

|| S P C M & ASSOCIATES ||

Chartered Accountants



**SPCM**  
L E G A L

**SAMĀCĀRA**

**December**

**2020**









# SAMĀCĀRA – DECEMBER 2020

## TEAM SAMĀCĀRA

### INCOME TAX

			
<b>CA. Suhas P. Bora</b>	<b>CA. Pradeep M. Katariya</b>	<b>CA. Disha M. Shah</b>	<b>CA. Manali Bhalgat</b>

### GOODS AND SERVICES TAX

		
<b>Adv. Abhay H. Bora</b>	<b>Ms. Ruchi Bhansali</b>	<b>CA. Kalpesh Shah</b>





**SAMĀCĀRA – DECEMBER 2020****COMPANY LAW**

		
<b>CA. Manoj R. Jain</b>	<b>CS. Pranoti Shinde</b>	<b>Ms. Purva Bhide</b>

**BANKING AND FINANCE**

		
<b>CA. Chetan R. Parakh</b>	<b>CA. Vishnu S. Rathi</b>	<b>CA. Prerna S. Bora</b>

**CIVIL, CRIMINAL, REAL ESTATE AND OTHER LAWS**

			
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## EDITORIAL

Dear All,

On November 12, 2020, The Union Minister for Finance and Corporate Affairs Smt. Nirmala Sitharaman announced 12 key measures as part of Government of India's stimulus to the economy, under Aatma Nirbhar Bharat 3.0. The net stimulus announced amounts to Rs 2.65 Lakh crore.

In a significant demand booster for the residential real estate sector, the govt has made amendments in the Income Tax Act to help home-buyers as well as developers. This relief is only for new buying of homes from the developers with certain restrictions. While doing so, there is no intelligible differentia as to why a middle-class home buyer is restricted from buying a residential unit from a 3rd person or a second-hand seller.

This Diwali and New Year festivities are different than the earlier years because of the ongoing corona pandemic. The visits to temples were forbidden so also to friends and relatives. Yet we could enjoy the festival of Diwali with a greater sense of satisfaction and joy as valuable moments were shared with family and near and dear ones. This year we have experienced the noiseless' Diwali; in the same breath the steps taken recently by the Government towards making certain proceedings under the direct tax and other laws are also noiseless' – so to say and thus require deeper examination.



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At SPCM, in spite of lesser strength, we are keeping the targets for completing the assignments of all Audits under different statute like GST, Income Tax, Bombay Public Trust Act, Companies Act, Limited Liability partnership Act on schedule and on time lines.

At the end I would like to conclude by sharing this, ‘who would have thought- till few months ago- that we would have to travel through this journey and have to carry the on with resources with enthusiasm our work and our life?’ As is said ***“As long as there is life, there is hope. As long as there is hope, there is a life.”***

**Till then, be safe and keep others safe.**

With Warm Regards,



**CA. Suhas P. Bora**





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## NOTIFICATIONS

**1. Notification No. 89/2020/ F.No. 370133/16/2020-TPL, dated 2nd, November, 2020**

The Central Government specifies the sovereign wealth fund, namely, the MIC Redwood 1 RSC Limited, Abu Dhabi, United Arab Emirates, as the specified person for the purposes of clause u/s. 10(23FE)(b)(vi) in respect of the investment made by it in India on or after the date of publication of this notification in the Official Gazette but on or before 31st March, 2024 subject to the fulfilment of conditions. Violation of any of the conditions as stipulated in the said clause (23FE) and this notification shall render the assessee ineligible for the tax exemption. It also has annexure of Audit report to be filed by the Sovereign Wealth Fund claiming exemption under clause (23FE) of section 10 of the Income -tax Act, 1961.

**2. Notification No. 11/21022/23(15)/2020-FCRA-III, dated 23rd, November, 2020**

**Extension of Time for Uploading/Online Submission/Filing of Annual FCRA Returns for the year 2019-20**

As per rule 17 of the Foreign Contribution (Regulation) Rules, 2011, every person who receives foreign contribution under the Foreign Contribution (Regulation) Act, 2010, shall submit a signed or digitally signed report in electronic form in Form FC-4 with scanned copies of income and expenditure statement, receipt and payment account and balance sheet for every financial year beginning on the 1st April within nine months of the closure of the financial year. The Foreign Contribution (Regulation) Act, 2010 has been amended by the Foreign Contribution (Regulation) Amendment Act, 2020. As per the amended provisions, the FCRA registered associations and prior permission (PP) holders as well as prospective seekers of registration or PP are required to meet few conditions.

