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TAX EDGE

Monthly Tax & Regulatory Updates



Audit



Tax



Regulatory



M&A

October 2023

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Goods & Services Tax (`GST`)

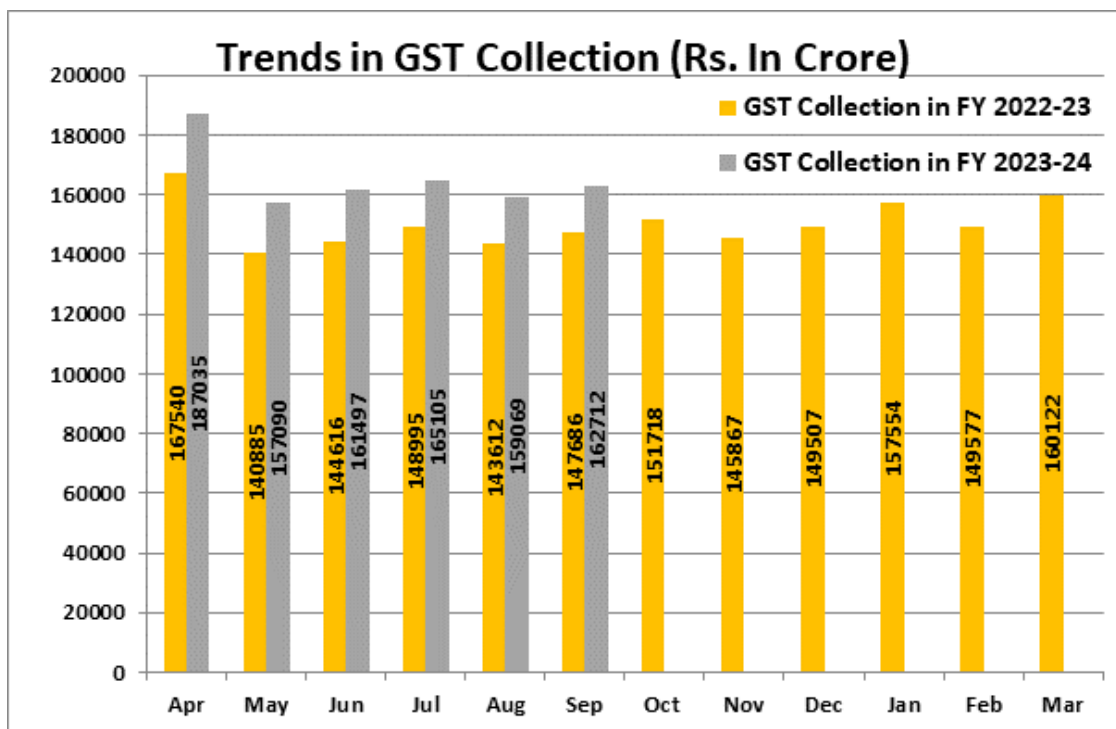


GST revenue collection for September 2023 Rs. 1,62,712 Crore (10% higher than GST revenue collection in August 2022)

The gross GST collected in the month of September 2023 is Rs. 1,62,712 Crore as below:

IGST (Integrated Goods and Services Tax)	Rs. 83,623 Crore
CGST (Central Goods and Services Tax)	Rs. 29,818 Crore
SGST (State Goods and Services Tax)	Rs. 37,657 Crore
Compensation cess	Rs. 11,613 Crore
Total	Rs. 1,62,712 Crore

The revenues for the month of September 2023 are 10% higher than the GST revenues in the same month last year. During the month, the revenues from domestic transactions (including import of services) are 14% higher than the revenues during the same month last year.



Please [Click Here](#) to read Press Release dated 1 October 2023.

Special drive against malpractice of claiming fake Input Tax Credit (ITC) to avoid tax evasion

Directorate General of GST Intelligence (DGGI) initiated a special drive against the practice of claiming fake Input Tax Credit (ITC) to plug the leakage in Government revenue. From April 2020 to September 2023, more than 6,000 fake ITC cases involving more than Rs. 57,000 crore GST evasion has been detected and a total of 500 persons have been arrested. Within 1 April 2023 to 18 October 2023 (approx. 6 months), a total of 1,040 fake ITC cases involving Rs. 14,000 crore has been detected.

In order to prevent GST evasion, the DGGI develops intelligence, especially in new areas of tax evasion, through advanced tools for data analytics besides using its intelligence network across the country to collect such information. This demonstrates the Government's efforts to strengthen tax enforcement and tackle tax evasion to safeguard government revenue and maintain the integrity of the GST system.

Please [Click Here](#) to read the Press Release dated 18 October 2023.

