



dvmgopal & associates
Company Secretaries

**INTELLECTUAL
PROPERTY**
COPYRIGHT

NEWSLETTER

May 2022

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Impact of Intellectual Property on Corporate Entities

Intellectual Property?

Intellectual Property as 'Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names, and images used in commerce. By and large, all organizations own some sort of Intellectual Property

Types of Intellectual Property

COPYRIGHT:

Copyright (or author's right) is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture, and films, to computer programs, databases, advertisements, maps, and technical drawings.

PATENTS:

A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem. To get a patent, technical information about the invention must be disclosed to the public in a patent application.

TRADEMARKS:

A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. Trademarks date back to ancient times when artisans used to put their signature or "mark" on their products.

INDUSTRIAL DESIGNS:

In a legal sense, an industrial design constitutes the ornamental aspect of an article.

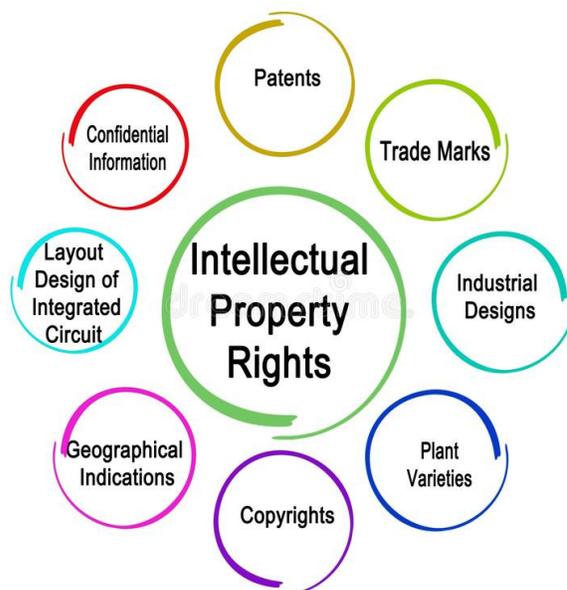
The Industrial Design recognizes the creation of new and original features of new shape, configuration, surface pattern, ornamentations, and composition of lines or colours applied to articles which in the finished state appeal to and are judged solely by the eye.

GEOGRAPHICAL INDICATIONS:

Geographical indications and appellations of origin are signs used on goods that have a specific geographical origin and possess qualities, a reputation, or characteristics that are essentially attributable to that place of origin. Most commonly, a geographical indication includes the name of the place of origin of the goods.

TRADE SECRETS:

Trade secrets are IP rights on confidential information which may be sold or licensed. acquisition, use, or disclosure of such secret information in a manner contrary to honest commercial practices by others is regarded as an unfair practice and a violation of the trade secret protection.





Why is Intellectual Property Important?

Intellectual property rights and registrations allow companies to protect their principal business and research and development activities while generating a strong negotiating posture for cross-licensing and counterclaims. Intellectual property rights and registrations also allow a company to block competitive products, prevent potential competitors from free riding and clear a technological path for future market share.

Protecting your company is just one of the benefits of registering intellectual property – it also allows you to build value. Intellectual property is tallied as an asset when determining the worth of a corporation and can even be used as collateral for a loan.

A single invention can be protected using multiple types of IP rights. Yes, all four types of intellectual property rights can protect one product. Take for example a can of Coca-Cola:

The brand, “Coca-Cola” is a trademark.

The formula for the actual soda is a trade secret, while copyright law protects the artwork on the bottle.

Both (1) a design patent and (2) a trademark (i.e., trade dress) can protect the shape of the Coca-Cola bottle.

Likewise, businesses can use one or more of the different types of intellectual property to protect their product.

Comparison Chart:

Type of protection	How to get it	Term	Applicable for
Patent	Apply	20 years,	Inventions
Trademark	Register	10 years, it can be renewed	Product names
Copyright	Automatically granted	Author’s life plus 60 years	Artistic works
Designs	Register	10 years, further extended up to 5 years	Industrial Designs
Trade secret	Non-disclosure agreement	Until the information is revealed	Confidential information

Hence, there is no single best or one type of intellectual property that is best for you, you need to choose what suits you best.

Monetary Value of Intellectual Property?

