

PKP NEWSLETTER

An Initiative by Pratapkaran Paul & Co

VOLUME
18



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PKP'ians day out to Green Meadows

Amidst the pandemic and routine blues and to awaken the spirit of oneness Pkp'ians thought that it was time for a mini get away and to have some fun & frolic.

Pkp'ians visited Resort "Green Meadows" (Pallavakkam) on September 4th and actively participated in all the Indoor and Outdoor games conducted. The day concluded with a group dance. Awaiting to have many more such events in the near future.





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Managing Partner's Address

Dear Pkpians,

Another month is behind us. What have we done or improved upon ? I want this question to be posed to each one of us , so that there is a constant quest to do things better and improve. The economy is showing signs of improvement. The indicators of improvement are visible in some sectors. Sectors most badly hit by the pandemic like- Travel, Hospitality etc are still in need of further assistance.

International Travel has not begun in full scale and countries are beginning to open up though cautiously.

On the deadlines , as expected there was a movement of the dates for filings with the Income Tax Department. This was subsequently followed with the Ministry of Corporate Affairs moving the date of holding the Annual General Meeting by 60 days.



Let not this time delay allow us to relax and it is hoped that we continue with the same momentum to complete the audits and the required filings, well before the due dates.

Congratulations and best wishes to the two newly qualified Chartered Accountants in our firm and also the ones who completed the Inter exams successfully.

Best wishes
Pratapkar Paul
Managing Partner

Positive Pay System



PALANIAPPAN
Article Assistant

What?

☐ Positive Payment System (PPS) is a process of RECONFIRMATION OF KEY DETAILS OF LARGE VALUE CHEQUES to the Drawee Bank before presentation of the cheques.

- This means before giving the Cheque to the Payee, we have to intimate the key details of the cheque issued by us to our Banker.
- When the payee presents the Cheque for payment, the Information provided in the Cheque are cross checked with the Information given under PPS by Cheque Truncation System (CTS).
- Any discrepancy is flagged by CTS to the Bankers (Both Banks - Drawee Bank and Presenting Bank) who will then take corrective action.

What are key details of the Cheque to be intimated?

- i. Cheque Number. (Mandatory)
- ii. Cheque Date. (Mandatory)
- iii. Payee Name. (Mandatory)
- iv. Account Number. (Mandatory)
- v. Image of Front and Reverse side of the Cheque. (Varies from bank to bank)

How to intimate the key details of the Cheque?

- i. Internet Banking.
- ii. Mobile Application of the Banker.
- iii. SMS.
- iv. ATM.

Is it mandatory to provide the details to the Banker under PPS?

It is mandatory for all cheques amounting to Rs. 50,000 and above – General Limit fixed by RBI.

NOTE: The limits vary from bank to bank and sometimes it is at the discretion of the account holder to share the details under PPS.

LIMITS UNDER SOME BANKS

S.No	Bank	Limit
1	Indian Bank	Rs. 2,00,000 & above
2	Indian Overseas Bank	Rs. 5,00,000 & above
3	ICICI Bank	Optional on the part of Account holder.
4	Canara Bank	Optional on the part of Account holder.

- What is the drawback in case of non-submission of details under PPS?
- Only those cheques (Rs. 50,000 & above), which are compliant with PPS will be accepted under dispute resolution mechanism at the CTS grids.
- Non submission of the details under PPS will lead to rejection of the claim under dispute resolution mechanism.
- THIS MAKES IT SIGNIFICANT TO SHARE DETAILS UNDER PPS.

➤ **Background behind introduction of PPS:-**

- According to RBIs data, around INR 64,000 Crore worth of Bank Frauds were reported from April to September 2020 (Covid 1st Wave Period). RBI aims to atleast reduce the frauds through Cheque payments.
- Reprinting/Duplication of cheques using Account details of Customer. (This has happened in New Delhi amounting to Rs. 40 lakhs.)
- This system will cover 15% of the Value of Total Retail Payments in India and 80% of the Value of Total Cheques

issued in India. (Average Value of a Cheque issued in India is Rs. 82,000)

Benefits of PPS:-

- Only Cheques (Rs. 50,000 & above) registered under Positive Pay will be considered for Dispute Resolution Mechanism.
- Counterfeit Cheques cannot be cashed out of our Account without our knowledge.
- Additional Safety and Security measure in case of Cheque payments.

