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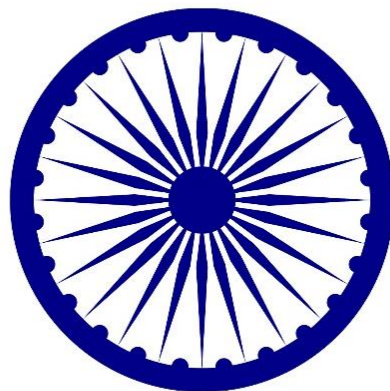
NEWSLETTER INDIA

ADDING VALUE

Issue:  
January  
2019

Latest news on compliance, tax and business in India

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# Rödl & Partner

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Santhosh Tantzcher  
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### A MOVE TAKEN TO FURTHER AMEND COMPANIES ACT, 2013 :

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- With a view to promote ease of doing business in India and to ensure better compliance, Indian Government passed Companies (Amendment) Ordinance, 2019 to bring further changes to Indian Companies Act, 2013 effective from 2<sup>nd</sup> November, 2018 . This Ordinance was again re-promulgated on 12<sup>th</sup> January 2019 and continues to have a binding effect. The changes introduced by way of Ordinance have been adopted in the Companies (Amendment) Bill, 2019. The Amendment Bill is anytime soon to be passed by the Parliament and to become an Act. Some of the key changes brought about are highlighted below.
- In order to curb down the menace of 'shell companies' a provision has been added which says any company incorporated after the commencement of the Ordinance, shall not commence any business or exercise borrowing powers-UNLESS the director has filed with the Registrar a declaration. Such declaration needs to be filed within 180 days of incorporation and stating that every subscriber to the memorandum has paid the value of the shares as agreed. Further, the company is required to verify its registered office by filing necessary returns with the Registrar of Companies ("ROC"). Non-compliance with the same will invite penalty and may also trigger strike-off.
- ROC may cause physical verification of the registered office to be done, if he has a reasonable cause to believe that no business or operation is being carried out by the company. This may also invite an additional triggering ground for ROC to strike off company's name.
- With a view to reduce burden of National Company Law Tribunal ("NCLT") there has been a shifting of power from NCLT to the Central Government for approving the alteration of financial year , approving the cases of conversion of public companies into private companies.
- In case of holding of directorships beyond permissible limits will trigger disqualification of such directors. Under Companies Act, 2013, the maximum limit for holding directorships in case of private companies is 20 and in case of public companies is 10
- Greater accountability has been imposed with respect to filing of documents related to creation, modification and satisfaction of charges. The implications under fraud given under 447 of Companies Act, 2013 will be attracted, in case of any wilful furnishing of false or incorrect information or knowingly suppressing any material information pertaining to registration of charges. Now charges which are created after the commencement of the Ordinance have to be registered within 30 days of such charge creation. In case such registration has not been done within 30 days, the Registrar may, on an application, allow a period of 60 days from the date of such charge creation subject to payment of additional fee. The Registrar may however, on an application allow such registration within a further period of 60 days on payment of ad valorem fees as may be prescribed.
- Non-compliance with respect to disclosure of nature of interest under Significant Beneficial Ownership may invite imprisonment up to one (1) year. Earlier such non-compliance was only punishable with a fine. Further, in case rights attached to the shares have been suspended by NCLT as a result of failure on the part beneficial owners to register themselves, time line has been given to make an application to re-claim the rights over the shares. For the purpose of the same, the person has to approach NCLT within one (1) year from the date of order for suspension of rights. Failure to claim within the time line, the shares will now be automatically transferred to the Investor Education & Protection Fund.
- There has been imposition of a cap on independent director's remuneration in terms of percentage of income. This is done with a view to prevent any material pecuniary relationship, which may be likely to impair his independence on the board of the company.

- As per the newly inserted section 454-A penalty, in case of repeated defaults, the penalty equivalent to twice the amount of penalty prescribed under the Companies Act, 2013 will be imposed upon the concerned company or person who had already been subjected to penalty under the Companies Act, 2013. This is subject to the condition that such repeated default must have occurred within three (3) years from the date of order imposing penalty for earlier default.
- A default involving reporting of drawdown of proceeds before availing LRN or delay in filing monthly returns can be regularized by payment of LSF in accordance with the LSF matrix as provided within the new framework.