One of the most vital and recognized elements of the legal protection granted by the Intellectual Property law is that it turns intangible assets into exclusive property rights, although for a limited period. Fundamentally, Intellectual Property protection makes intangible assets “a bit more tangible” by turning them into valuable exclusive assets which are taken into account in all negotiations that happen around any merger or acquisition transactions that take place between the businesses.

Enterprises globally are also increasingly recognizing the value of their Intellectual Property assets, and, on occasions, have included them in their balance sheet as well. In reality, in many cases, the enterprises have acknowledged that their Intellectual Property assets value more than the physical assets held by them. This is often the case with companies operating in knowledge-intensive and highly innovative sectors, or companies that have been in the business for a fairly long period and thus their brand name is itself symbolized by a certain quality of the product by the consumers.

P&G in 2004 valued its trademarks at US\$ 3.9 billion. Further, P&G trademark out-licensed Olay (Nature Made vitamins); Mr. Clean (gloves in EP); Pantene (hair dryers by Panasonic); Cover Girl (contacts); Iams (pet health insurance) for US\$2 billion in sales of products bearing licensed P&G trademarks.



In the developed nations, there is an ever-expanding shift toward the knowledge economy and towards industries based on innovation whose assets are substantially intangible assets. As of 2008, the share of intangible assets in the total wealth of Canada was 31.2%, and the percentage continues to steadily increase with each passing year. In the United States, intellectual property-intensive industries account for over 1/3 of the national GDP (the figure is even more staggering in the European Union at 39%).

Significance of Intellectual Property Protection in Entrepreneurship Property Important?

➤ **It Boosts Innovation and Protects Small Businesses.**

It takes a lot of work to come up with a truly useful and unique idea and part of the encouragement is knowing that once you obtain a patent, you will have the ability to capitalize on your invention for a set period without knockoff products legally entering the market. There would be very little incentive to ever disclose new developments if people knew that there was a huge chance that their idea would be taken by a major company as soon as they publicized it. Smaller inventors would have little to no incentive to release new products if they knew that they would never be able to stay competitive.

➤ **Augment the market value of your business.**

Intellectual Property can produce income for your business through licensing, sale, or commercialization of protected products or services. This can, in turn, improve your market share or raise your profits. In case of sale, merger, or acquisition, having registered and protected Intellectual Property assets can raise the value of your business.

➤ **It Helps Create Brand Trust and Awareness.**

Intellectual Property is vital in forming an image for your business. Think trademarks, logos, or the design of your products. Intellectual Property can help you differentiate your products and services in the market and promote them to your customers.

When you spend a lot of time working on your brand and your products or services, you can establish a level of trust with your customers when they know that you distribute quality products or services. However, the risk of not protecting your Intellectual Property is that someone else assumes a similar name and thus limits or destroys the value of your brand.

➤ **It Helps Secure Secondary Revenue Streams.**

Intellectual Property which is an intangible form of property is now often one of the most significant and valued assets that a company holds, and as such, intellectual property plays a very critical role in commercial transactions.

Intellectual Property can help you to turn ideas into commercially successful products and services. Licensing your patents or copyright, for example, can lead to a steady stream of royalties and supplementary income that can augment your business.

➤ **Intellectual Property as Collateral.**

If you have valuable Intellectual Property, then you can use the value of that Intellectual Property as collateral when you are financing to grow your business. You can use your Intellectual Property as a benefit when applying for public or government funding, such as grants, subsidies, or loans. Additionally, you can sell your Intellectual Property with your company (or separate from the company).

➤ **Chances of survival and longevity of your firm.**

Firms that applied for intellectual property protection had a significantly lower chance of exiting the market within five years than their competitors that did not invest in intellectual property protection. More precisely, firms that owned at least one trademark registration had a 16% lower chance of exit, and firms with at least one granted patent had a 14%



lower chance of exit, all other variables equal. An innovative environment that has protections for creativity increases firms' chances of thriving and flourishing.

Does registering make a difference?

