Key Issue Raised:**

Whether penalty is payable for movement of goods on the basis of expired EWB?

**Gist of the Decisions:**

The Hon’ble HC held that while procedural compliance under the GST framework is crucial, but penalties imposed purely for procedural lapses without evidence of tax evasion or malicious intent may not serve the legislative intent. Hence, in the absence of evade tax or divert the products (and based on petitioner’s compliance record), the court held that imposing penalty was unwarranted in this case.



### **3. Khodiyar Trading vs. Union of India [2024-TIOL-2093-HC-AHM-GST]**

#### **Background facts:**

The petitioner was required to make payment of tax under RCM in GSTR 3B. However, the said liability to pay tax under RCM was inadvertently clubbed with output tax liability and discharged by the petitioner. On realising the mistake, the petitioner again made payment of tax under RCM in subsequent month and thereafter claimed ITC on the same. The petitioner approached the tax officer with a refund claim of excess payment of tax for the previous period. However, the application was rejected.

#### **Key Issue Raised:**

Whether the petitioner is eligible for refund of tax for such inadvertent payment?

#### **Gist of the Decisions:**

The Hon'ble HC held that the adjudicating authority did not provide any reason for rejecting the claim of refund. Hence, HC decided to take up the matter on merits and not send it back for re-adjudication.

The Hon'ble HC, considering the facts of the case, compared the actual liability due for the relevant months and the actual liability paid by the petitioner. It thereafter came to a conclusion that the petitioner had indeed made excess payment of tax and such excess payment of tax should be refunded back.

#### **SBGCO comments for case 1, 2 & 3:**

The 3 cases highlight that despite the best efforts, mistakes will happen. The GST portal and the ground level officers are not geared up to allow for honest mistakes. The relief for such honest mistakes will be available only at a higher forum, which comes with a cost - time and resources. The taxpayers must be vigilant about their compliances and ensure that no mistake creep in them or else, seeking a relief will be a huge task in itself. The silver lining in all these cases is that, the HC came to the rescue of such Bonafide taxpayers and granted the due relief.

#### **Category: Notices and Orders against entity no longer in existence due to amalgamation**

### **4. HC Infosystems Ltd vs. Commissioner of State Tax [2024-TIOL-2039-HC-DEL-GST]**

#### **Background facts:**

"Digilife Distribution and Marketing Services Limited" was legally dissolved following a scheme of amalgamation with HCL Infosystems Limited. Application for cancellation of GST registration was filed and ITC balance was also transferred to the amalgamated company. Despite being in knowledge of the above facts, the Department issued the SCN for FY 2017-2018 and FY 2018-2019 in the name of the dissolved amalgamating and also adjudicated the same.

#### **Key Issue Raised:**

Can legal proceedings be held to be valid against a non-existent entity?



**Gist of the Decisions:**

The Hon'ble HC placed reliance on the decision of Income Tax Act, 1961 in the case of International Hospital Limited v. DCIT Circle [2024-TIOL-1690-HC-DEL-IT] and held that proceedings cannot be continued against a non-existent entity.

The HC set aside the SCN and the Order issued against the dissolved amalgamating company and at the same time, kept the doors open for the department to proceed against amalgamated company as per the provisions of the law.

**SBGCO comments:**

As a taxpayer, it is an important learning to ensure the details of amalgamation/ merger, etc. are intimated to the department on timely basis because issuing notices/ adjudication orders to non-existent entities is void. The Department may or may not consider the changes in the business structure while issuing notice but important for taxpayer to ensure such details are communicated to the Department.

**Category: Non-consideration of facts during adjudication**

**5. Baccarose Perfumes and Beauty Products Pvt Ltd vs. State of Gujarat [2024-TIOL-2210-HC-AHM-GST]**

**Background facts:**

The petitioner is entity in the FTWZ area of the Kandla SEZ. For certain DTA clearances, the petitioner paid IGST through Treasury Challan (TR-6). The petitioner reported this as outward supply transaction in GSTR 1 but did not report in GSTR 3B because TR-6 challan details are not synced with GSTR 3B. The adjudicating officer issued SCN demanding tax for difference between liability reported in GSTR 1 and short taxes paid in GSTR 3B. Despite the submission of TR-6 challan, the adjudicating officer confirmed the demand in his Order.

**Key Issue Raised:**

Can liability be fastened on the petitioner in such a case?

**Gist of the Decisions:**

The Hon'ble HC observed that, the petitioner was not required to pay to IGST on the goods supplied from SEZ unit to DTA in the first place. For transaction from SEZ to DTA, the DTA unit is required to report such transaction as import of goods and pay IGST at the time of clearance of the goods. Hence, the HC noted that the adjudicating authority has failed to consider this aspect in his order.

Secondly, the adjudication authority also failed to consider that, liability if any, was already paid by the petitioner. Thus, the Department has failed to consider the explanation provided by the petitioner and merely referring to the provisions without considering the peculiar facts and explanation tendered by the petitioner.

**SBGCO comments:**

There may be many learnings for the Department officials but it is equally important for taxpayers to know that they must also be aware about the provisions of the law. As a taxpayer, one must be aware of situations when the liability falls on taxpayer and when it does not. Ignorance of law cannot be an excuse before any court. The bonafide act of payment of tax came to the aid of the petitioner in the above case, which might not happen every time.



**C. GST Compliance chart for January 2025**

<b>S N</b>	<b>Due Date</b>	<b>Form</b>	<b>Period</b>	<b>Periodicity</b>	<b>Special Remarks</b>
1.	10.01.2025	GSTR - 7	Dec 2024	Monthly	To be filed by those who are required to deduct TDS under GST
2.	10.01.2025	GSTR - 8	Dec 2024	Monthly	To be filed by those who are required to collect TCS under GST
3.	11.01.2025	GSTR - 1	Dec 2024	Monthly	Taxpayers filing GSTR - 1 monthly
4.	13.01.2025	GSTR - 5	Dec 2024	Monthly	To be filed by a non-resident foreign taxpayer registered in GST
5.	13.01.2025	GSTR - 6	Dec 2024	Monthly	To be filed by an ISD
6.	13.01.2025	GSTR - 1	Oct 2024 to Dec 2024	Quarterly	To be filed by those under QRMP Scheme
7.	18.01.2025	CMP - 08	Oct 2024 to Dec 2024	Quarterly	To be filed by Composition Dealer (Payment of Self-assessed tax)
8.	20.01.2025	GSTR - 3B	Dec 2024	Monthly	To be filed by Taxpayer filing monthly GSTR 3B
9.	20.01.2025	GSTR - 5A	Dec 2024	Monthly	To be filed by non-resident Online Information and Database Access or Retrieval (OIDAR) services provider
10.	22.01.2025	GSTR - 3B	Oct 2024 to Dec 2024	Quarterly	To be filed by those under QRMP Scheme (#)
11.	24.01.2025	GSTR - 3B	Oct 2024 to Dec 2024	Quarterly	To be filed by those under QRMP Scheme (\$)

(#) Last date for filing return without late fees and interest for the states of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union Territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands, and Lakshadweep.

(\$) Last date for filing return without late fees and interest for the states of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand, Odisha, the Union Territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi.





## **Disclaimer**

This newsletter is for general public information and knowledge sharing. In case any clarifications required, you may connect with us at:

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