## COMPANY SECRETARIAL (CS) COMPLIANCES FOR PRIVATE LIMITED COMPANY

Below is the summary of the compliances which needs to be adhered for the next quarter (Jan - Mar 2019)

### RESERVE BANK OF INDIA ("RBI") RELEASES NEW EXTERNAL COMMERCIAL BORROWINGS ("ECB") FRAMEWORK

- The RBI on 17<sup>th</sup> December, 2018 issued Foreign Exchange Management (Borrowing and Lending) Regulations, 2018, in an attempt to consolidate all the regulations dealing with borrowing and lending transactions between a person resident in India and a person resident outside India. In furtherance to which RBI issued ECB Policy Framework on 16<sup>th</sup> January, 2019.
- The new ECB Framework, now allows all the entities that are eligible to receive Foreign Direct Investment (FDI) to raise ECB. Further, FDI eligible entities engaged in service/ trading sectors as well as Limited Liability Partnerships ("LLP"), that were not considered as eligible borrowers under the erstwhile framework now can raise ECB.
- Now Track I and Track II ECBs under the erstwhile guidelines have been merged as 'Foreign Currency denominated ECB' and Track III and Rupee Denominated Bonds are combined as 'Rupee Denominated Bonds'.
- ECB can be raised up to USD 750 million or equivalent per financial year under the automatic route.
- Apart from end-user restrictions as provided in the framework, ECB proceeds cannot be utilised for activities prohibited under Foreign Direct Investment ("FDI").
- For all ECBs, the minimum average maturity period ("MAMP") has been kept at three (3) years, irrespective of the amount of ECB raised except for ECB up to USD 50 million or its equivalent for entities engaged in the manufacturing sector MAMP can be 1 year. For ECB raised from foreign equity holder and utilised for specified purposes like working capital purposes, general corporate purposes and repayment of Rupee loans - MAMP will be 5 years.

Sr. No	Particulars	Due Date (2019)
1.	Hold at least one Board Meeting in quarter Jan-Mar 2019 (Gap between previous board meeting and this meeting should not be made than 120 days)	31 <sup>st</sup> March
2.	Form DIR-3 KYC (Due early in the following quarter Apr - Jun 2019)	30 <sup>th</sup> April

## EMPLOYEE PROVIDENT FUND WITHDRAWAL RULES AMENDED

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- The Ministry of Labour, with effect from 6 December, 2018 has notified the Employees' Provident Funds (Amendment) Scheme, 2018 ("Amendment") in order to further amend the Employees' Provident Funds Scheme, 1952. The Amendment inserts a new paragraph 68HH, which allows an EPF member to withdraw non-refundable advance maximum up to 75 % in case continuous unemployment for a period not less than one (1) month. It is pertinent to note that, after such withdrawal is made, the EPF membership will remain unaffected and such EPF member will eligible to receive benefits.
- Further as per the Employee Provident Fund Organisation ("EPFO") circular issued, it is clarified that the newly notified paragraph 68 HH, is in addition to the existing paragraph 69(2) of the EPFF Scheme, 1952. 69(2) allows 100 % withdrawal after two (2) months of continuous unemployment, immediately preceding the date on which the application for making such withdrawal is made. The EPFO circular also says that the requirement of two(2) months waiting , is not applicable to female employees who are unemployed, for the purpose of getting married.

## SUPREME COURT DECIDED ON THE APPLIAC-TION OF LIMITATION ACT, 1963 TO CLAIMS FILED UNDER INSOLVENCY BANKRUPTCY CODE,2016

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- Supreme Court of India (SC) in a case B.K. Educational Services Private Limited v Parag Gupta and Associates, has decided the issue regarding the applicability of Limitation Act, 1963 to applications filed by creditors for initiating insolvency resolution process. SC has clarified that applications for initiating insolvency resolution process will not be admitted in respect of statute barred debts, except in those cases where delay can be condoned by showing sufficient cause under section 5 of the Limitation Act, 1963.

