

GST NEWSLETTER

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INDEX



1. Article [pg 2-7]
a. GST Implication On Charitable Institutions
& Religious Trusts



2. Case Laws [pg 8-9]
a. Should The Pre-deposit For Appeal In GST
Be Paid By Cash Or ITC-high Court Of Allahabad
b. Depositing Cash In Electronic Cash Ledger Is
Not Equivalent To Payment Of Tax



**3. Notifications and
Circulars** [pg 10]



4. Due Dates [pg 11]

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ADVISORY AND BUSINESS
CONSULTING FIRM**

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ARTICLE

GST Implication On Charitable Institutions & Religious Trusts

Introduction

Charitable institutions, religious trusts, and Non-Governmental Organizations (NGO) are entities that work towards the greater good of the society. There are Lacs of religious and charitable trusts in India. They may be Religious Temples, Halls or Dharmshalas, Charitable Trusts like schools, orphanages, or other Non-Government Organizations. The objectives of these institutions or trusts are neither to make profit nor enhance their revenues. As a result of which they are eligible for multiple exclusions and relaxations as far as taxes are concerned under various statutes. However, all the services provided by such entities are not exempt from tax. In fact, there are many services that are provided by such entities which would be within the ambit of GST.

In this article we will look at the implication of GST on Charitable institutions & religious trusts.

Table Of Contents

- ✔ **What Are Charitable Activities?**
- ✔ **When To Take Registration Under GST?**
- ✔ **What Is GST Implication Of Donation Received From Individual By Charitable Institution?**
- ✔ **What Are The Exemptions Available To Charitable Trust?**
- ✔ **What Is GST Implication On Import Of Services By Trust?**
- ✔ **Conclusion**



✔ **What Are Charitable Activities?**

As per the CGST Act, 2017, trusts are included in the definition of 'persons' under section 2(84). Therefore, by virtue of their status as a trust, charitable trusts are not excluded from the taxability under GST. However, the exemption Notification no. 12/2017- Central Tax, vide its entry no. 1 provides an exemption to all entities registered under section 12AA of the Income Tax Act, 1961 from GST to the extent they provide 'charitable activities'.

Charitable activities have been defined in the said notification as under -

“charitable activities” means activities relating to:

● **Public health by way of:**

● **Care or counseling of**

1. **Terminally ill persons or persons with severe physical or Mental disability;**
2. **Persons afflicted with HIV or AIDS;**
3. **Persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or**

● **Public awareness of preventive health, family planning, or prevention of HIV infection;**

● **Advancement of religion, spirituality, or yoga;**

● **Advancement of educational programmes or skill development relating to:**

1. **Abandoned, orphaned, or homeless children;**
2. **Physically or mentally abused and traumatized persons;**
3. **Prisoners; or**
4. **Persons over the age of 65 years residing in a rural area;**

● **Preservation of the environment including watershed, forests, and wildlife.**

Thus, it is clear from the above that any activities rendered by a trust which do not form a part of charitable activities would come under the ambit of GST, and such revenue will be subject to GST. The indicative list of such services could be renting of premises by such entities, grant of sponsorship and advertising rights during conduct of events/functions etc.

✔ **When To Take Registration Under GST?**

As per section 22 of the Act, every supplier is liable to be registered: -

- 
- **If he makes any taxable supply (and)**
 - **If his aggregate turnover in a financial year exceeds Rs. 20 Lacs (Rs. 10 Lacs in special category States).**

Both the above conditions need to be fulfilled to obtain registration under GST. Important thing that should be kept in mind is that even if charitable trust generally supplies exempted/ Nil rated items; but if it supplies any other item in the course of business even if the value is very less, it will become liable to get registered. For example, the trust has some extra space in its office that it gives on rent to someone for Rs. 30,000 per month and has other income of Rs. 20 Lacs from exempted activities; it will become liable to get registered because the aggregate turnover includes exempted supply.