Important Note:-

- Kindly provide the Information of the Post Dated cheques issued to suppliers or debtors under PPS at the time of issuing the Cheques, to avoid dishonoring of Cheque payments to suppliers or payment of loan Instalments on the Cheque date.
- Kindly provide correct details under PPS to avoid mismatch between details for genuine cheque payments.

Coming Soon:-

Reverse Positive Pay is a new concept to be introduced by RBI in the near future.

Foreign Liabilities and Assets



SUBHANI MULLA
Article Assistant



- It is Regulated Under FEMA(Foreign Exchange Regulations Act) 1999.
- It is required to be submitted by all the Indian resident companies which have received FDI and/ or made overseas investment in any of the previous year(s), including the current year. i.e. who holds foreign Assets or Liabilities in their Balance Sheets.
- As more companies involve themselves with foreign investments, the importance of the Foreign Exchange Management Act (FEMA) regulations and their compliance becomes a major part of the company's operations.

- FLA return is one of the compliances that have to be met by the companies that have either received FDI or made ODI.

How to do Registration for filing FLA Return

- On the FLA Portal, click on the “New Entity User” for the Entity User Registration, fill the form and attach the Authority Letter and Verification Letter in the prescribed format (Explained below).
- After filling the “User Registration Form”, a mail will be received with a User ID and password code on the registered email id.
- Change the password using the password code and the registration procedure is complete.
- Go to Login Page (user will receive email OTP every time you log in the portal) for Further Reporting.

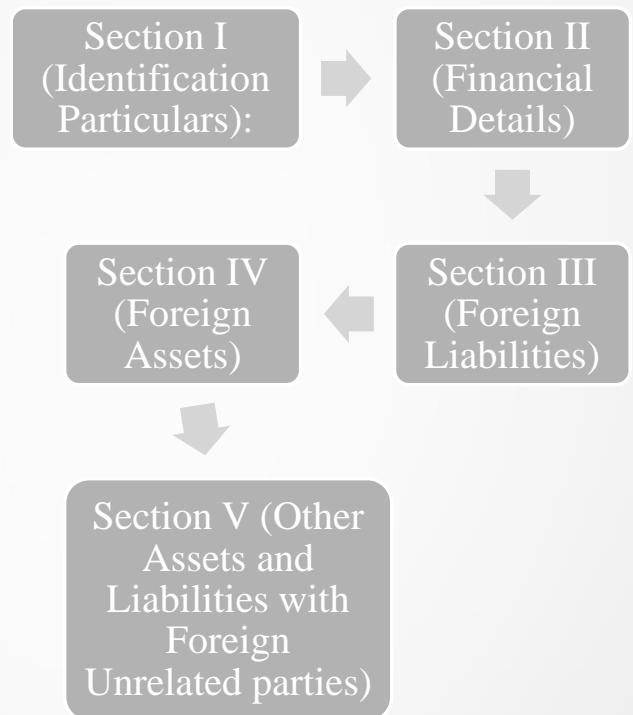
Who is required to file it?

- A Company within the meaning of section 1(4) of the Companies Act, 2013.
- A Limited Liability Partnership (LLP) registered under the Limited Liability Partnership Act, 2008
- Others [include SEBI registered Alternative Investment Funds (AIFs), Partnership Firms, Public-Private Partnerships (PPP), Branches, or Trustees].

Companies exempted from filing FLA return

- Companies that have only issued shares on a non-repatriable basis to the non-residents of India are exempt from filing FLA return.
- Companies that do not have any outstanding balance of FDI or ODI by the end of the financial year are exempt from filing FLA return.
- Companies that have only received share application money and have not received any FDI or not made any ODI, are exempt from filing FLA return.

It Comprises of 5 sections



Due Date of Filing FLA:

FLA return is mandatory under FEMA 1999 and companies are required to submit the same based on audited/ unaudited accounts by July 15 every year.

- If the company's accounts are not audited before the due date of submission, i.e. July 15, then the FLA Return should be submitted based on unaudited (provisional) account. Once the accounts get audited and there are revisions from the provisional information submitted by the company, they are supposed to submit the revised FLA return based on audited accounts by 30th September.

Penalty:

- There are no specific penalties for FLA however, as per. (A.P. (DIR Series) Circular No. 29, dated February 02, 2017), Non-filing of FLA return before the due date will be treated as a violation of FEMA and penalty will be levied on defaulters which shall be–
- If, the amount against which offense is quantifiable, then the penalty will be “**THRICE**” the sum involved in the contravention.
- Where the amount cannot be quantified the penalty may be imposed up to two lakh rupees.
- If, the contravention is continuing every day, then Five Thousand

for every day after the first day during which the contravention continues.