Therefore, considering above, the Central Government extends the time for uploading/online submission of annual returns for the year 2019-20 up to 30th June, 2021.



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## CIRCULAR

1. **Circular No. 19/2020/ F. No. 197/135/2020-ITA-1, dated 3rd November,2020**

**Condonation of delay u/s. 119(2)(b) of the Income-tax Act, 1961 in filing of Form No. 10BB for AY 2016-17 and subsequent years**

Under the provisions of section 10(23C) of Income-tax Act, 1961 where the total income of the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), without giving effect to the provisions of the said sub-clauses, exceeds the maximum amount which is not chargeable to tax in any previous year, such trust or institution or any university or other educational institution or any hospital or other medical institution shall get its accounts audited in respect of that year by an accountant before the specified date referred to in section 44AB and furnish by that date, the report of such audit in the prescribed form duly signed and verified by such accountant.

As per Rule 16CC of the Income-tax Rules, 1962 the audit report of the accounts of such a fund or trust or institution or any university or other educational institution or any hospital or other medical institution is to be furnished in Form No. 10BB. As per Rule 12(2) of the Rules, such audit report is to be furnished electronically. The failure to furnish such report in the prescribed form along with the return results in disentitlement of such entity from claiming exemption under section 10(23C) of the Act.

In relation to above, CBDT directs that:

- (i) In all the cases of belated applications in filing of Form No. 10BB for years prior to AY. 2018-19, the Commissioners of Income-tax are authorized to admit such applications for condonation of delay u/s 119(2)(b) of the Act. Further, all such applications shall be disposed of by 31.03.2021.



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- (ii) Where there is delay of up to 365 days in filing Form no. 10BB for AY 2018-19 or for any subsequent AY, the Commissioners of Income-tax are authorized to admit such belated applications of condonation of delay u/s. 119(2) of the Act and decide on merits.

**2. Circular No. 583/2020, dated 27th November, 2020**

The Office of the Charity Commissioner Maharashtra State has extended due date for submitting trust accounts for the FY 2019-20 to 31st December 2020.





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## NEW FAQ'S ON VIVAD SE VISHWAS

CBDT's second set of 34 FAQs on Vivad se Vishwas Scheme further clears air on the scope/eligibility (20 FAQs), computation (4 FAQs), consequences (8 FAQs) and procedure (2 FAQs); Clarifies on availability of the Scheme where appeal / arbitration was pending as on the specified date (i.e., Jan 31st, 2020), but was subsequently disposed off before filing of declaration;

Further, clarifies that where the application for condonation is filed before the date of issue of this circular, and appeal is admitted before the date of filing of the declaration, "such appeal will be deemed to be pending as on 31st Jan, 2020."; Likewise, clarifies that cross objections, MAs pending as on the specified date will also be covered under the Scheme, however, denies availability of Scheme where proceedings are pending before the Settlement Commission;

Also, issues clarification on Scheme entitlement in respect of cases before AAR and cases where MAP is invoked, states that "in a case where MAP resolution is pending or the assessee has not accepted MAP decision, the related appeal shall be eligible for VsVS.";

However, makes it clear that appeal against Trust's registration denial is not eligible for VsVS; Rejects consequential relief in Sec. 201 proceedings where appeal involving Sec. 40(a)(ia)(ia) disallowance is settled under the VsVS; Similarly, after making payment of tax under VsVS in respect of cash credit addition u/s. 68, CBDT clarifies that the assessee cannot make entries in his books by crediting the said loan in his capital account;

Lastly, provides for revision of declaration "any number of times before the DA issues a certificate u/s 5(1) of VsV Act."



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### UNREPORTED DECISIONS

- 1. S. 68 r.w.s. 115BBE: Cash Credit – demonetization of currency – unaccounted sales only profit therefrom could only be taxed as income of assessee:**

It is evident from entries found in cash book and from statement recorded from assessee in course of survey that assessee purchased gold in period of demonetization which was obviously for sale to persons on receiving cash from them as the same is normal practice of gold trade. The gold purchased in period of demonetization was towards agreed sale to persons on receiving amount there from those persons. Thus, the source of payment for purchase of gold is out of amount received from its sales and so it is to be treated as properly explained. It is only profit on sale of said purchased gold which is income of assessee which was undisclosed income of assessee and the same could only be subjected to tax. It is settled law that in case of unaccounted sales only profit therefrom could only be taxed as income of assessee.