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## → Tax News

### Transfer Pricing

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#### EXTENSION OF COUNTRY-BY-COUNTRY REPORTING (CbCR) FILING DUE DATE

Central Board of Direct Taxes ('CBDT') Notifies on December 26, 2018 extension of CbCR filing due date

The time line for filing of CbCR was 12 months from the end of the reporting accounting year. i.e Accounting year ending on December 31, 2017 the filing due date was December 31, 2018.

The CBDT has vide circular dated 26 December 2018, extended the due date to 31 March 2019 for situations covered under, where Indian Constituent entity is obliged to furnish CbCR

- Where the parent entity is not obligated to file CbCR
- Where the parent entity being a resident of a country or territory with which India does not have an agreement providing for the exchange of CbCR;

It should be noted that, the extended time limit of 31 March 2019 shall apply to all reporting accounting years ending up to 28 February 2018.

The above circular clarifies that the requirement to furnish CbCR in India applies to all reporting accounting year ending up to 28 February 2018. In India, CbCR compliances are effective from 1 April 2016 onwards. Accordingly, if the reporting accounting year of the MNE group is January to December, then Indian constituent entity will have to furnish CbCR by 31 March 2019 for two years; i.e, for the year ended on 31 December 2016 and 31 December 2017.

#### ADVANCED PRICING AGREEMENT ('APA')

The Central Board of Direct Taxes (CBDT) has entered into 5 more Unilateral Advance Pricing Agreements (UAPAs) and 1 Bilateral APA

CBDT has signed Bilateral APA with treaty partner Australia and Switzerland. After the signing of this agreements total number of APA has gone up to 244, out of which Unilateral APA is 220 and Bilateral APA is 24.

The International transactions covered in all these agreements include following:

- provision of software development services
- provision of back office (ITeS) support services
- export/import of raw materials, journals, etc
- payment of royalty
- advertising, marketing and sales promotion (AMP) expenses incurred
- provision of marketing support services
- distribution of finished goods
- corporate management and business support services
- payment of guarantee fee

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→Tax News

## Indirect Tax

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- Supply of Security services from a non – body corporate liable to GST under reverse charge mechanism – The Central Government vide Notification No. 29/2018 – Central Tax (Rate) dated 31 December 2018, has brought security services (provided by way of supply of security personnel) provided to a registered person by any supplier other a body corporate under the scope of reverse charge mechanism.
- The Central Government vide Notification No. 78/2018 – Central Tax dated 31 December 2018 has extended the due date for filing Form ITC – 04 (being form for declaration of goods sent to job worker for further processing) for the period July 2017 to December 2018 till 31 March 2019.
- Time Limit for availing Input Tax Credit pertaining to invoices for the FY 2017-18 extended – The Central Government vide Order No. 2/2018 dated 31 December 2018 has extended the time limit for availing Input Tax Credit in relation to any invoice or invoices relating to such debit note for supply of goods or services or both made during the FY 2017-18, upto the due date for filing the Form GSTR 3B for the month of March 2019, provided such details have been uploaded by the supplier in its Form GSTR-1 on or before the due date for furnishing Form GSTR 3B for the month of March 2019.
- Late Fees on delayed filing of Form GSTR – 1, Form GSTR 3B and Form GSTR 4 to be waived off – The Central Government has issued requisite notifications to waive off the late fees payable on delayed filing of Form GSTR – 1, Form GSTR 3B and Form GSTR 4, for the period July 2017 to September 2018, provided such returns are filed after 22 December 2018 but on or before 31 March 2019.
- Taxpayers who have not filed the returns for Two consecutive tax periods shall be restricted from generating E-Way bills - The Central Government vide Notification No. 74/2018 – Central Tax dated 31 December 2018, with a view to curb growing non-compliances on filing of GST

returns, has made necessary changes to the GST rules to bar E-Way bill generation while transporting consignment if the supplier or recipient of the cargo has not furnished GST returns for two consecutive tax periods under GST. However, this provision shall be made effective once GSTN/NIC makes available the required functionality.