- Because of less knowledge about the value of registration, many business owners, particularly those conducting small operations or just starting a business, wonder if intellectual property registration is worth it. It is sometimes hard to see the difference between a well-protected confidential invention and a granted patent, or between a brand that is starting to accumulate some goodwill locally and a registered trademark.
- Even though some advantages of intellectual property are available without registration, there are many problems that can arise if businesses forgo IP registration. First, registration is usually a precondition for any investment into or transfer of the asset. Without legal proof of ownership, it is hard to assign an appropriate value for the intellectual property in question or to meaningfully collect royalties. A lack of legal ownership further leaves the assets vulnerable to imitation by competitors, or even legal disputes if other individuals file for registration.
- Potential investors in your business may hesitate to move forward with financing if the scope of intellectual property rights you retain are uncertain or susceptible to infringement. Filing for IP protection is also likely to increase the overall value of the firm in question once the associated IP rights are granted. The value of your business can also grow indirectly by communicating to possible business partners that you are committed to protecting your intangible assets.
- Finally, although trade secrets and unregistered trademarks do have a degree of protection, it is significantly more fragile than that available to registered assets and generally depend on a lack of concurrent innovation. If at any point a similar innovation is brought to the market by another entity, both individuals will likely lose the right to secure intellectual property rights to it.

Jet Airways Trademark and Its Ownership

Jet Airways, incorporated in the early '90s, has been granted a scheduled airline status in early 1995, was once India's biggest private airline. Jet Airways became one of the best-known brands by 2008 with several honours such as being the world's best long-haul airline after Singapore Airlines. In a poll conducted in September 2008, it was voted as the world's seventh-best airline overall. It has also won an award for the quality of its catering. According to March 2008 figures, Jet Airways' share of India's domestic aviation market stood at 29.8%, including its low-cost subsidiary Jet Lite's share of 7.1%, making it the largest airline in India. Consequently, there is substantial goodwill in "Jet Airways" name and trademark, which is a registered trademark in India.

However, the trademark "Jet Airways" was not registered with the company, it was rather registered with Jet Enterprises Private Limited (JEPL), a company considerably owned by its Promoter Mr. Naresh Goyal along with Mr. Hasmukh Gardi, up until 2005. The use of the "Jet Airways" trademark has been licensed to Jet Airways for use in India on an exclusive non-assignable basis by JEPL by way of a Registered User Agreement. Certain other variations of the mark have also been given as license to Jet Airways by JEPL by way of Common Law Agreement

Under the Common Law Agreement, Jet Airways was required to pay a fixed annual license fee of Rs.0.1 million for each trademark licensed under this agreement.¹ JEPL has also registered the mark "Jet Airways" in jurisdictions outside India such as Hong Kong, Singapore, U.A.E., the U.K., and, Mauritius. Subsequently, JEPL has agreed to license the use of the mark registered in these jurisdictions as well to Jet Airways.

In 2005, Jet Airways has come out with an initial public offering (IPO). Major reservations against the IPO were recorded in feedback from its investor's ownership of the brand trademark is not with Jet Airways rather it was JEPL. The non-ownership of the brand was recorded as a risk factor in the airline's draft prospectus – post IPO. For these reservations and risk factors involved, Jet Airways decided to buy the brand name/Trademarks from JEPL.

In 2005 Jet Airways, has bought back the 'right, title, and interest' in the "Jet Airways" trademark from Jet Enterprises (JEPL), for a one-time fee of \$7 million.

INTELLECTUAL PROPERTY VALUATION

The most commonly used standards of value are Fair market value and Fair Price Value. Fair market value (Market value) can be defined as the price at which an asset or service passes from a willing seller to a willing buyer. Whereas fair market value seems to be more appropriate when used in the premise of value in exchange, fair value is often based on the premise of value-in-use. In a common situation, IP valuation is a process to evaluate the fair market value of an IP asset.

Methods of IP Valuation

Methods of IP Valuation

Income Method: This is the most common technique used in **Intellectual Property valuation**. In this process, the assessment is made based on the economic income expected to generate from it against the present-day value. This method is popular in scenarios where IP assets have promising cash flows and future estimation can be made based upon the cash flow generated in the past.