✔ **What Is GST Implication Of Donation Received From Individual By Charitable Institution?**

As per Circular No. 116/35/2019-GST [F.NO. 354/136/2019-TRU], where individual donors provide financial help or any other support in the form of donation or gift to institutions such as religious institutions, charitable organizations, schools, hospitals, orphanages, old age homes etc. and the recipient institutions place a name plate or similar such acknowledgement in their premises to express the gratitude and public recognition of donor's act of philanthropy and is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business, then it can be said that there is no supply of service for a consideration (in the form of donation). Therefore, there is no GST liability on such consideration.

Thus, where all the following three conditions are satisfied namely

- **The gift or donation is made to a charitable organization,**
- **The payment has the character of gift or donation and**
- **The purpose is philanthropic and not advertisement (i.e., it leads to no commercial gain), GST is not leviable.**

It's important for both charitable institutions and donors to ensure that such donations are not merely money transferred to the institution. Additional safeguards such as a document or declaration accompanying the receipt / acknowledgement stating the purpose of accepting the donation and the display of such donor's names are only to express gratitude can also be considered. This may help to ensure that such donations are not subject to scrutiny and litigations, especially when the amount involved is significant.

✔ What Are The Exemptions Available To Charitable Trust?

Under GST law, various exemptions are declared under notification no. 12/2017- Central Tax (Rate). Activities not covered by the specific exemption would be taxable. The various exemptions as specified in the notification vis-a vis charitable institution or trusts are listed as under:

- **Entry No.13 of the notification no.12/2017- Central Tax (Rate) provides the following exemption to entities registered under Section 12AA of the Income Tax Act:**

Services by a person by way of:

- (a) conduct of any religious ceremony;
- (b) renting of precincts of a religious place meant for general public, owned or managed by an entity registered as a charitable or religious trust under section 12AA of the Income-tax Act, 1961 (hereinafter referred to as the Income-tax Act) or a trust or an institution registered under sub clause (v) of clause (23C) of section 10 of the Income-tax Act or a body or an authority covered under clause (23BBA) of section 10 of the said Income tax Act:

Provided that nothing contained in entry (b) of this exemption shall apply to:

- (i) renting of rooms where charges are one thousand rupees or more per day;
- (ii) renting of premises, community halls, kalyanmandapam or open area, and the like where charges are ten thousand rupees or more per day;
- (iii) renting of shops or other spaces for business or commerce where charges are ten thousand rupees or more per month.

Hence, any amount which is recovered for conducting any religious activities is exempt from GST. Moreover, the renting income for rooms, mandap, shops to the general public is also exempt, as long as it does not exceed the prescribed threshold. Nonetheless, any other activities which are conducted in the religious precincts apart from religious ceremonies such as photography, tour charges, etc. will be taxable under GST.