### KEY HIGHLIGHTS OF DECISIONS TAKEN IN 31<sup>ST</sup> GST COUNCIL MEETING HELD ON 22 DECEMBER 2018

- Due Date for filing Form GSTR-9 and Form GSTR 9C Extended – The due date for filing of annual returns in Form GSTR-9 and reconciliation statement in Form GSTR-9C for the FY 2017 – 2018 has been extended till 30 June 2019.
- Single Pager Return Filing System- The Central Government shall be introducing a new single pager return filing system on a trial basis with effect from 1 April 2019 and on mandatory basis from 1 July 2019.
- Paperless Refunds – The supporting documents/invoices in relation to a claim for refund vide Form GST RFD-01A shall be required to be uploaded electronically on the common portal at the time of filing of the refund application itself, thereby obviating the need for a taxpayer to physically visit a tax office for submission of a refund application. GSTN shall enable this functionality on the common portal shortly.

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→Tax News

## Direct and International Taxation

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### APPLICATION FOR LOWER/NIL WITHHOLDING TAX CERTIFICATE GOES ONLINE

In cases where withholding tax is required to be effected under the ITA, if the Assessing officer is satisfied that the total income of the recipient justifies the deduction of withholding tax at any lower rates or no deduction of withholding tax, then upon an application made by the recipient of income under section 197 of the ITA, the Assessing Officer may either issue a lower/Nil withholding tax certificate. The said application in Form 13 was till date filed manually with the concerned Assessing officer and based on physical hearings with the Assessing officer the lower/Nil withholding tax certificate was issued.

Vide CBDT notification no. 74/2018 dated 25 October 2018, Rule 28 and Rule 37G of the Income-tax Rules, 1962 have been amended to provide for filing an application in Form 13 electronically (e-filing), based on certain procedures, formats and standards. Further, vide CBDT notification no. 08/2018 dated 31 December 2018, the procedure/standards/formats for electronic filing of Form 13 have been laid down. Form 13 is now to be submitted along with supporting documents electronically, either under a digital signature or through electronic verification code. The application form, providing supporting documents as well as the verification process of the concerned tax authorities would all be conducted in an online manner only, without any physical interactions. The online processing facility will be made available through the TRACES web portal of the Indian Income tax department ([www.tdscpc.gov.in](http://www.tdscpc.gov.in)).

Further, vide press release dated 24 December 2018, CBDT has clarified that all entities (residents/non-residents) shall henceforth be required to file Form 13 electronically. The only exception being that Non-resident Indians (NRI) who are not able to register themselves on TRACES portal can file application manually up to 31 March 2019.

### CLARIFICATION IN RELATION TO FILING OF APPEALS BY THE TAX DEPARTMENT (CIRCULAR DATED 11 DECEMBER 2018)

CBDT, while revising the monetary limits for filing of appeals by the tax department before various courts, had carved out certain exceptions wherein an appeal could be filed by the department on merits irrespective of the lower or nil tax effect than the prescribed limit.

Now, the CBDT has issued a clarification that though in exceptional cases the appeals be 'con-tested on merits', it doesn't imply that there should be any mechanical filing of appeals in these cases

### AMENDMENTS IN THE RULES AND FORMS IN RELATION TO APPLICATION FOR PERMANENT ACCOUNT NUMBER (PAN)

The CBDT, through notification dated 19 November 2018, has amended the rules to include following persons who are required to apply for PAN:

- A resident, other than an individual, entering into a financial transaction of an amount aggregating to two lakh fifty thousand rupees or more in a financial year; and
- A managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer or any person competent to act on behalf of the person referred in above.

