

DEVMANTRA TIMES

JANUARY EDITION

Issue No.46, Dated 4th January, 2025

Dear Readers,

We welcome you to the Forty-Sixth edition of DevMantra Times for the month of January 2025. As we step into a brand-new year, we extend our heartfelt gratitude for your continued support and engagement. Your trust and partnership have been the cornerstone of our journey, and we are excited to carry this momentum into 2025. The New Year brings a fresh start and countless opportunities for growth, collaboration, and success. At Aone Devmantra, we are committed to exceeding your expectations, driving innovation, and supporting you in achieving your goals.

Here's to a year filled with new milestones, shared successes, and inspiring moments. May 2025 bring health, happiness, and prosperity to you and your loved ones. Thank you for being an essential part of our community. Together, let's make this year extraordinary!

Industry & Economic Updates

Gross NPAs of banks decline to 12-year low of 2.6%: RBI report

The Reserve Bank's report shows that banks' asset quality has improved. Gross non-performing assets fell to a 12-year low of 2.6% in September 2024. The improvement is driven by falling slippages, higher write-offs, and steady credit demand. Public sector banks and private sector banks have

recorded strong profit growth in the first half of 2024-25.

Auto industry closes 2024 in top gear with record-breaking car sales

Car sales in India rose for the third consecutive month in December, closing the year at a record 4.3 million vehicles. Maruti Suzuki and Tata Motors saw significant growth. Festive season demand and new launches helped boost sales. Despite challenges in the commercial vehicle segment, companies remain optimistic about the future.

Startup Updates

Layoffs in 2024: These startups grappled with workforce cuts

The year witnessed notable layoffs, with numbers ranging from a few hundred to a few thousand, at companies like Ola Electric, Paytm parent One 97 Communications, Byju's, Swiggy, and Flipkart. Startups cut about 11,250 jobs during the January-June period this year, as per data from executive search firm Longhouse Consulting.

ETtech State of Startups survey predicts revival in private funding, more IPOs in 2025

Indian startups are predicting increased private funding and tech IPOs for 2025. Industry leaders foresee a shift towards profitability and public listings, with many startups preparing for IPOs.

VC interest in AI, consumer brands, and deep tech remains high. Startups expect less restructuring and emphasise corporate governance amidst evolving regulations.

Oyo completes G6 Hospitality acquisition from Blackstone Real Estate for \$525 million

Oyo has acquired G6 Hospitality, including Motel 6 and Studio 6 brands, from Blackstone Real Estate for \$525 million. This acquisition will boost Oyo's earnings and expand its North American presence. Oyo's founder Ritesh Agarwal is increasing his stake in the company. The startup also reported its first profit and continues to grow in key markets.

Why this Volume of Newsletter is important for reader?

Through the series of this newsletter, we aim at covering all relevant Income Tax, Goods & Service Tax and Companies Act, Start-up Update, notification, circulars and case laws which may directly or indirectly impact our readers.

At DevMantra, it is our utmost priority to help our readers to be informed with respect to the changes in relevant laws for a smoother compliance.

DevMantra was founded based on the unalterable premise of excellence, acuity, integrity and an unwavering commitment to delivery.

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These principles continue to form the edifice of our approach as an organization, to our clients, our professionals and our community, and this has served us well in our journey so far. This approach has allowed DevMantra to work with and advise the very best clients, both in India and internationally. We encourage our people to strive for excellence and innovation within a meritocratic working environment and support their entrepreneurial spirit. It is our consistent endeavor with our people, to ensure that they imbibe the culture of the firm and form part of the weft and weave of the fabric of DevMantra. Our core values remain the guiding principles for everything we do, and we would like to emphasize "Knowledge" as one of the fundamental beliefs which drive the success of our operations. As we keep on reiterating, Knowledge is our number one priority. We don't count time when it comes to gain any new knowledge or to reinstate the earlier one. Our clients trust our expertise and putting countless hours in keeping ourselves up to date on the subject we are advising on, deserve their trust.

Regards & Best Wishes,

Editorial Team



JUDICIAL UPDATES

HC ordered provisional release of goods and conveyance if petitioner proved that transaction was included in GSTR-1 Return

Editorial Note:

Where goods were detained on ground that e-invoice was not generated at time of interception of goods in view of fact that e-invoice was generated on next day and goods were meant for export which is a zero rated supply, if petitioner was able to demonstrate that transaction was included in GSTR-1 Return, goods would be released provisionally.