Recommendations made by the GST Council in its 52nd Meeting held on 7 October 2023

The 52nd Meeting of the GST Council was held on 7 October 2023 at New Delhi under the chairpersonship of the Union Finance & Corporate Affairs Minister Smt. Nirmala Sitharaman. Key recommendations made by the GST Council revolved around the following:

- GST rate changes on Goods and Services
- Trade facilitation measures
- Other measures pertaining to law and procedures

Please [Click Here](#) to read our detailed Alert on the key recommendations.

To give effect to the above recommendations, the Central Board of Indirect Taxes & Customs (CBIC) has issued a series of Notifications on 19 October 2023, summarised below:

Sl	Central Tax Notifications (Please click to read)	Particulars
1	Notification no. 12/2023 – Central Tax (R) dated 19 Oct 2023	<p>Where the supplier of passenger transport services or rental services of any motor vehicles with operator, opts to discharge GST @5%, ITC in excess of 5% shall be restricted</p> <p>Activities of a race club by way of totalizator and gambling have been excluded from the service rate notification</p> <p>The entry related to ‘Gambling’, ‘Gambling and betting services including similar online services’ and ‘Lottery services’ in the scheme of classification of services has been omitted</p>
2	Notification no. 13/2023 – Central Tax (R) dated 19 Oct 2023	Services of water supply, public health, sanitation conservancy, solid waste management, slum improvement and upgradation supplied to Governmental Authorities have been exempted from GST
3	Notification no. 14/2023 – Central Tax (R) dated 19 Oct 2023	Supply of all goods and services by Indian Railways taxed under forward charge mechanism to enable them to avail ITC to reduce the cost for Indian Railways
4	Notification no. 15/2023 – Central Tax (R) dated 19 Oct 2023	Refund of unutilized ITC now restricted to only those construction services of complex, building or a part thereof, which are intended for sale to a buyer and where the amount charged includes the value of land or undivided share in land
5	Notification no. 16/2023 – Central Tax (R) dated 19 Oct 2023	Bus operators organized as companies providing transportation services through Electronic Commerce Operators (ECOs) to pay GST using their ITC
6	Notification no. 17/2023 – Central Tax (R) dated 19 Oct 2023 Notification no. 18/2023 – Central Tax (R) dated 19 Oct 2023	<p>GST on molasses reduced from 14% to 2.5%</p> <p>GST on spirits for industrial use taxable @ 9%</p> <p>GST on food preparation of millet flour in powder form containing at least 70% millets by weight:</p> <ul style="list-style-type: none"> • 2.5% pre-packaged and labelled form • 0% other than pre-packaged and labelled form
7	Notification no. 19/2023 – Central Tax (R) dated 19 Oct 2023	Sale of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by Ministry of Railways shall be taxed under forward charge
8	Notification no. 20 /2023 – Central Tax (R) dated 19 Oct 2023	In case of supply of imitation zari thread or yarn made out of metallized polyester film /plastic film, refund of unutilized ITC due to inverted duty structure shall not be available

The above Notifications are effective from 20 October 2023 onwards.

Similar Notifications have been issued under:

- IGST Act vide Notification Nos. 15 to 23/2023 - Integrated Tax (Rate) dated 19 October 2023; and
- UTGST Act vide Notification Nos. 12 to 20/2023 - Union Territory Tax (Rate) dated 19 October 2023.

Notifications issued on 29 September 2023 to implement various amendments

On 29 September 2023, a plethora of notifications have been issued by the GST department, covering a range of topics, from applicability of GST to online gaming, to amendments in valuation rules and registration requirements. The same have been summarized below:

Sl	Central & Integrated Tax Notifications (Please click to read)	Particulars
1	Notification no. 48/2023 – Central Tax dated 29 September 2023	Central Government has notified 1 October 2023 as the appointed date on which provisions of CGST (Amendment) Act, 2023 will come into force
2	Notification no. 02/2023 – Integrated Tax dated 29 September 2023	Central Government has notified 1 October 2023 as the appointed date on which provisions of IGST (Amendment) Act, 2023 will come into force
3	Notification no. 49/2023 – Central Tax dated 29 September 2023	Central Government has notified the following supplies, value of which shall be determined in the prescribed manner effective from 1 October 2023 onwards: <ul style="list-style-type: none">• Supply of online money gaming• Supply of online gaming, other than online money gaming; and• Supply of actionable claims in casinos
4	Notification no. 50/2023 – Central Tax dated 29 September 2023	GST registered persons engaged in supplying specified actionable claims [as defined u/s 2(102A) of the CGST Act, 2017] shall be liable to pay GST on the advances received for such supply with effect from 1 October 2023 onwards (an amendment to Notification no. 66/2017-CT dated 15 November 2017)