Further, in the forms for application of PAN, CBDT has now included reporting of following options:

- Name of single mother as a parent (mandatory);
- Name of mother, if otherwise (optional); and
- Option to print either of the parents' name on the PAN card



## AMENDMENTS IN THE FORMS AND NOTES FOR FILING OF APPEALS BEFORE THE INCOME TAX APPELLATE TRIBUNALS (NOTIFICATION DATED 23 OCTOBER 2018)

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The CBDT has recently notified new form 36/36A for the purpose of filing appeals/cross objection (CO) before the ITAT. The revised form(s) require detailed information divided into following sections:

- Appellant's personal information;
- Respondent's personal information;
- Details of Appeal/COs;
- Amounts disputed in appeal/COs;
- Grounds of appeal/COs; and
- Appeal filing details

The CBDT has inserted new fields of required information. Below are some of the key fields of information to be furnished in the revised forms:

- PAN and TAN of the Appellant and Respondent, if available and applicable;
- Phone no. with STD code/mobile no. and email address of the Appellant (mandatory) and the Respondent (if available);
- Total amount of addition or disallowances made in the assessment;
- Amount disputed in appeal/COs;
- Tax effect relating to each ground of appeal/CO;
- An application seeking condonation of delay in case of delay in filing of appeal/COs;
- Details of appeal fees paid;
- Name and designation of authorized representative, if any or the appellant signing and verifying the form;

Notes have also been amended to include the explanation regarding calculation of tax effect for the purposes of reporting in the respective forms.

## INDIA-CHINA SIGN PROTOCOL AMENDING DTAA INCORPORATING BEPS RELATED CHANGES

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The Government of the Republic of India and the Government of the People's Republic of China have amended the Double Taxation Avoidance Agreement (DTAA) for the avoidance of double taxation and for the prevention of fiscal evasion with respect to taxes on income, by signing a Protocol on 26 November 2018.

Besides other changes, the Protocol updates the existing provisions for exchange of information to the latest international standards. Further, the Protocol incorporates changes required to implement treaty related minimum standards under the action reports of Base Erosion & Profit shifting (BEPS) Project to which India has been an active participant.

## INDIA - HONG KONG DTAA COMES INTO FORCE

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The agreement between India and Hong Kong for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income was signed in the month of March 2018.

India completed all the relevant procedures required by its laws for the entry into force of the agreement on May 11 and the government of Hong Kong Special Administrative Region completed all the relevant procedures required by its laws or the entry into force of the agreement on November 30.

Accordingly, in India the DTAA will be applicable in respect of any income derived from 1 April 2019 i.e. fiscal year beginning on or after April 1 following the date on which the DTAA enters into force

## FINAL NOTIFICATION ISSUED U/S 112A SPECIFYING THE NATURE OF EQUITY SHARES ON WHICH STT WOULD NOT APPLY FOR 10 % LTCG TAX

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The erstwhile tax exemption under section 10(38) ITA applicable for Long-term Capital Gain ("LTCG") on sale of listed equity shares [subject to payment of Securities Transaction Tax ("STT")] was withdrawn by Finance Act, 2018 and a new Section 112A was inserted in the ITA to tax such LTCG arising on transfer of listed equity shares in company or a unit of an equity oriented fund at a concessional rate of 10 %, upon fulfilment of certain conditions (i.e. transaction subject to STT).

However, in some transactions of acquisition of equity shares, STT could not have been paid at the time of acquisition. In order to give the benefits of section 112A to such genuine cases, the Central Government was given powers to notify transactions wherein 10 % tax rate shall be applicable even if STT has not been paid at the time of acquisition or transfer. In exercise of such powers, CBDT issued a final notification (F. No. 370142/9/2017-TPL) on October 1, 2018 specifying the nature of transactions in respect of which requirement of payment of STT would not apply. The notification is in line with the draft notification issued in April 2018.

As per the notification, the chargeability of STT will not be a condition for equity shares i) acquired before 01 October, 2004 or ii) on or after the first day of October, 2004 other than some 'specified' transactions ("negative list"). In addition, the notification also provides a list of exclusions to the negative list of transactions for which the condition of chargeability to STT would not be applicable for availing the concessional rate of 10 % under section 112A ITA.

The above notification is applicable for transactions entered into for FY 2018-19 onwards.