Mismatch between GSTR-3B and GSTR-1 does not invoke Section 74 without fraud or suppression of facts: HC

Editorial Note:

Section 74 of the CGST Act, 2017, applies only in cases of fraud, wilful misstatement, or suppression of facts with intent to evade tax. A mere mismatch between GSTR-3B and GSTR-1, often due to errors or reconciliation issues, does not justify invoking this section. Tax authorities must establish intentional misconduct to apply penal provisions, as courts have ruled that discrepancies alone are insufficient without evidence of malafide intent. This ensures genuine errors are treated fairly while maintaining the integrity of tax compliance.

Order denying ITC set aside as a new provision inserted in GST Act to extend time limit for claiming ITC for FY 2017-18 to 2020-21: HC

Editorial Note:

Vide section 118 of Finance (No.2) Act, 2024 a new provision being sub-section (5) was inserted in section 16 of CGST Act which provides for condonation of delay in availment of credit and extended time limit by providing that for supplies pertaining to financial years 2017-18 to 2020-21, registered person would be entitled to take input tax credit in any return under section 39 which is filed up to 30-11-2021.

HC allowed refund of IGST on ocean freight paid by importer by relying on ruling in Mohit Minerals case

Editorial Note:

Where assessee filed application of refund of IGST paid on ocean freight and same was rejected, in view of judgement of Apex court in Union of India v. Mohit Minerals (P.) Ltd. [2022] 138 taxmann.com 331 (SC), wherein it was specifically held that respondent authorities could not insist for levy of IGST on amount of ocean freight, order passed by respondent authority rejecting refund claim was to be set aside.

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Date of expiry of limitation for passing demand order under section 73(10) for FY 2017-18 would stand extended to 21-1-2025: HC

Editorial Note:

As per Supreme Court's directions in Writ Petition No. (Civil) No. 3 of 2023 in Cognizance for Extension of Limitation, In re [2022] 134 taxmann.com 307, for year 2017-18, date of expiry of limitation for passing demand order under section 73(10) i.e., 31-3-2023 would stand extended to 21-1-2025 while for 2018-19 for which expiry date fell on 31-12-2023, date would stand extended to 28-2-2025 and for 2019-20 for which expiry date fell on 31-3-2024 would stand extended to 28-2-2025.

Order denying ITC to be stayed as retrospective insertion of Section 16(5) allows ITC claims for FY 2017-18 to 2020-21

Editorial Note:

The assessee challenged an order issued under Section 73(9) of the CGST Act on the ground that the retrospective insertion of Section 16(5) permits Input Tax Credit (ITC) claims for the financial years 2017-18 to 2020-21 in returns filed up to November 30, 2021. The assessee argued that this retrospective amendment validates their ITC claims, which were previously disputed. A stay on the

order was granted until the next hearing, as the assessee successfully established a prima facie case. This interim relief highlights the significance of legislative amendments and their impact on ongoing disputes.

Issuance and dropping of notice under Section 73 does not prevent authorities from initiating proceedings under Section 74: HC

Editorial Note:

Where issuance of notice under section 73 and dropping proceedings would not prevent respondent-department from independently initiating subsequent proceedings under Section 74, further, tax anomaly in GSTR 2A reflected that petitioner-assessee had not deposited tax in Government treasury and had availed same liability wrongfully, therefore, writ petition was dismissed without interrupting impugned proceedings

Claiming of ITC under wrong head is only a technical mistake committed by assessee: HC

Editorial Note:

Where on receipt of IGST paid inward supplies from outside State, in Form GSTR-3B, appellant inadvertently showed IGST component as nil and added bifurcated CGST and SGST components of IGST to existing figures showing eligible CGST and

SGST credit, resulting in mismatch between Form GSTR-2A and Form GSTR-3B, in view of fact that there was no wrong availment of credit and only a technical mistake was committed by appellant, order demanding tax was to be set aside

Telecom towers are movable properties as they do not meet the test of permanency and ITC on same cannot be denied: HC

Editorial Note:

Telecommunication towers does not qualify test of permanency, they are not 'attached to earth', they can be dismantled and moved and are never erected with an intent of conferring permanency and their placement on concrete bases was only to enable those towers to overcome vagaries of nature, they can be considered as moveable property eligible for ITC