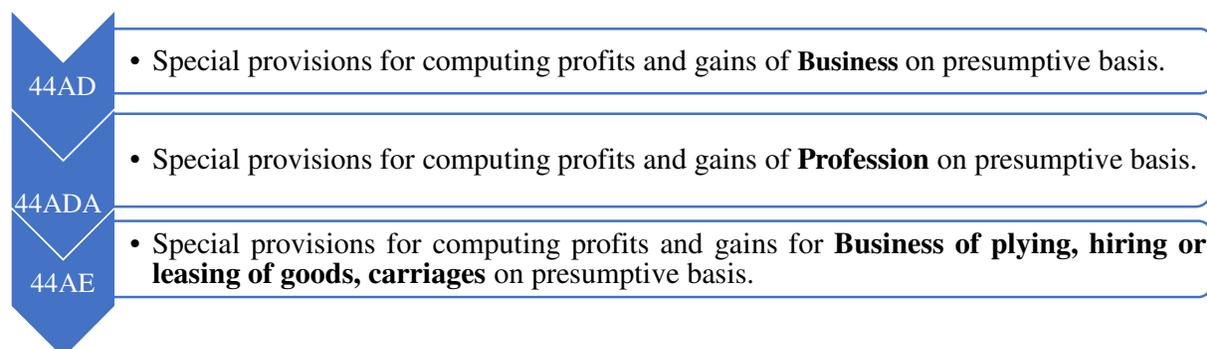
Market Method: This method uses the market behavior as a base to quote a value to the IP of a company. The price paid for the transfer of similar rights in another comparable transaction is used to influence the IP valuation of another transaction.

Cost method: In this valuation technique, the valuation of an IP is conducted by computing the cost of a similar IP asset. This method comes in handy when the IP asset in question can be easily replicated and its economic benefits cannot be easily quantified.

TAXATION ON PRESUMPTIVE INCOME - CERTAIN ELIGIBLE BUSINESSES AND PROFESSIONS

As per the Income-tax Act, a person engaged in business or profession is required to maintain regular books of account and further, he has to get his accounts audited. To give relief to small taxpayers, the Income-tax Act has framed the presumptive taxation schemes which relieves an individual from maintenance of Books of Account and getting the accounts audited.

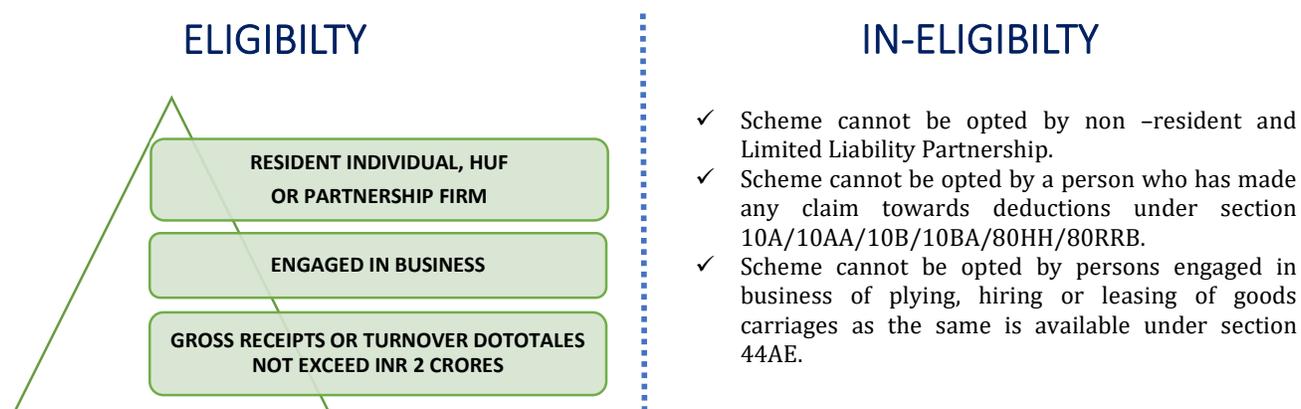
For small taxpayers the Income-tax Act has framed presumptive taxation schemes as given under:



Presumptive Taxation Scheme of Section 44AD:

The presumptive taxation scheme of section 44AD is designed to give relief to small taxpayers engaged in any business (except the business of plying, hiring or leasing of goods carriages referred to in section 44AE), whose total turnover or gross receipts from the business do not exceed Rs. 2,00,00,000.

The presumptive taxation scheme of section 44AD can be adopted by following persons:



In other words, the scheme cannot be adopted by a non-resident and by any person other than an individual, a HUF or a partnership firm (not Limited Liability Partnership Firm) and by a person who has made any claim towards deductions under section 10A/10AA/10B/10BA or under sections 80HH to 80RRB in the relevant year.