Key Points

- At the time of filling the basic credentials it is preferable to give the Email Id and Phone Number of the accountant instead of the director or partner in order to avoid hindrance in receiving the OTP, as every time of login the OTP is provided to the authorised person in the email (provided in FLA user registration Form).
- While filling FLA Form ,Keep the Financials and other relevant data readily available in excel or in PDF format subject to the conditions prescribed by the RBI because at the time of filling FLA Return each Section is required to be filled completely with all the necessary details and after it's validation only we can proceed towards next section.
- After filing and validation of Section V of FLA Return, a report is generated which is a Summarized Report that helps in verifying the credentials filled in each Section and after verification we can submit the same. Final form before submitting can be reviewed in this way entirely.

LLP Amendment Bill

- In the Budget 2021, our honourable financial minister announced about Amendment in LLP Act with a press release on 03rd February 2021. MCA initiates process of Decriminalisation of compoundable offences of LLP
- Further in continuation of the same Wednesday, 28th July, 2021 Cabinet has passed LLP Amendment Bill, 2021. This will be the first changes that are being made to the Act since it came into effect in 2009. They have made 30 amendments to LLP Act 2008 by LLP Amendment Bill 2021.

PURPOSE OF AMENDMENT

- To improve ease of doing business and encourage the start-ups and business class to incorporate LLP's. To remove the fear of criminal prosecutions for non- substantive minor and procedural omissions and commissions in the normal course of their business transactions. It would benefit the 2.3 lakh LLP firms currently operational in the country.



SANDHIYA
Article Assistant

- The objective of the Decriminalization exercise is to remove criminality of offences from business laws where no malafide intentions (in bad faith/with intent to deceive) are involved.

PRINCIPLES ADOPTED FOR DECRIMINALIZATION OF COMPOUNDABLE OFFENCES:

- **Principle 1:** Offences that relate to minor/ less serious compliance issues, involving predominantly objective determinations, are proposed to be shifted to the In-house Adjudication Mechanism (IAM) framework instead of being treated as criminal offences.
- **Principle 2:** Offences that are more appropriate to be dealt with under other laws, are proposed to be omitted from the LLP Act, 2008.

- **Principle 3:** For non-Compoundable offences that are very serious violations entailing an element of fraud, intent to deceive and caused injury to public interest or non-compliance of order of statutory authorities impinging on effective regulation, Status Quo would be maintained.
- As per proposed amendment, LLP shall have only 22 Penal Provisions under the LLP Act, Only 7 (Seven) Compoundable Offences and only 3 (Three) Non-Compoundable Offences

create a class of LLP called as “Small LLP” in line with the concept of Small Companies. Such Small LLPs would be subject to lesser compliances, lesser fee and lesser penalties. Thus, lower cost of compliance would incentivize unincorporated micro and small partnerships to convert into the organized structure of an LLP and derive its benefits.

➤ b) Earlier: LLPs with contribution less than or equal to 25 lakh and turnover less than 40 lakh are treated as small LLPs.

CRUX:

- In all, twelve (12) offences are proposed to be decriminalized and three (3) section having criminal liability is proposed to be omitted. The 12 decriminalized offences would then get shifted to In-House Adjudication Mechanism (IAM) thereby de-clogging the criminal courts from routine cases.
- c) Proposed Amendment: 25 lakhs will go over to 5 crores and the turnover size will be treated as 50 crores.
- d) Non-convertible Debentures (NCDs): It is proposed to allow LLPs to raise capital through issue of fully secured Non-Convertible Debentures (NCDs) (as an alternative to equity participation) from investors who are regulated by SEBI or RBI. This will help deepen the Debt Market and enhance the capitalization of LLPs.

NEW CONCEPTS:

- The key components of MCA21 to be launched during Fiscal Year 2021-22 are:
 - a) Small LLP: It is proposed to

Adjudicating Officers

- Under the Act, the central government may appoint Adjudicating Officers for awarding penalties under the Act.

Special Courts

- The Bill allows the Central government to establish special courts for ensuring speedy trial of offences which consists of:
 - I) A sessions judge or an additional sessions judge, for offences punishable with imprisonment of 3 years or more
 - II) A Metropolitan Magistrate or a Judicial Magistrate, for other offences.