GST authority was directed to return cash seized as it had no power to seize cash found during search: HC

Editorial Note:

In a case where a search was conducted at the petitioner's premises under Section 67(1) of the CGST Act, the authorities seized cash amounting to ₹62.40 lakhs. It was held that the seizure of cash is not authorized under the provisions of Section 67(1), which empowers officers to seize goods, documents, or books relevant to tax evasion but

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does not extend to seizing cash. Consequently, the seized amount was ordered to be returned to the petitioner. This decision underscores the limits of authority under Section 67(1) and protects taxpayers' rights against unauthorized actions.

SCN to be set aside due to inordinate delay causing serious prejudice to the assessee: HC

Editorial Note:

Where inordinate unexplained delay by respondent no.2 - department had caused serious prejudice to petitioner-assessee, therefore, by adopting reasoning in various decisions, impugned show-cause notice dated 28.03.2013 was to be set aside and respondents were to be restrained from taking further steps or proceedings.

SCN for multiple FYs to be set aside as a consolidated SCN for multiple FYs was not permissible: HC

Editorial Note:

Where respondent-department segregated liability of petitioner-assessee for entire period between January-2018 and August-2022 in a consolidated show cause notice, instead of issuing separate show cause notices, therefore following decision of W.P.No.15810/2024, impugned show cause notice issued by respondent-department was to be set aside.

INCOME TAX

REGULATORY UPDATES

Severance payment received due to redundancy and job termination not taxable as profits in lieu of salary: ITAT

Editorial Note:

In a case where an assessee received severance compensation following the termination of their employment due to the acquisition of the company by another entity, it was held that such compensation constituted a capital receipt. Since the payment was made for the loss of employment and not as a reward for past services, it did not qualify as "profits in lieu of salary" under Section 17(3) of the Income Tax Act. Consequently, the severance compensation was not chargeable to tax, reaffirming the principle that receipts compensating for the termination of employment are treated differently from salary-related income.

Premium paid on loan foreclosure to avail fresh loan at lower interest rate is allowable under section 37(1): HC

Editorial Note:

Expenditure incurred for the payment of a foreclosure premium as part of restructuring a loan and obtaining a fresh loan at a lower rate of interest is allowable as a business expenditure under Section 37(1) of

the Income Tax Act. Such expenses are considered wholly and exclusively for the purpose of business, as they aim to reduce financial costs and improve the efficiency of operations. The courts have consistently held that these expenditures are revenue in nature and directly connected to the conduct of the business, making them deductible under Section 37(1).

Transfer of case from Chennai to Kolkata justified due to seizure of incriminating materials in Kolkata: HC

Editorial Note:

In a case where a search and seizure action was conducted under Section 132 of the Income Tax Act by the Investigation Wing in Kolkata, resulting in the seizure of numerous incriminating documents that were inter-connected and had a bearing on the assessment of the assessee, it was held that the transfer of the assessee's case from Chennai to Kolkata was justified. The transfer was necessary to ensure a coordinated and comprehensive assessment, as the nexus between the seized documents and the assessee's financial transactions warranted centralized scrutiny. This decision underscores the principle that the proper jurisdiction for assessment should align with the location of the relevant evidence and investigative actions.

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Expenditure incurred for generating exempt income can not be added while computing book profits under MAT: ITAT

Editorial Note:

Adjustment qua expenditure directly incurred towards generating exempt income could be made for computing book profit under section 115JB as per clause (f) of Explanation 1 to section 115JB(2), without resorting to amount calculated under section 14A read with rule 8D

No additions u/s 56(2)(x) if payment/possession of land occurred in 2008 and 2010, but registration done in 2020: ITAT

Editorial Note:

Where assessee contended that he had purchased two plots of land in year 2008 and 2010 and paid entire consideration and took possession of same in those years itself and only registered sale deed in impugned year 2020, however, Assessing Officer made addition under section 56(2)(x) on account of difference between stamp duty value and consideration paid for said plots of land during impugned year without considering assessee's explanation and passed non-speaking order,



No TDS on payments to non-residents if services do not provide technical knowledge to assessee: ITAT

Editorial Note:

Where non-residents to whom assessee-company paid professional fee had not any permanent establishment or fixed base in India and services provided by them did not make available any technical knowledge, skill, experience etc. to assessee, professional fee paid by assessee to said non-residents would not be liable to tax in India and, therefore, tax withholding requirements contained in section 195 would not apply and provisions of section 40(a)(i)

Sanctity of TRC cannot be doubted without strong evidence proving entity is a sham or shell company: ITAT

Editorial Note:

Where assessee, Austrian company, was engaged in business of providing software quality assurance solutions by selling licenses of its testing software to various customers across world, including India, since receipts from sale of software licenses were held as business income, they could not be taxed in India in absence of PE of assessee in India

Sec. 54F exemption not allowed if assessee purchased two non-adjacent flats in same residential society: HC

Editorial Note:

Where assessee sold a plot of land and used proceeds to purchase two non-adjacent flats, since two flats were constructed and situated physically in a manner that it was not possible to combine them and they could not be used as one single dwelling unit even though they were in a same tower of a residential society, assessee was entitled to exemption under section 54F in respect of only one flat

Broker facilitating transactions between clients & NSEL isn't liable to deduct TDS u/s 194A from fixed returns paid to investors: ITAT

Editorial Note:

In a situation where the assessee acted merely as an intermediary between its clients and the National Spot Exchange Limited (NSE) and was not a party to any transactions with counterparty members, it was held that the assessee was not required to deduct TDS under Section 194A of the Income Tax Act. The brokerage received by the assessee in such a scenario does not constitute "interest" as defined under Section 2(28A) of the Act, and thus the provisions of Section 194A, which mandate TDS on interest

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payments, were not applicable. This decision emphasizes the importance of correctly identifying the nature of payments to determine TDS obligations.

Hiring charges paid to owners of vehicles/machines covered u/s 194-I and not u/s 194-C: ITAT

Editorial Note:

Where assessee paid hire charges to various persons, since it was materially established by assessee that amount for higher charges was paid to owners of vehicles/machines, besides other incidental expenses like fuel, maintenance, tyre-tube, drivers salary etc. were borne by assessee, payment of hiring charges towards hiring of vehicle/machines were in nature of rent within meaning of section 194I

Depreciation allowed while calculating accumulated profits for deemed dividend u/s 2(22)(e): ITAT

Editorial Note:

For the purpose of calculating "accumulated profits" within the meaning of the Income Tax Act, it has been held that depreciation as granted under the rates prescribed by the Act must be deducted to ascertain the true quantum of accumulated profits. Accumulated profits represent the surplus left after deducting legitimate business expenses, including depreciation, which is a statutory allowance. The

depreciation computed under the Income Tax Act reflects a realistic reduction in asset value and ensures an accurate depiction of the profits available for distribution or taxation. This principle ensures compliance with the statutory framework and avoids overstatement of accumulated profits.

AO must clarify if penalty is for income concealment or inaccurate particulars when initiating : HC

Editorial Note:

Where penalty proceedings are said to be initiated by revenue under section 271(1) (c), specific ground which forms foundation thereof needs to be spelt out in clear terms, hence, in absence of specific charge for initiation of penalty proceedings, Tribunal rightly held that levy of penalty under section 271(1)(c) in case of assessee was not valid

Depreciation allowed on Distribution Network & Customer Relations acquired in amalgamation process: ITAT

Editorial Note:

Where a company was amalgamated with assessee-company and consideration paid by assessee in excess of fair value of net assets (identified intangible assets and major tangible fixed assets) taken over was recorded in audited

financial statements of assessee company as goodwill, assessee would be entitled to depreciation on goodwill

Indirect connection can prove nexus between exp. incurred & income earned; ITAT directs AO to allow interest exp

Editorial Note:

Where Commissioner (Appeals) made addition on account of personal withdrawals, since said addition was neither subject matter of assessment nor source of income which was considered expressly or impliedly by Assessing Officer, Commissioner (Appeals) had transgressed its power of enhancement granted under section 251 while making addition on account of personal withdrawals, and therefore impugned addition was to be deleted

Exp. incurred on Portfolio Management Services directly related to securities transaction allowed while computing capital gains: ITAT

Editorial Note:

In a case where the assessee claimed a deduction for Portfolio Management Service (PMS) expenses against income declared under the head "Capital Gains," it was held that such expenses are allowable as a deduction. Since PMS expenses are directly related to the management and transaction

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of securities, they are intrinsically connected to the earning of capital gains. Therefore, these expenses qualify as costs incurred wholly and exclusively in connection with the transfer of capital assets under Section 48 of the Income Tax Act, and their deduction is justified while computing capital gains. This ruling reinforces the principle of allowing expenses directly tied to the earning of taxable income.