Manner of computation of taxable business income under Section 44AD:

In case of a person adopting the provisions of section 44AD, income is computed on presumptive basis at the rate of 8% of the turnover or gross receipts of the eligible business for the year. Income shall be computed at the rate of 6% instead of 8% if turnover/gross receipt is received by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed during the previous year or before the due date of filing of return.

However, a person may voluntarily disclose his business income at more than 8% or 6%, as the case may be, of turnover or gross receipt.

The income computed as per the prescribed rate will be the final taxable income of the business covered under the presumptive taxation scheme and no further expenses will be allowed or disallowed.

Maintenance of Books of Account:

Any person adopting the provisions of section 44AD and declaring income @ 6% or 8% (as the case may be) of the turnover, then the provisions under section 44AA relating to maintenance of books of account shall not apply. In other words, he is not required to maintain the books of account.

Taxable income – In a situation where the actual income of the assessee is more than deemed income of 8% of Turnover?

In a situation, where it is obvious to the Assessee that his/her income is more than 8% of Turnover deemed as income under Section 44AD, the question arises whether the assessee is bound to declare the such higher income as its income or it is left to the discretion of the assessee. This issue arises particularly with the use of words “*or, as the case may be, a sum higher than the aforesaid sum claimed to have been earned*”, in the said Section.

Had it been left to the option of the Assessee; no prudent person would choose an option to declare the higher income as his/her income and thereafter pay a higher tax. Thus, inclining us to the view that, if there is a higher income earned, the assessee is bound to declare such higher income as its income. But such an interpretation would defeat the very purpose of these provisions, which purports to provide following benefits to the small businesses:

- Exemptions from maintaining Books of Account – if no books are maintained how would assessee know his income
- Concept of Deemed Income – Word “deemed” means presuming the existence of something which actually is not. If legislature in wake of providing relaxation to small businesses provides a certain % of turnover as income, and assesses is not disputing the same, then why such obligation should lie on him to declare higher income.

Thus, this question still remains unanswered, owing to the fact there is a clear absurdity in the provisions, and interpretations are possible in both ways.

Presumptive Taxation Scheme of Section 44ADA:

The presumptive taxation scheme of section 44ADA is designed to give relief to small taxpayers engaged in specified profession.

The benefits of Section 44ADA are eligible only in case of an assessee who is:

1. Resident Individual or Partnership Firm.
2. Engaged in professions specified under section 44ADA.
3. Whose total gross receipts does not exceed Rs. 50 Lakh.

Eligible Professions:

1. Legal
2. Medical
3. Engineering or Architectural
4. Accountancy
5. Technical Consultancy
6. Interior Decoration.
7. Company Secretary
8. Authorised Representative
9. Film Artist
10. Information Technology.

Manner of computation of taxable income under Section 44ADA:

In case of a person adopting the provisions of section 44ADA, income will be computed on presumptive basis, i.e., @ 50% of the total gross receipts of the profession. However, such person can declare income higher than 50%. Any person who adopts the presumptive taxation scheme is deemed to have claimed all deduction of expenses. Any further claim of deduction is not allowed after declaring profit @ 50%.

Maintenance of Books of Account:

In case of a person engaged in a specified profession as referred above opts for presumptive taxation scheme of section 44ADA, the provision of section 44AA relating to maintenance of books of account will not apply.

Frequently Asked Questions:

Which businesses are not eligible for presumptive taxation under section 44AD?

The scheme of section 44AD is designed to give relief to small taxpayers engaged in any business, except the following businesses:

- ✓ Business of plying, hiring or leasing goods carriages referred to in sections 44AE.
- ✓ A person who is carrying on any agency business.
- ✓ A person who is earning income in the nature of commission or brokerage
- ✓ Any business whose total turnover or gross receipts exceeds two crore rupees.

Apart from above discussed businesses, a person carrying on profession as referred to in section 44AA (1) is not eligible for presumptive taxation scheme under section 44AD.

1. If a person adopts the presumptive taxation scheme under section 44AD/44DA, then is he liable to pay advance tax in respect of the income from business/profession?