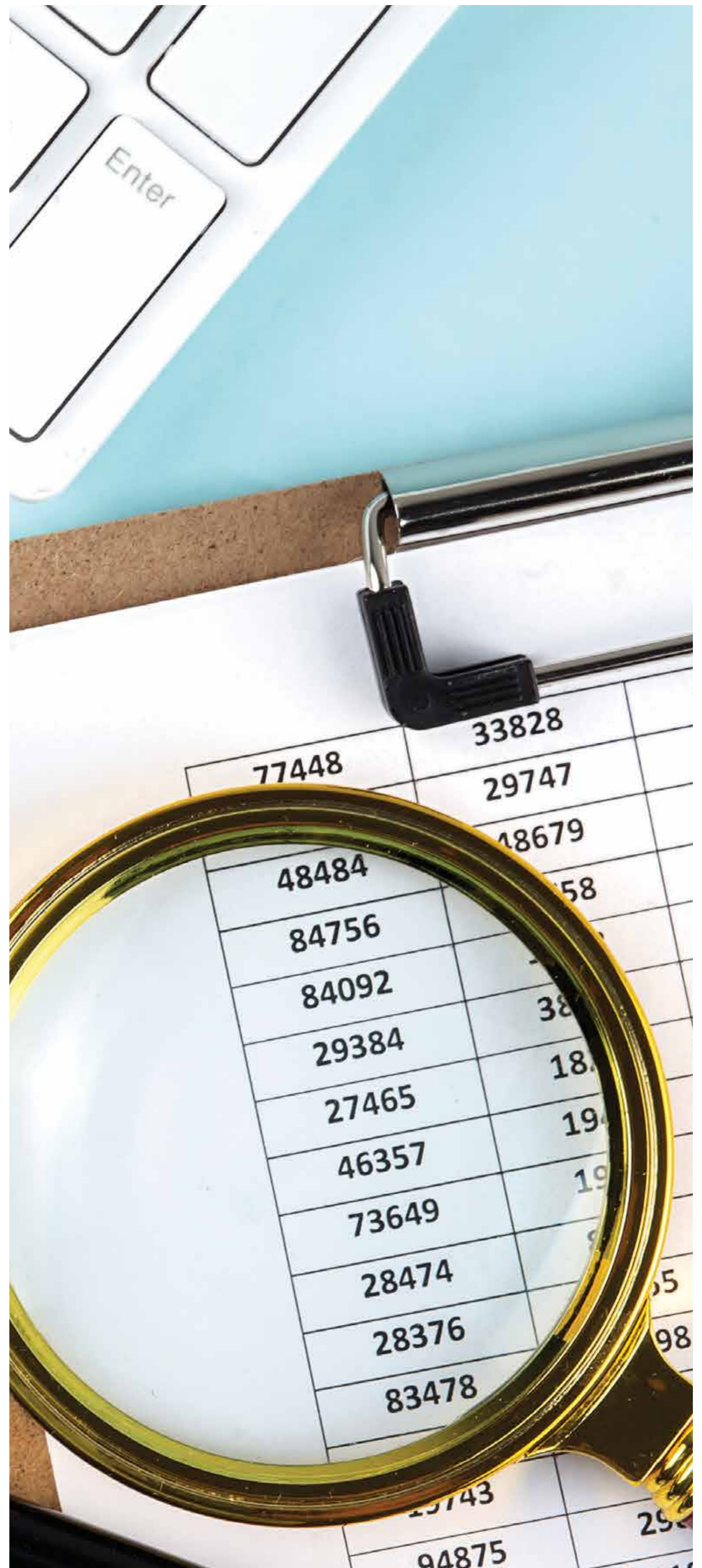
Income from a religious ceremony organized by a charitable trust is exempt as per the above notification. So, the income from Navratri functions, other religious functions, and religious poojas conducted on special occasions like religious festivals by persons so authorized for this purpose by the charitable or religious trust are exempt from GST. However, if income loses its religious nature, it will be chargeable to GST. This includes entry into religious events such as Garbha, which are not prima facie a religious ceremony but a social event and attracts GST.

The activity of 'religious ceremony' in this context has to be strictly interpreted. There may be practices or ceremonies that may not be of a religious nature and thus, may not enjoy the exemption that the

notification provides. Further ancillary services such as setting up pandals or organizing pilgrimage tours are not to be considered as 'religious ceremonies' and will not enjoy the exemption.

- **As per entry no. 50 of the said notification, GST will not be applicable on the income derived by charitable trusts which are running public libraries and lend books, other publications or knowledge enhancing content/material from their libraries.**
- **If the trust is running school for the purpose which is not covered in the definition of charitable activities, income from such activity will be exempt under entry no. 66 of notification no.12/2017. Entry 66 provides for exemption w.r.t supply by and to educational institutions and only the following services received by eligible educational institution are exempt:**
 - i. Transportation of students, faculty and staff of the eligible educational institution.
 - ii. Catering service including any mid-day meals scheme sponsored by the Government.
 - iii. Security or cleaning or house-keeping services in such educational institution.
 - iv. Services relating to admission to such institution or conduct of examination.