Loss on sale of NPAs assigned to ARC allowable as deduction u/s 36(1)(vii) if debt written off in books: ITAT

Editorial Note:

Where assessee, a non-resident banking company, assigned outstanding loans due from a customer to an asset reconstruction company for a sale consideration of certain amount against outstanding loans of higher amount and balance in debtors account was actually written off as bad debts, claim of assessee as a bad debt was as per provisions of Act and also allowable as a business loss

No proportionate TDS share on joint property sale if the entire TDS has been deposited in one's PAN: Mumbai ITAT

Editorial Note:

Where assessee and his wife sold an immovable property and capital gain arising out of such sale was offered in equal proportion by

assessee and his wife, merely because property was jointly owned by assessee and his wife and capital gain arising on sale of property was equally shared by joint owners, that could not be sole reason for disallowing assessee's claim in respect of TDS credit

Providing credit guarantee to micro & small enterprises is an eligible activity u/s 2(15); exemption u/s 11 allowed

Editorial Note:

In a case where an assessee trust was engaged in providing credit guarantees to small ventures and supporting business and livelihood development, it was held that such activities did not contravene the provisions of Section 2(15) of the Income Tax Act. The trust's actions were considered charitable in nature as they aligned with the advancement of an object of general public utility. Since the trust was not engaging in trade, commerce, or business primarily for profit but rather facilitating economic empowerment, it was eligible for exemption under Section 11. This decision highlights that activities promoting economic and social development can qualify as charitable when they fulfill public welfare objectives.



Loss on FD upon bank liquidation classified as capital loss; not deductible as trading loss or bad debt: HC

Editorial Note:

In a case where the assessee had made deposits with a bank, which were in the nature of fixed deposit investments, it was held that the loss suffered by the assessee when the bank went into liquidation constituted a capital loss. Since these deposits were not part of the assessee's trading transactions or business operations, the loss could not be treated as a bad debt under Section 36(1)(vii) of the Income Tax Act or as a trading loss. Fixed deposits are capital assets, and any loss on their devaluation or non-recovery due to liquidation is a capital loss, which may not be allowable as a deduction from business income. This distinction ensures that the treatment of losses aligns with the nature of the underlying asset

No sec. 28(iv) benefit if shares allotted at par instead of premium by Co. where assessee was director: ITAT

Editorial Note:

Where three companies in which assessee was a director allotted shares to assessee at par as against allotment of shares to a third party at a premium, since alleged benefit to assessee was not arisen

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from business or profession of assessee or from exercise of profession of assessee, then same could not be brought to tax under provisions of section 28(iv)

TDS obligation not applicable on interest paid by Co. to group entities if it was merely a reimbursement: ITAT

Editorial Note:

Where group to which assessee company belonged took loan from bank and assessee had borrowed a sum of money from its group entities and paid interest on same, interest paid by assessee was merely reimbursement of interest to principal borrower (its group entities) who had paid interest to bank after deducting TDS, therefore, assessee was under no statutory obligation to deduct TDS under section 194A

No need to maintain separate books if business activity is incidental to main objectives of trust: ITAT

Editorial Note:

When the business activity of a trust is incidental to achieving its primary objectives, it is not mandatory for the trust or institution to maintain separate books of account specifically for such activities. This principle is rooted in the understanding that the primary purpose of the trust is charitable or religious, and the incidental

business activity is undertaken solely to further its main objectives. As long as the trust's overall activities align with its charitable purposes under Section 2(15) of the Income Tax Act, and its income is applied towards its stated objectives, the absence of separate books for incidental business activities does not affect its compliance or eligibility for exemption under Section 11.