Sl	Central & Integrated Tax Notifications (Please click to read)	Particulars
5	Notification no. 51/2023 – Central Tax dated 29 September 2023	<p>The following amendments have been made in CGST Rules, 2017 with effect from 1 October 2023 onwards:</p> <ul style="list-style-type: none"> Any person supplying online money gaming from a place outside India to a person in India shall submit registration application in Form GST REG-10. The registration shall be granted in Form GST REG-06 subject to prescribed conditions and restrictions New rules for determining the value of supply in case of online gaming including online money gaming and actionable claims in case of casinos respectively In online money gaming, the tax invoice issued by the registered person to an unregistered person shall contain name of the State which shall be considered as the address on record of the recipient Every registered person providing online money gaming from a place outside India to a person in India shall file return in Form GSTR-5A by 20 day of the succeeding calendar month A person supplying online money gaming from a place outside India to a person in India may make the deposit in electronic cash ledger through international money transfer through Society for Worldwide Inter-bank Financial Telecommunication payment network
6	Notification no. 11/2023 – Central Tax dated 29 September 2023	<p>Taxability of specified actionable claims [as defined u/s 2(102A) of the CGST Act, 2017] @ 28% with effect from 1 October 2023 onwards.</p>
7	Notification no. 14/2023 – Integrated Tax dated 29 September 2023	
8	Notification no. 03/2023 – Integrated Tax dated 29 September 2023	<p>Central Government has notified supply of online money gaming as goods on import on which IGST shall apply (and not in accordance with the Customs Tariff Act, 1975) with effect from 1 October 2023 onwards</p>
9	Notification no. 04/2023 – Integrated Tax dated 29 September 2023	<p>Central Government has empowered Principal Commissioner of Central Tax, Bengaluru West and all the officers subordinate to him as the officers to grant registration to the suppliers of online money gaming provided by a person located in non-taxable territory and received by a person in India</p>

It is advisable that businesses impacted by the above changes in GST law should take note of the same and take necessary action to be compliant.

Direct Tax



Direct Tax

Direct tax collection for Financial Year (FY) 2023-24 (upto 9 October 2023) Rs 11.07 Lakh Crore, 17.95% higher than gross collection for corresponding period last year

The Central Board of Direct Taxes has released the following statistics on 11 August 2023.

For the period 1 April 2023 till 9 October 2023	Amount	Remarks	
Gross direct tax collection	Rs 11.07 lakh crore	17.95% higher than gross collection for corresponding period last year	
Net direct tax collection (after adjustment of refunds)	Rs. 9.57 lakh crore	<ul style="list-style-type: none">• 21.82% higher than net collection for corresponding period last year• The collection represents 52.50% of the total direct tax budget estimate for FY 2023-24	
Growth Rates	Particulars	Gross Growth Rate	Growth Rate (Net of refunds)
	Corporate Income Tax (CIT)	7.30%	12.39%
	Personal Income Tax (PIT)	29.53%	32.51%
	PIT including STT	29.08%	31.85%
Refunds issued	Rs. 1.50 lakh crore		

Please [Click Here](#) to read Press Release dated 10 October 2023.

Section 115BAA of the Income-tax Act, 1961 allowing option to follow concessional tax regime for domestic companies – Central Board of Direct Taxes (CBDT) condones delay in filing of Form 10-IC for Assessment Year (AY) 2021-22, till 31 January 2024

Background

Section 115BAA of the Act provides for an optional concessional tax regime for domestic companies @ 22% (plus surcharge and cess) on profits, provided they are willing to give-up / forego on certain specific tax exemptions / incentives mentioned in the said section. The option to exercise being governed by the said provision is applicable from AY 2020-21 onwards.

The taxpayer is required to submit Form 10-IC with the tax authorities if it wants to follow section 115BAA. The form is required to be submitted on or before the due date of filing corporate Income-tax Return (ITR) u/s 139(1) of the Income-tax Act for the relevant year. The option once exercised is applicable to subsequent AYs as well. Failure to submit Form 10-IC timely results in denial of the concessional tax rate.

The issue that arose

AY 2020-21 being the 1st year for which section 115BAA is applicable, representations were received by the CBDT from industry that delay in filing Form 10-IC for the said year should be condoned. This is because many companies though have opted for section 115BAA in AY 2020-21, had not filed Form 10-IC which was a statutory requirement. While processing corporate ITRs of AY 2020-21, huge demands were created as higher tax rate under regular provisions of the Act was applied.