If such school or other educational institution gives property owned by such institution on rent to others, no exemption will be available for such services. Therefore, all services received by educational institutions managed by charitable trusts (for other than charitable activities, as defined) except those services mentioned above are taxable.





- **According to entry no. 74 of Notification No. 12/2017, services provided by the way of**

- healthcare services by a clinical establishment, an authorized medical practitioner or para-medics;
- services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above

are exempt from GST. As per clause (zg), health care services mean any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicines in India but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.

So, if charitable trusts run a hospital and appoint specialist doctors, nurses and provide medical services to patients at a concessional rate, such services are not liable to GST. However, sale of medicines and pharmaceutical products, even if given at a discounted rate would not enjoy exemption under GST as they are neither charitable in nature nor health care services.

- **Similarly, entry No.80 of notification no.12/2017, provides the following exemption to an entity registered under Section 12AA:**

Services by way of training or coaching in recreational activities relating to:

- arts or culture, or
- sports by charitable entities registered under section 12AA of the Income-tax Act.

- ✔ **What Is GST Implication On Import Of Services By Trust?**

As per the entry no. 10 of Notification No. 9/2017-Integrated Tax (Rate) dated 28.06.2017, any services received by the charitable trusts registered under Section 12AA of Income-tax Act, for charitable purposes, from the provider of services which are located in non-taxable territory are not chargeable to GST under the reverse charge mechanism.

Conclusion

The Government has tried to provide necessary incentive wherever possible considering the noble causes served by a charitable institution. Nonetheless, there is no exemption for supply of goods by charitable trusts. Thus, any goods supplied by such charitable trusts for consideration shall be liable to GST. Also, services provided to a charitable trust, unless specifically made exempt, are taxable under the GST law.



CASE LAWS

Should The Pre-deposit For Appeal In GST Be Paid By Cash Or ITC - High Court Of Allahabad

Facts Of The Case

Tulsi Ram and Company v. Commissioner (Writ Tax No. 1237 OF 2022 Dated 23/11/2022)

The Petitioner Tulsi Ram and Company had filed an appeal with the First Appellate authority against a GST order issued against them. The mandatory 10% pre-deposit was paid by Appellant by utilizing the ITC balance in the Electronic Credit ledger. The Additional Commissioner, Appeals rejected the appeal on the ground that the mandatory deposit should have been made from the cash ledger instead and without deciding the issue on merits. Thus, the Petitioner has filed writ petition at High court of Allahabad on the matter of pre-deposit.

Provision Of Law

According to Section 107(6) of CGST Act, 2017, before filing appeal, Appellant has to pay

- The full amount of admitted dues such as tax, interest, penalty
- 10% of disputed Tax dues subject to maximum of Rs. 25 Crores
- Further the government clarified by way of Circular No. 172/04/2022-GST F.No. CBIC-20001/2/2022-GST Dated 6th July, 2022 as follows:
 - Any payment towards output tax, whether self-assessed in the return or payable as a consequence of any proceeding instituted under the provisions of GST Laws, can be made by utilization of the amount available in the electronic credit ledger of a registered person.
 - Output tax does not include tax payable under reverse charge mechanism, implying thereby that the electronic credit ledger cannot be used for making payment of any tax which is payable under reverse charge mechanism.

Ruling Of AAR

The hon'ble High Court held that the Petitioner had made the pre-deposit before the Appellate Authority as per the provisions of the GST acts and hence, the Appellate Authority shall not insist on them to make deposit through electronic cash ledger and shall proceed to decide the appeal on merits strictly in accordance with law.