**Nawal Kishore Soni vs. ACIT (ITAT Jaipur) dt: September 15, 2020; ITA No. 1307, 1308, & 1309/JP/2019; Assessment Years: 2015-16 to 2017-18**

- 2. S. 56(2) (viib)/Rule 11UA: Fair market value of shares – assessee are free to adopt any one of the methods:**

The appellant has challenged the addition of ₹ 3,96,54,531 u/s. 56(2) (viib) of the Act by the AO on account of issuance of shares on basis of Discounted Free Cash Flow Method instead of Net asset method.



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Section 56 allows the assessee to adopt one of the methods of their choice. But the AO held that the assessee should have adopted only one method for determining the value of the shares. In our opinion, it was beyond the jurisdiction of the AO to insist upon a particular system, especially the Act allows to choose one of the two methods. Until and unless the legislature amends the provision of the Act and prescribes only one method for valuation of the shares, the assessee are free to adopt any one of the methods.

**Karmic Labs Pvt. Ltd. v/s. ITO, Ward-15(2) (1); ITA No. 3955/Mum/2018 Assessment Year: 2014-15; Mumbai ITAT; dt: 28/07/2020**

### **3. S. 10(38)/68: Bogus Capital Gains from Penny Stocks – third party statement – cross examination not provided:**

The Tribunal observed that the primary material to make additions in the hands of assessee was the statement of one Shri Vipul Bhat and the outcome of each proceedings on his associated entities including M/s. SAL. However, there is nothing on record to establish vital link between the assessee group and Shri Vipul Bhat or any of his group entities. The assessee, all along, denied having known Shri Vipul Bhat or any of his group entities. However, nothing has been brought on record to controvert the same and establish the link between Shri Vipul Bhat and the assessee. The opportunity to cross-examine Shri Vipul Bhat was never provided to the assessee which is contrary to the decision of Hon'ble Supreme Court in M/s. Andaman Timber Industries V/s. CCE (CA No. 4228 of 2006) wherein it was held that not allowing the assessee to cross-examine the witnesses by the



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adjudicating authority though the statement of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity in as much as it amounts to violation of principal of natural justice because of which the assessee was adversely affected

The AO has not discharged the onus of controverting the documentary evidences furnished by the assessee and by bringing on record any cogent material to sustain the addition. The allegation of price rigging / manipulation has been levied without establishing the vital link between the assessee and other entities. The whole basis of making additions is third party statement and no opportunity of cross-examination has been provided to the assessee to confront the said party. As against this, the assessee's position that that the transactions were genuine and duly supported by various documentary evidences, could not be disturbed by the revenue.

**Dipesh Ramesh Vardhan vs. DCIT (along with other appeals) [I.T.A. No. 7648/Mum/2019 dated: 11/8/2020, AY: 2014-15 "D" BENCH, MUMBAI]**



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## GST

### GIST OF GST NOTIFICATIONS

NOTIFICATION NO	DATE	SUBJECT	HIGHLIGHTS
89/2020-Central Tax	29.11.2020	CBIC Seeks to waive penalty payable for noncompliance of the provisions of notification No.14/2020 – Central Tax, dated the 21st March, 2020.	Penalty waived for QR code provisions for default during 1 <sup>st</sup> December 2020 to 31 <sup>st</sup> March 2021, if complied before 1 <sup>st</sup> April 2021.
88/2020-Central Tax	10.11.2020	CBIC notified E-invoicing for the taxpayers having aggregate turnover exceeding Rs. 100 Cr from 01st Jan 2021	E-invoicing mandatory for taxpayers (Other than SEZ unit) having aggregate turnover exceeding Rs. 100 Cr from 01st Jan 2021
87/2020-Central Tax	10.11.2020	CBIC extended the due date ITC-04 for period July- September 2020 till 30th November, 2020.	Due date of ITC-04 for period July-September 2020 is extended till 30th November, 2020.
86/2020-Central Tax	10.11.2020	CBIC rescinds Notification 76/2020-Central tax dated 15.10.2020	CBIC rescinded Notification No. 76/2020 w.r.t due dates of filing GSTR-3B for October 20 to March 21.
85/2020-Central Tax	10.11.2020	Seeks to notify special procedure for making payment of 35% as tax liability in first two months	CBIC notifies procedure to opt for Quarterly GSTR 3B but monthly payment of Tax has