Punishment for Fraud

- Under the Act, if an LLP or its partners carry out an activity to defraud their creditors, or for any other fraudulent purpose, every person party to it knowingly is punishable with imprisonment of up to 2 years and a fine between Rs.50,000 and Rs.5,00,000. The Bill increases the maximum term

of imprisonment from 2 to 5 years.

Non-compliance of orders of Tribunal

- Under the Act, non-compliance with an order of the National Company Law Tribunal (NCLT) is punishable with imprisonment up to 6 months and fine up to Rs.50,000. The Bill removes this offence.

Compounding of offences

- Under the Act, the central government may compound any offence under the Act which is punishable only with a fine. The amount imposed may be up to the maximum fine prescribed for the offence. The Bill amends this to provide that a regional director, appointed by the central government, may compound such offences. The amount imposed must be within the minimum and maximum fine for the offence. If an offence by an LLP or its partners was compounded, then a similar offence cannot be compounded within a 3 years period.

Reduction of additional fee:

It is also proposed to amend Section 69 of the Act with a view to reduce the additional fee of Rs. 100 per day which is presently applicable for the delayed filing of forms, documents. A reduced additional fee is expected to smoothen the filing of records and returns of LLPs and consequently result in an updated registry for proper regulation and policy making.

CONCLUSION:

They are bridging this gap between Company and LLP's and making LLPs far more attractive and easy to handle, so that many of the start-ups today, which prefer the LLP model can also feel equally given the ease of business opportunities.

Scrapping of Retrospective tax

What is Retrospective tax policy?

A retrospective tax is a tax imposed on a transaction or deal that was conducted in the past. It can be a new or additional charge on transactions done in the past. Ideally, retrospective tax is to make adjustments when policies in the past and the present are so vastly different that tax paid before under the old policy.

Retrospective taxation allows a nation to implement a rule to impose a tax on certain products, goods or services and deals and charge companies from a time before the date on which the law is passed. Countries use this form of taxation to rectify any deviations in the taxation policies that in the past allowed firms to take benefit from any loophole. Retrospective tax affects companies that had unknowingly or knowingly used the tax rules differently.

It was introduced in a 2012 amendment to the Finance Act, which enabled imposition of retrospective tax on deals executed after 1962 involving transfer of shares in a foreign entity which had assets in India.



KAVIN
Article Assistant

Reasons for retrospective amendment / tax

Retrospective amendments are carried out to undo some of the decisions of judicial bodies which went against legislative intent or for removing certain anomalies in law. Sometimes it may be simply to benefit taxpayers in genuine cases and do away with undue hardship or difficulties faced by taxpayers.

The main reason to introduce the retrospective taxation in India was the Vodafone-Hutchison deal in 2007. In May 2007, Vodafone had bought a 67 percent stake in Hutchison. Indian government raised a tax demand of Rs 7,900 crore in capital gains and withholding tax.



Vodafone challenged the notice in Supreme Court and subsequently, the judgment favoured the company. The government then, under Pranab Mukherjee as Finance Minister, amended the tax law retrospectively, providing a legal framework for the government demand.

Tax terrorism

The National Democratic Alliance (NDA), which was in the Opposition at the time, termed this use of power as “tax terrorism” and late former Finance Minister Arun Jaitley had promised to stop the retrospective tax levy. However, there has been no move to scrap the law in the NDA’s seven years in office so far.

Case of Cairn

Income-tax demand has been raised in seventeen cases, which include Cairn. In 2006-2007, the Cairn UK transferred shares of Cairn India Holdings to Cairn India. The government decided the company had made capital gains out of the process and sought taxes. By March 2015, the government demanded Rs 31,800 crores in taxes.

The company moved arbitration and the Hague based Arbitral tribunal pronounced its award on December 21, 2020 in favour of Cairn Energy Plc and Cairn UK Holdings Ltd (CUHL). It asked India to pay Cairn an award amounting to \$1232.8 million plus interest and \$22.38 million towards arbitration and legal costs. India filed an appeal against the ruling.

Later the company filed a lawsuit in a US Court against Air India, as the airline is a public entity, to enforce the award. Then a French court passed an order to freeze 20 Indian properties in Paris.