Depositing Cash In Electronic Cash Ledger Is Not Equivalent To Payment Of Tax

Facts Of The Case

India Yamaha Motor Private Limited vs Various authorities in GST (WP.No.19044 of 2019 dated 29/08/2022)

The Petitioner had delayed in filing the July 2017 GSTR 3B which resulted in the department levying interest on the net GST liability after adjusting input tax credit (ITC) available in electronic credit ledger as per section 50 of CGST Act, 2017. Aggrieved by this, the Petitioner has filed a Writ Petition contending that interest could not be levied on tax paid by cash as it had sufficient balance in cash ledger during the period of default and there was no revenue loss to government.

Provision Of Law

As per section 50 of CGST Act, 2017, 'Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.'

Under the Goods and Service Tax, having sufficient balance of ITC in the Electronic Credit Ledger or Electronic Cash Ledger is immaterial as such credit or cash has to be debited and transferred to the authorities through the Electronic Liability Ledger Hence any kind of tax payment is final only when the Returns are electronically filed in the Common portal and the actual tax liability is debited in the 'Electronic Credit/ Cash Ledgers'.

Ruling Of AAR

The hon'ble High Court observed that mere availability of credit could not be assumed for payment of tax liability unless it was debited for discharging liability. The petitioner argued that no interest need be levied on the strength of the balances lying to its credit in the Electronic Cash Ledger. However, this argument shall not be sustainable as deposits standing to credit do not necessarily imply that resources to back credit up are within reach of Department. Therefore, the Court held that interest would be payable on tax paid by debiting electronic cash ledger in respect of delayed filing of returns and availability of balance in cash ledger could not be assumed as payment of tax.

NOTIFICATIONS AND CIRCULARS FOR THE MONTH OF SEPTEMBER 2022

- ✓ Three Central Tax Notifications. - [Click here](#)
- ✓ One Corrigendum to Notification. - [Click here](#)
- ✓ One Central Tax Circular. - [Click here](#)
- ✓ One Central Tax Instruction/Guideline. - [Click here](#)

Sl. No	Subject	Notifications/Circulars No. Date of Issue
1.	Seeks to notify 01.10.2022 as the date on which provisions of sections 100 to 114, except clause (c) of section 110 and section 111 of Finance Act, 2022 shall come into force.	18/2022-Central Tax 28-Sep-2022
2.	Seeks to make amendments (Second Amendment, 2022) to the CGST Rules, 2017.	19/2022-Central Tax 28-Sep-2022
3.	Seeks to rescind Notification No. 20/2018-CT dated 28th March, 2018.	20/2022-Central Tax 28-Sep-2022
4.	Corrigendum to Notification No. 20/2022-Central Tax dated 28.09.2022.	Corrigendum dated 29-Sep-2022
5.	Guidelines for filing/revising TRAN-1/TRAN-2 in terms of order dated 22.07.2022 & 02.09.2022 of Hon'ble Supreme Court in the case of Union of India vs. Filco Trade Centre Pvt. Ltd	180/12/2022-GST 09-Sep-2022
6.	Guidelines for launching of prosecution under the Central Goods & Services Tax Act, 2017.	Instruction No.04/2022-23 [GST-INV] 01-Sep-2022

DUE DATES OF GST FOR THE MONTH OF OCTOBER 2022

OCTOBER

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						* Tran-1 & Tran-2 1
2	3	4	5	6	7	8
9	GSTR-7, GSTR-8 10	* GSTR-1 11	12	* GSTR1, & GSTR-6 13	Generation of Form 2B 14	15
16	17	CMP-08 18	19	* GSTR-3B, GSTR 5 & GSTR-5A 20	21	* GSTR-3B Part A States/UT 22
23	* GSTR-3B Part B States/UT 24	25	26	27	28	29
30	31					

2022

* Monthly returns for taxpayers with Annual Turnover more than Rs. 5 Crores or Taxpayer who has opted Monthly return option.

* Quarterly returns for taxpayers with Annual Turnover less than Rs. 5 Crores and opted for quarterly return monthly payment option (QRMP).

* Note-Option to File TRAN-1 and TRAN-2 will be open for 2 months up to 30th Nov 2022




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