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NOTIFICATION NO	DATE	SUBJECT	HIGHLIGHTS
			to be made @ 35% on the basis of Tax liability of the previous quarter.
84/2020-Central Tax	10.11.2020	Seeks to notify class of persons under proviso to section 39(1).	Option to file quarterly returns now available to taxpayers having turnover up to Rs. 5 Cr.
83/2020-Central Tax	10.11.2020	Seeks to extend the due date for FORM GSTR-1	CBIC extends the time limit of filing GSTR 1 for every quarter under proviso to sub-section (1) of section 39 of the said Act, shall be extended till the thirteenth day of the month succeeding such tax period. W.e.f. 1 <sup>ST</sup> Jan 2020.
82/2020-Central Tax	10.11.2020	Seeks to make the Thirteenth amendment (2020) to the CGST Rules.201	CBIC has released the Thirteenth Amendment Rules, 2020. In the amendment rules, CBIC also notifies new rules for Inward/Outward Supplies, GST Returns & New GST Form-2B





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## GST CIRCULAR

Circular no	Date of issue	Subject	Clarification
143/2020	10-11-2020	Provisions relating to Quarterly Return Monthly Payment Scheme	Notification 81/2020 to 85/2020 on QRMP Quarterly Return Monthly Payment Scheme is duly summarized

## GST UPDATES

### 1. GST turnover is now reflecting in 26AS of Income Tax, taxpayer should reconcile before filing ITR:

- GSTR-3b return month wise details from FY 2019-2020 now appearing in FORM 26AS.
- Following information are reflected in Form 26AS: -
  - a) GST number
  - b) ARN Number
  - c) Date of filing of GST return
  - d) Return period
  - e) Taxable Turnover
  - f) Total Turnover

### 2. GSTN Portal is now showing Annual Aggregate Turnover for Previous Financial Year

- The portal is now showing aggregate annual turnover for the previous financial year after logging in to the portal which includes all GSTINs of PAN related.



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### 3. GSTN issues Advisory on E-Invoicing: -

- From January 1, 2021, Government has mandated e-invoicing for the taxpayers with aggregate turnover exceeding Rs.100 Cr. (in any preceding financial year from 2017-18 onwards). The GSTN notified that for all the notified taxpayers, API sandbox/testing is enabled since 29<sup>th</sup> October, 2020. The trial e-invoice portal (<https://einvoice1-trial.nic.in/>) for testing the upload of invoices by notified taxpayers through offline utility (bulk generation tool) was activated from 6th November 2020.
- The GSTN highlighted that the taxpayers need to note that the e-invoices/IRNs and e-way bills generated on trial e-invoice portal (<https://einvoice1-trial.nic.in/>) are for testing purposes only. They do not have any legal validity and shall not be used for regular supplies, i.e. for actual movement of goods etc.

### 4. CBIC enables Auto-populated E-Invoice details into GSTR-1 in GST Portal: -

The Central Board of Indirect Taxes and Customs (CBIC) has enabled the Auto-populated E Invoice details in GSTR-1 in GST Portal. The details of e-invoices available for auto-population along with status of auto-population can also be downloaded as excel file. To effect this, certain tabs/labels are being added on GSTR-1 dashboard and screens.

### 5. E-Way Bill generation facility to be blocked for All Taxpayers who failed to file GSTR-3B from December: -

In terms of Rule 138E (a) and (b) of the CGST Rules, 2017, the E-Way Bill (EWB) generation facility of a taxpayer is liable to be restricted, in case the taxpayer fails to file their FORM GSTR-3B returns/Statement in FORM GST CMP-08, for tax periods of two or more.

### 6. CBIC extends Due date for filing ITC-04 for the period July 2020 to September 2020: -

The Due date for filing ITC-04 which pertains to Job worker return, in respect of goods dispatched to a job worker or received from a job worker,



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during the period from July 2020 to September 2020 extended to 30th November 2020.

### 7. Recent Notification Regarding Quarterly Return & Monthly Payment Scheme (QRMP Scheme): -

Notification No.81, 82, 84, 85/2020 dated 10.11.2020 related to QRMP.