The Government introduced The Taxation Laws (Amendment) Bill, 2021

Putting an end to the retrospective tax law of 2012, the order endangering sovereign assets was largely seen as a dent on an emerging power like India. Especially when the country is trying to portray itself as an investment destination on its road to recover from the economic impact of the Covid-19. Finance Minister on 5th August introduced a Bill in Parliament to nullify the provision in the Income Tax Act.

if the transaction was undertaken before May 28, 2012, shall be “deemed never to have been passed or made”. It was on May 28, 2012 when the Finance Bill, 2012 received the President’s assent. The latest Act also envisages that no tax demand will be raised in the future for transactions made before May 28, 2012.

The government has also proposed to refund the amount paid in litigation by companies without any interest thereon, provided the concerned taxpayers would have to drop all pending cases against the government and promise not to make any demands for damages or costs.



The Bill would withdraw the retrospective amendments to the Income Tax Act that had raised demands on Vodafone, Cairn and others, indicating a move to attract foreign investments.

It prescribes that tax demands raised on the basis of the 2012 retrospective amendment for any indirect transfer of Indian assets,

Pre-packaged Insolvency Resolution process

Unpacking The Pre-Pack Insolvency Resolution Process



Background:

In the past one year, the impact of Covid-19 pandemic has been severely stressful on the Indian economy. There is no doubt that the insolvency procedure under the Insolvency and Bankruptcy Code is one of the major hit areas.

To combat with this predicted low fall in the economy, one of the initiatives by the Government is introduction of Pre-Pack Insolvency Resolution for MSME sector under the Insolvency and Bankruptcy Code.



NIKHIL BHARATHRAJ
Audit Manager

The basic idea behind the making of Pre-Pack Insolvency is to save the time period taken in the whole resolution process, an informal out of court settlement and consensual restructuring instead of a public bidding process.



Need for a Pre pack :

- In respect of defaults due to covid-19 and defaults less than Rs. 1 crore.
- In times of stress before default.
- Fast, Cost Efficient, and Effective in resolution of stress much before value deteriorates.

- Enables stakeholders to resolve the stress of a CD as a going concern.

Eligibility for Pre-packaged insolvency resolution

- A company or LLP that classifies as an MSME under Section 7(1) of the Micro, Small and Medium Enterprises Development Act, 2006. The MSME should fulfill the following conditions.
 - a) It should have failed to pay a due and payable debt of 10 lakhs or more.
 - b) It should not have undergone a PPIRP or corporate insolvency resolution process (the regular insolvency process under IBC) (CIRP) during the past 3 years.
 - c) No liquidation orders should have been passed against it.
 - d) It should not be a person who is disqualified under Section 29A of the IBC. However, as per Section 240 A, Section 29(a)(c) and Section 29(a)(h) are exempt for MSMEs.
- Proprietorships, partnerships and HUF forms of MSMEs are out of the ambit of the pre-pack

process, thereby restricting the number of MSMEs eligible for pre-pack.

Who can initiate PPIRP?

- The corporate debtor, i.e., the MSME itself, by filing an application for initiation of PPIRP. The application can be filed through an authorized shareholder or partner of the MSME or an individual who manages the MSME's operations or resources or controls and supervises its financial affairs. Creditors of MSMEs are not permitted to file an application to initiate PPIRP.

What is the RP's role during PPIRP?

- The RP's role is to conduct the PPIRP, ensure its transparency and fairness and safeguard the interests of relevant stakeholders. The RP forms the COC, confirms the list of claims, maintains information, monitors compliance and timelines and monitors management of the MSME's affairs. The RP has powers to attend meetings of the directors or partners of the MSME, access books, accounts, records, etc.

Who manages the affairs of the MSME during PPIRP?

- Ordinarily, the management of the MSME's affairs continues to be with its board of directors or partners. To this extent, the PPIRP is a debtor-in-possession regime, unlike CIRP, in which the RP is in possession and responsible to manage the debtor's affairs.
- This regime provides an incentive for the MSME's promoters to voluntarily opt for the PPIRP.
- The Committee of Creditors, at any time during the pre-packaged insolvency resolution process period, by a vote of not less than 66% of the voting shares, resolves to vest the management of the corporate debtor with the resolution professional, the resolution professional shall make an application for this purpose to the Adjudicating Authority.