Any person opting for the presumptive taxation scheme under section 44AD/44ADA is liable to pay whole amount of advance tax on or before 15th March of the previous year. If he fails to pay the advance tax by 15th March of previous year, he shall be liable to pay interest as per section 234B and section 234C.

2. Can a person whose total turnover or gross receipts for the year exceed Rs. 2,00,00,000 adopt the scheme of Section 44AD?

The presumptive taxation scheme of section 44AD can be opted by the eligible persons if the total turnover or gross receipts from the business do not exceed the limit prescribed under section 44AB (*i.e.*, Rs. 2,00,00,000). In other words, if the total turnover or gross receipt of the business exceeds Rs. 2,00,00,000 then the scheme of presumptive taxation under section 44AD cannot be adopted.

3. If a person adopts the presumptive taxation scheme but opts out from the scheme in any of the subsequent years, then what are the consequences?

If a person opts for presumptive taxation scheme, then he is required to follow the scheme for next 5 years. If he fails to do so, then the benefits of the presumptive taxation scheme will not be available for him for next 5 years.

He is required to keep and maintain books of account and he is also liable for tax audit as per section 44AB from the assessment year in which he opts out from the presumptive taxation scheme.

4. Can an insurance agent adopt the presumptive taxation scheme of section 44AD?

Insurance agents earn income by way of commission and, hence, they cannot adopt the presumptive taxation scheme of section 44AD.

Compliance Calendar – May 2022

Companies Act, 2013			
Compliance details	Form	Applicability	Due Date
Reconciliation of Share Capital Audit Report	Form PAS-6 (Half Yearly)	Every unlisted public companies	30/05/2022
FEMA			
Compliance details	Form	Applicability	Due Date
External Commercial Borrowings (ECB) - FEMA	Form ECB-2	All Companies having ECB	07/05/2022
SEBI LODR Regulations			
Compliance details	Form	Applicability	Due Date
Regulation 24A	Secretarial Compliance Report	All Listed Entity, other than (a) the listed entity having equity paid up capital upto Rs. 10.00 Cr & net worth upto Rs. 25.00 Cr, as on the last date of the previous FY (b) the listed entity listed on the SME Exchange.	30/05/2022
Regulation 33	Financial Results alongwith Limited review report/Auditor's report	All Listed Entity	30/05/2022
SEBI Circular dated 26th November, 2018	Large Corporate: Initial Disclosure and Annual Disclosure	by Listed entity identified as a Large Corporate, as per the said circular	15/05/2022
Labour Laws			
Compliance details	Form	Applicability	Due Date
PF Payment	Monthly ECR	Entities registered with PF Authorities	15/05/2022
EDLI Return (Employees Deposit Linked Insurance)		All companies and firm deducting PF	25/05/2022
ESI Payment	Monthly ECR	Entities registered with ESIC Authorities	15/05/2022
INCOME TAX			
Compliance details	Form	Applicability	Due Date
TDS Payment	Challan 281	Non-government deductors	07/05/2022
TDS returns	Form 24Q/26Q/27Q	All Tax deductors	31/05/2022
statement of financial transaction	Form 61A	Applicable taxpayers	31/05/2022
GST			
Compliance details	Form	Applicability	Due Date
Return of outward supplies of taxable goods and/or services	GSTR 1	GST Taxpayers who have not opted for QRMP scheme	11/05/2022
Return of outward supplies of taxable goods and/or services	GSTR 1	GST Taxpayers who opted for QRMP scheme -Optional	13/05/2022
Summary Return of Outward and Inward Supplies along with payment of Tax	GSTR 3B	GST Taxpayers who have not opted for QRMP scheme	20/05/2022
GST Challan Payment if no sufficient ITC		GST Taxpayers who opted for QRMP scheme and not having sufficient ITC	25/05/2022
Summary Return of Outward taxable supplies and tax payable	GSTR 5 & 5A	Non-Resident GST Taxpayers	20/05/2022
Return for details of ITC received and distribution	GSTR 6	Input Service Distributors	13/05/2022
Return for TDS under GST	GSTR 7	Government Authorities	10/05/2022
Return for Details of Supplies and the amount of tax collector	GSTR 8	E-commerce Operator	10/05/2022
Return for details of goods and services purchased in India	GSTR-11	Taxpayer claiming Refund & having UIN	28/05/2022