#### ➤ Eligibility -

- A registered person who is required to furnish a return in FORM GSTR-3B, and who has an aggregate turnover of up to 5 crore rupees in the preceding financial year, is eligible for the QRMP Scheme.
- In case the aggregate turnover exceeds 5 crore rupees during any quarter in the current financial year, the registered person shall not be eligible for the Scheme from the next quarter.
- The option to avail the QRMP Scheme is GSTIN wise and therefore, distinct persons (different GSTINs on same PAN) have the option to avail the QRMP Scheme for one or more GSTINs. In other words, some GSTINs for that PAN can opt for the QRMP Scheme and remaining GSTINs may not opt for the Scheme.

#### ➤ How to exercise option -

- Facility to avail the Scheme on the common portal would be available throughout the year.
- A registered person can opt in for any quarter from first day of second month of preceding quarter to the last day of the first month of the quarter. In order to exercise this option, the registered person must have furnished the last return, as due on the date of exercising such option
- Registered persons are not required to exercise the option every quarter. They shall continue to furnish the return as per the



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selected option for future tax periods, unless they revise the said option.

### ➤ Default Migration Scheme for QRPM Scheme

- All the registered persons, whose aggregate turnover for the FY 2019-20 is up to 5 crore rupees and who have furnished the return in FORM GSTR-3B for the month of October, 2020 by 30<sup>th</sup> November, 2020, shall be migrated on the common portal as below.

Sr. No.	Class of registered person	Default option
1	Registered persons having aggregate turnover of up to 1.5 crore rupees who have furnished FORM GSTR-1 on quarterly basis in the current financial year	Quarterly return
2	Registered persons having aggregate turnover of up to 1.5 crore rupees who have furnished FORM GSTR-1 on monthly basis in the current financial year	Monthly Return
3	Registered persons having aggregate turnover more than 1.5 crore rupees and up to 5 crore rupees in the preceding financial year	Quarterly return

- The taxpayers who have not filed their return for October, 2020 on or before 30<sup>th</sup> November, 2020 will not be migrated to the Scheme. They will be able to opt for the Scheme once the FORM GSTR-3B as due on the date of exercising option has been filed.
- The registered persons are free to change the option as above, if they so desire, from 5<sup>th</sup> of December, 2020 to 31<sup>st</sup> of January, 2021.



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- It is re-iterated that any taxpayer whose aggregate turnover has exceeded 5 crore rupees in the financial year 2020-21, shall opt out of the Scheme

### ➤ **How to opt out for QRMP Scheme**

The facility for opting out of the Scheme for a quarter will be available from first day of second month of preceding quarter to the last day of the first month of the quarter.

- All persons who have obtained registration during any quarter or the registered persons opting out from paying tax under Section 10 of the CGST Act during any quarter shall be able to opt for the Scheme for the quarter for which the opting facility is available on the date of exercising option

### ➤ **If aggregate turnover crosses 5 Crore rupees during quarter in a financial year**

- Such registered person, whose aggregate turnover crosses 5 crore rupees during a quarter in current financial year, shall opt for furnishing of return on a monthly basis, electronically, on the common portal, from the succeeding quarter.
- In other words, in case the aggregate turnover exceeds 5 crore rupees during any quarter in the current financial year, the registered person shall not be eligible for the Scheme from the next quarter.

### ➤ **The procedure to file GSTR-1 who has availed QRPM Scheme**

- The registered persons opting for the Scheme would be required to furnish the details of outward supply in FORM GSTR-1 quarterly

Optional: - Supplies made to Registered Person



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- For each of the first and second months of a quarter, such a registered person will have the facility (Invoice Furnishing Facility- IFF) to furnish the details of such outward supplies to a registered person between the 1st day of the succeeding month till the 13th day of the succeeding month.
- The said details of outward supplies shall, however, not exceed the value of fifty lakh rupees in each month. It may be noted that after 13th of the month, this facility for furnishing IFF for previous month would not be available.
- The facility of furnishing details of invoices in IFF has been provided so as to allow details of such supplies to be duly reflected in the FORM GSTR-2A and FORM GSTR-2B of the concerned recipient.
- The details of invoices furnished using the said facility in the first two months are not required to be furnished again in FORM GSTR-1.