Process of Pre-Pack Insolvency Resolution Process

- Approval for PPIRP from the shareholders or partners of the MSME by a special resolution.
- Formulation of a base resolution plan by the MSME for its revival/restructuring and submission of the plan to financial creditors.
- Approval for PPIRP from financial creditors (not related parties) representing at least 66% in value of total financial debt.
- Proposal of a resolution professional (RP) for the MSME by its financial creditors (not related parties) representing at least 10% of the value of total financial debt.
- Approval of the proposed RP by financial creditors representing at least 66% of the above value.
- Where a corporate debtor has no FCs, such approval shall be obtained from unrelated Operational Creditors in the same manner as prescribed for FCs.

➤The Adjudicating Authority shall, on the pre-packaged insolvency commencement date, along with the order of admission declare a moratorium once the application gets admitted.

➤The resolution professional shall, within seven days of the pre-packaged insolvency commencement date, constitute a CoC, based on the list of claims confirmed.

➤If the AA is satisfied that the resolution plan as approved by CoC subject to the conditions provided therein, meets the requirements as provided in the Code, it shall, within thirty days of the receipt of such resolution plan, by order approve the resolution plan.

➤The amount payable under a resolution plan –

a. to the operational creditors shall be paid in priority over financial creditors; and

b. to the financial creditors, who have a right to vote and did not vote in favour of the resolution plan, shall be paid

in priority over financial creditors who voted in favour of the plan.

Key differences between PPIRP and CIRP:

➤PIRP applies only to MSME debtors.

➤PPIRP can be initiated only by the debtor, i.e., the MSME, unlike CIRP which can also be initiated by creditors.

➤PPIRP involves a pre-pack, i.e., the MSME has to approach its financial creditors along with a base resolution plan and obtain their approval before formally initiating PPIRP.

➤PPIRP is a debtor-in-possession regime while CIRP involves RP-in-possession.

➤The MSME debtor has to submit a base resolution plan against which competing plans are evaluated and one plan is finally selected. The MSME can also improve the base resolution plan submitted. CIRP does not provide these options to debtors.

➤NCLT has a limited role in PPIRP.

- PPIRP must be completed within a period of 120 days while the limit for a CIRP is 180 days (extendable up to 330 days).

On the whole -

- This ordinance adopts a hybrid approach towards the resolution of insolvent MSMEs, balancing the interests of creditors on the one hand and the need to preserve the autonomy of MSMEs on the other hand, to best serve the interests of both of them.

Compliance Calendar

Compliance Due Date	Concerned (Reporting) Period	Compliance Detail	Applicable To
Direct Taxes			
7 th September, 2021	August 2021	Deposit of Tax Deducted	Non-government Deductors
7 th September, 2021	August 2021	Deposit of equalization levy	All Deductors
15 th September, 2021	F.Y. 2021-22	2nd Instalment of Advance Tax	Taxpayers liable to pay advance tax
30 th September, 2021	Period mentioned in Vivad se Vishwas	Payments without additional amount under the Vivad se Vishwas scheme	Assessee opted to pay under Vivad se vishwas scheme.
Indirect Taxes			
10 th September 2021	August 2021	GSTR 7	Summary of Tax deducted at Source (and deposited under GST laws.
10 th September 2021	August 2021	GSTR 8	Summary of Tax collected at Source (by e commerce operators under GST laws.
11 th September, 2021	August 2021 (Monthly)	GSTR 1	Taxpayers with Annual Turnover more than 1.5 cr.
13 th September, 2021	August 2021	IFF	Taxpayers opted for quarterly filing under QRMP scheme.

13 th September, 2021	August 2021	GSTR 6	Details of (ITC) received and distributed by an Input Service Distributor)
20 th September, 2021	August 2021 (Monthly)	GSTR 5	Summary of outward taxable supplies and tax payable by the non resident taxable Persons.
20 th September, 2021	August 2021 (Monthly)	GSTR 5A	Summary of outward taxable supplies and tax payable by OIDAR provider
20 th September, 2021	August 2021 (Monthly)	GSTR 3B	Taxpayers with Annual Turnover more than 1.5 cr.
Other Compliances			
15 th September, 2021	August 2021	PF/ESI	Depositing contribution towards PF/ESI
30 th September, 2021	F.Y. 2020-21	Last day for holding AGM	Companies closing their subsequent financial year on 31st March, 2021
30 th September 2021	FY 2020-21	DIR 3 KYC	Director KYC submission for DIN holders as on 31 March 2020. Every person who has a DIN allotted and the status of the DIN is 'Approved'.



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