CBDT expands scope of enquiry in limited scrutiny cases for examining of tax-evasion information

During the years 2017 and 2018 certain cases were selected for "Limited Scrutiny" wherein the tax officer could not travel beyond the issues bases which the cases were selected.

Now, the CBDT has directed that the scope of such "Limited Scrutiny" cases wherein credible information or information provided by any law-enforcement/intelligence/regulatory authority or agency regarding tax evasion is available can be expanded to "Complete Scrutiny" with prior administrative.

In this connection, the tax officer is required to record reasons for the expansion of scope. Further, prior approvals for expansion also has to be taken from the Principal Commissioner and the tax officer has to accordingly intimate the tax payer about the change in scope.

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## → Accounting/Audit News

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### Business Process Outsourcing

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#### KEY AUDIT MATTERS.

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Audit report is an opinion issued by the auditor communicating about the affairs of the company to the intended users of the financial statement.

This report is useful for taking key decisions with respect to Management, Investment, and Lending etc.

Critical matters, which the auditor wants to bring to the attention of intended users are reported through, modified opinion in form of:

- Qualified Opinion
- Adverse Opinion
- Disclaimer of Opinion

While, other matters where a modification to audit report is not required but still requires an attention of intended users is reported through "Emphasis of Matter" paragraph in the audit report.

With the purpose of further enhancing the communicative value by providing better transparency and additional information, the regulatory body has introduced new paragraph in audit report "Key Audit Matters". Key Audit Matters helps the users of the financial statement to understand those matters that, in the auditor's professional judgement, were of most significance in the audit of financial statement.

These matters will further engage the management and those charged with governance, as the auditors will identify key matters based on area of complexity and significant management judgement in the financial statement.

Communicating Key Audit Matters in the auditor's report is not:

- A substitute for disclosures in the financial statement as required under reporting framework;
- A substitute for the auditor expressing a modified opinion;
- A separate opinion on individual matters.

The auditors need to document and have intense dialogue with management as part of two way communication, this will increase attention of management towards disclosures in the financial statements to which reference is made in the auditor's report.

With the additional paragraph of Key Audit Matters being added in auditor's report, the management and those charged with governance will have to deal with all the significant and critical areas carefully. One has to take note that there is no limit to reporting Key Audit Matters in auditor's report. This is purely based on professional judgement of either parties.

This paragraph applies to all the audit reports issued for the financial statement for the period beginning on or after April 1, 2018.

## COMPLIANCE CALENDAR

Compliances – Direct Tax		
Sr. No	Particulars	Due Date (2018)
1.	Monthly payment of TDS	7 <sup>th</sup> of next month
2.	Filing of Tax Collection at Source (TCS) Return for the quarter October 2018 to December 2018	January 15
3.	Filing of Tax Deducted Source (TDS) return for the quarter October 2018 to December 2018	January 31
4.	Payment of 4 <sup>th</sup> Instalment of Advance Tax for the FY 2018-19	March 15
5.	Intimation under section 286(1) in Form No. 3CEAC, by a resident constituent entity of an international group whose parent is non-resident	January 31
6.	Country-By-Country Report in Form No. 3CEAD for the previous year 2017-18 by a parent entity or the alternate reporting entity, resident in India, in respect of the international group of which it is a constituent of such group	March 31
7.	Country-By-Country Report in Form No. 3CEAD for a reporting accounting year (assuming reporting accounting year is April 1, 2017 to March 31, 2018) by a constituent entity, resident in India, in respect of the international group of which it is a constituent if the parent entity is not obliged to file report u/s 286(2) or the parent entity is resident of a country with which India does not have an agreement for exchange of the report etc.	March 31
8.	Filing of GSTR 1 (Monthly)	11 <sup>th</sup> of the next month
9.	Filing of GSTR 1 for the quarter October 2018 to December 2018	January 31
10.	Filing of GSTR 3B (Monthly)	20 <sup>th</sup> of next month
11.	Form ITC-04 for the quarter July 2017 to December 2018	March 31
12.	MVAT Audit Form 704 for the period April 2018 to June 2018	Extended to February 28

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