### ➤ **How to make Monthly Payment of Tax**

- The registered person under the QRMP Scheme would be required to pay the tax due in each of the first two months of the quarter by depositing the due amount in FORM GST PMT-06, by the twenty fifth day of the month succeeding such month.
- While generating the challan, taxpayers should select “Monthly payment for quarterly taxpayer” as reason for generating the challan.





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### DUE DATE CALANDER

DATE	DUE DATE FOR
07/12/2020	Payment of TDS/TCS deducted /collected in November.
10/12/2020	GSTR-7 Monthly Return by Tax Deductors for November.
10/12/2020	GSTR-8 Monthly Return by e-commerce operators for November.
11/12/2020	GSTR-1 Monthly return of Outward Supplies for Nov (Turnover exceeding 1.5 Cr.in previous year).
13/12/2020	GSTR-6 Monthly Return of Input Service Distributor for November.
15/12/2020	E-payment of PF and ESI for November 2020.
15/12/2020	Deposit of Third Instalment of Advance Tax (75%) by all assesses (other than 44AD & 44ADA cases).
20/12/2020	GSTR-5 & 5A Monthly Return by Non-resident taxable person for November.
20/12/2020	GSTR-3B Summary Return cum Payment of Tax for Nov by taxpayers having an aggregate turnover of more than Rs. 5 cr in previous financial year.



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DATE	DUE DATE FOR
22/12/2020	<p>GSTR-3B</p> <p>Summary Return cum Payment of Tax for Nov by taxpayer with turnover up to 5 cr.in 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 or Lakshadweep.</p>
24/12/2020	<p>GSTR-3B</p> <p>Summary Return cum Payment of Tax for Nov by taxpayer with turnover up to 5 cr.in Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi.</p>
30/12/2020	<p>Form 26QB</p> <p>Deposit of TDS on payment made for purchase of property in November.</p>
30/12/2020	Form 26QD



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DATE	DUE DATE FOR
	Deposit of TDS u/s 194M for November.
31/12/2020	<p>(Last DAY Compliance due)</p> <p>Form-3CD Filing of Tax Audit Report AY 2020-2021.</p> <p>Filing ITR for AY 2020-2021 for non-audit cases. (extended due date)</p> <p>GSTR-9 - GST Annual Return for 18-19. Mandatory if Turnover &gt; 2 cr.</p> <p>GSTR-9C - GST Audit Report for 18-19. Mandatory if Turnover &gt; 5 cr.</p> <p>MCA - Holding of AGM for FY 19-20 (extended due date).</p> <p>MCA - Avail Companies Fresh Start Scheme, 2020.</p> <p>MCA - Avail LLP Settlement Scheme.</p> <p>GSTR-9 - GST Annual Return for 19-20. Mandatory if Turnover &gt; 2 cr.</p>



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<b>DATE</b>	<b>DUE DATE FOR</b>
	<p>GSTR-9C - GST Audit Report for 19-20. Mandatory if Turnover &gt; 5 cr.</p> <p>GSTR-9A - GST Annual Return for 18-19 by Composition taxpayer.</p> <p><b>Income Tax</b> Making of Declaration under Vivad se Vishwas Scheme. Payment of disputed amount of Tax without additional payment can be made before 31.03.202</p>



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## **ALLIED LAWS**

### **SEC 125 CRPC**

**Rajnesh v/s Neha & Anr**  
**2020 SCC OnLine SC 903**

**The present dispute is regarding the interim maintenance to be paid by husband towards his wife and son as directed by hon'ble Family court to the tune of Rs. 15000/- towards wife and Rs. 5000/- for son till August 2015 and later increased to Rs. 10,000/- pm.**

**Appeal was filed against the order in the High Court which was set aside by the High Court.**

**Husband was liable to pay Rs 200000/- towards interim maintenance and 3,00000/- towards arrears.**

**Appeal is filed in Apex court to impugn the order passed by the High Court.**

**There has been emphasis taken on various enactments regarding maintenance and interim maintenance under various enactments which provide independent and distinct remedy with specific object and purpose.**



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The Mediator was appointed in order to solve the dispute but it was observed that mediation failed.

Husband takes the contention that he does not have means to continue to pay the said amount for arrears occurred.

It is contended by the husband that; Family Court has erroneously relied upon the Tax Returns of the year 2006 rather than that of 2013.

The husband is directed to make entire payment within 12 weeks and to comply with this order till continuance of proceedings, it is also stated that in case the husband fails to comply the order the wife can take recourse of various laws in force under sec 128 CRPC.