Value of patented technology approved as part of scheme of amalgamation can't be doubted by AO

Editorial Note:

When there is a delay by the assessee in depositing employees' contributions towards Provident Fund (PF) and Employees' State Insurance (ESI) beyond the due date specified under the respective statutes, such a delay attracts disallowance under Section 36(1)(va) of the Income Tax Act. This section mandates that employees' contributions must be deposited within the prescribed timelines, failing which the deduction is not permissible, even if the payment is made before the filing of the income tax return. The provision ensures timely compliance with labor welfare laws and distinguishes employees' contributions from employer contributions, the latter being deductible under Section 43B if paid

before the due date of filing the return.

CORPORATE LAW UPDATES

Limitation period for appointing an arbitrator starts after a valid notice is issued & the other party fails to appoint



Editorial Note:

Limitation period for filing an application seeking appointment of arbitrator commences only after a valid notice invoking arbitration has been issued by one of parties to other party and there has been either a failure or refusal on part of other party to make an appointment as per appointment procedure agreed upon between parties

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SEBI proposes allowing AOPs to hold units of MFs, corporate bonds and govt. securities in their own demat accounts

Editorial Note:

SEBI has proposed allowing associations of persons (AOPs) to hold units of mutual funds (MFs), corporate bonds and government securities in their own demat accounts. This would encourage dematerialisation of securities held in physical form. In the case of AOP, the beneficiary owner (BO) account

can be in the name of AOP and securities (other than equity shares) can be held in its own name. Further, the demat account must not be used for subscribing/holding equity shares.

ICSI caps signing of Annual Returns by practicing Company Secretaries to 75 companies annually w.e.f. F.Y. 2025

Editorial Note:

ICSI's Council, in its 312th meeting, introduced a ceiling on the number of Annual Returns (MGT-7)

that a Company Secretary (CS) in Practice can sign. A CS can sign for up to 75 companies per financial year, while a Peer Reviewed CS can sign for up to 125 companies, effective from FY 2025. Also, it has been advised that the CS in practice shall observe mandatory compliance with the ICSI Unique Document Identification Number (UDIN) Guidelines, 2019.



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Tax Compliance Calendar for January 2025

Compliance Due Date	Concerned (Reporting) Period	Compliance Detail	Applicable To
1 th January	December 2024	Section 173 of Companies Act, 2013	Section 173 provides for holding at least four board meetings in a year in such manner that not more than 120 days shall intervene between two board meetings. Regulation 17(2) of SEBI (LODR) Regulations, 2015 provides for holding at least one board meeting in a quarter with the stipulation that maximum time between two board meetings should not exceed four months.
		Reg. 29 & 30 of SEBI	LODR provides for giving of notice of board meeting at least 5 days prior to each meeting. Outcome of the meeting is to be informed to Stock Exchange (SE) within 30 minutes of the closure of the Board Meeting.
7 th January		TDS Deposit	Deposit of tax deducted at source
11 th January		GSTR-1 (Outward supply return)	Every regular taxable person who is required to furnish details of outward supply every month, is required to furnish monthly statement of outward supply for the month of December 2024.
14 th January		Issuance of TDS certificate for tax deducted under section 194-IA/194-IB/ 194M/194S	Certificate of TDS in respect of tax deducted under section 194-IA/194-IB-194M/194S during the month of November 2024.

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15 th January		Quarterly statement of TCS	Quarterly statement of tax collected at source for the quarter October-December 2024 is to be furnished.
20 th January		GSTR-3B (Summary return)	A regular taxpayer having aggregate turnover more than Rs. 5 crore in the preceding financial year is required to make payment of tax and furnish monthly return for the month of December, 2024.
22 nd January		Monthly Return	A regular taxpayer having an aggregate turnover of upto Rs. 5 crore in the previous financial year, whose principal place of business is in category A States, is required to make payment of tax and furnish monthly return for the month of December, 2024
30 th January		Furnishing of challan-cum-statement in respect of TDS under section 194-IA/194-IB/194M/194S	Challan-cum-statement in respect of tax deducted under section 194-IA/194-IB/194M/194S during the month of December 2024 to be furnished to Principal DGIT systems or DGIT systems or person authorised by him.
31 st January		Quarterly statement of TDS in case of all deductors	Quarterly statement of TDS to be furnished : (i) In respect of tax deducted at source from salary payments made during quarter Oct.- Dec. 2024

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			(ii) In respect of tax deducted at source from income other than salary during quarter Oct.-Dec. 2024 (iii) In respect of deductee who is non-resident not being a company or foreign company or resident but not ordinarily resident
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