As the interim maintenance is pending since 7 years now, the Family Court is directed to pass appropriate order within 6 months.

### **GUIDELINES/ DIRECTIONS ON MAINTENANCE**

Art 15(3)- special provisions for women and children. (Captain Rameshchandra Kaushal v/s Mrs. Veena Kaushal.

Various legislations on maintenance are: Special Marriage Act, Sec 125 CrPC, Domestic Violence Act (irrespective of any religious community), Hindu Marriage Act, Hindu Adoption and Maintenance Act.

**Nanak Chand v/s Chandra Kishor Agarwal – Supreme Court-** There is no inconsistency between the CrPC and HAMA. Sec 4(b) of HAMA would not repeal or affect the provisions of Sec 488 of old CrPC Act.





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## STATUTORY PROVISIONS OF VARIOUS ENACTMENTS:

### 1) **Special Marriage Act-**

Sec 4 – Secular legislation to all who marry in India.

Sec 25- Wife entitled for pendent lite maintenance if she does not have sufficient means for her

Sec 36- Alimony pendent lite- at the time of proceedings- weekly/ monthly.

Sec 37- Permanent Alimony and Maintenance

### 2) **Hindu Marriage Act**

For Hindus only.

Sec 24 and 25- Maintenance, irrespective of gender prerequisite there is no income for the one demanding it.

Sec 24 for pending litigation and expenses of proceedings.

Sec 25- Permanent Alimony and Maintenance

Sec 26- Interim Orders – custody, maintenance and education of minor children.

### 3) **Hindu Adoption and Maintenance Act**

Adoption and Maintenance among Hindus only.

Sec 18- Wife shall be maintained by the husband during her lifetime.

Sec 18 to be read with sec 23 to decide quantum of maintenance.

The distinction between maintenance granted under sec 18 of HAMA and sec 25 of HMA is that HAMA is applicable at the time of subsistence of marriage, without any matrimonial proceeding pending



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between the parties. Once there is a divorce relief under sec 25 is to be asked.

#### 4) **Sec 125 CrPC**

Maintenance for wife, children and parents in a summary proceeding. Can be claimed irrespective any community. Bhagwan Dutt v/s Kamla Devi – Only a wife who is unable to maintain herself is entitled to seek maintenance.

**Prior to Amendment in 2001 there was a ceiling limit of 500/- as a whole payment for maintenance.**

#### 5) **Domestic Violence Act**

DV Act is specifically for a woman subjected to Domestic Violence. Definition of domestic violence is gender neutral.

**D. Veluswamy v/s Patiachmal- Not all live-in relationship would amount to relationship of marriage to avail benefit of DV Act. Merely weekends together or one-night stand does not come in purview of Domestic Violence.**

**Essentials for a live-in to come in purview following essentials were laid in the case of Indra Sharma v/s V.K.V Sharma**

Essentials for a Permanent Alimony:

- 1) Look at the persons income and expenditure, balance sheet while computing the alimony
- 2) Duration of relationship
- 3) Must include expenses for child's marriage incase custody with mother of the child.
- 4) In case any investments made in form trusts/ funds in name of child should be declared at the time of computation.



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Essentials for computation of Maintenance:

- 1) Reasonable needs of wife and children
- 2) Applicant qualified / educated.
- 3) Independent source of income.
- 4) Whether income sufficient to sustain a living
- 5) Whether employed during subsistence of marriage
- 6) Whether wife required to sacrifice employment to nurture the family
- 7) Reasonable costs of litigation for non- working wife.

The court must observe the financial capacity of the husband and even consider the number of members in family dependent on his income. Due regards to the standard of living of the husband, spiraling inflation rates to be taken into consideration.

**Additional Factors:**

- 1) Age and employment of parties
- 2) Right to residence (share household under DV Act)
- 3) Wife is earning some income
- 4) Maintenance of minor children
- 5) Serious disability or ill health

**Maintenance to be provided from the date of order and that maintenance from date of application is an exception – as per interpretation of sec125(2) CrPC.**

**In the present case maintenance to be awarded from date of application as there has been a lapse of altogether 7 years.**

In case of overlapping jurisdictions, the parties must state about any previous orders or any allied litigation is filed in any courts.

Any modification for any orders already passed would be revised in the same court itself wherein order was passed.

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**THANK**  
**YOU!**

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