Condonation of delay by CBDT for AY 2020-21 (vide circular issued in March 2022)

Considering the difficulties faced by industry in submission of Form 10-IC for AY 2020-21 (being the 1st year for which section 115BAA was applicable), CBDT vide circular issued in March 2022 had condoned the delay for submission of Form 10-IC in cases where the following conditions were fulfilled:

- ITR for AY 2020-21 was filed on or before the due date u/s 139(1) of the Income-tax Act
- The taxpayer has opted for taxation u/s 115BAA in 'Filing Status' in 'Part A-GEN' of Form ITR-6, and
- Form 10-IC was filed electronically on or before 30 June 2022

Similar extension in due date for submission of Form 10-IC for AY 2021-22 allowed by CBDT, till 31 January 2024

Following its footsteps of last year, CBDT has granted similar extension in timeline for submission of Form 10-IC for AY 2021-22, till 31 January 2024 (provide the remaining 2 conditions are also fulfilled by the taxpayer).

Please [Click Here](#) to read Circular no. 19/2023 dated 23 October 2023.

Amendment in Income-tax Rules relating to obtaining & quoting Permanent Account Number (PAN)

CBDT has amended the following Income-tax Rules.

Rule	Description	Amendment by CBDT
Rule 114B of Income-tax Rules, 1962	<ul style="list-style-type: none"> The Rule relates to various transactions in relation to which quoting of PAN is mandatory A person is allowed to furnish declaration in Form 60 if he does not possess PAN 	<ul style="list-style-type: none"> A company or partnership firm (including limited liability partnership) is not required to submit Form 60 A foreign company has been allowed to furnish declaration in Form 60 if such foreign company has no taxable income in India and does not have PAN. The relaxation is available only with respect to the following transactions entered into with an International Financial Services Centre (IFSC) banking unit: <ul style="list-style-type: none"> ✓ Opening an account with bank (other than basic savings bank deposit account) ✓ A time deposit, if the amount of deposit > Rs. 50,000 in each transaction or Rs. 5 lakh in aggregate during a FY with bank, post office, nidhi company or non-banking finance company Necessary changes have been made in Form 60
Rule 114BA of Income-tax Rules, 1962	<p>The Rule lists following additional situations in which a person is required to obtain PAN:</p> <ul style="list-style-type: none"> Cash deposit or withdrawal of Rs. 20 lakh or more with bank or post office Opening a current account or cash credit account with the bank or post office 	<p>Both Rule 114BA and 114BB have been amended to give more clarity with respect to non-residents and foreign companies.</p> <p>Further, these rules do not apply if a non-resident or foreign company conducts transactions with an IFSC banking unit that involve deposits or withdrawals through means other than cash or opening a current account that is not a cash credit account.</p> <p>However, the benefit is available subject to the condition that non-resident / foreign company has no taxable income in India.</p>
Rule 114BB of Income-tax Rules, 1962	A person must quote either his PAN or Aadhaar number if he enters into any of the transactions mentioned above	

Charitable & Religious Trusts / Institutions – CBDT relaxes reporting details of ‘Significant Donors’ & their relatives / concerns in audit report in Forms 10B, 10BB

Background

Trusts / Institutions are eligible to claim tax exemption under 2 regimes:

- 1st Regime - Fund / Institution / Trust / University / Educational Institution / Hospital / Medical Institution referred u/s 10(23C)(iv) or (v) or (vi) or (via) of Income tax Act, and
- 2nd Regime Trust registered u/s 12AA/ 12AB of Income tax Act.

Trusts / Institutions are required to get their accounts audited annually in order to be entitled for the prescribed tax exemption under the Income tax Act. The audit report is required to be submitted in Form 10B, where

- The total income of Trust / Institution > Rs . 5 Crore during the year, or
- Such Trust / Institution has received any foreign contribution during the year, or
- Such Trust / Institution has applied any part of its income outside India during the year

In other cases, the audit report is required to be furnished in Form 10BB. The Income tax return (ITR) in Form ITR 7 is required to be submitted by the Trusts / Institutions annually.

Last month, the due date to submit audit reports in Form 10B and 10BB for FY 2022-23 was extended by a month from 30 September 2023 to 31 October 2023. Similarly, the due date for submission of ITR 7 was extended from 31 October 2023 to 30 November 2023.

Circular no. 17 issued by CBDT on 9 October 2023

In February 2023, CBDT had substantially increased the reporting requirements in Forms 10B and 10BB including information about related parties. Reportedly, representations have been received by CBDT regarding difficulties faced by taxpayers in filling details of persons who have made a 'substantial contribution to the trust or institution', i.e., any person whose total contribution up to the end of the relevant year > Rs. 50,000.

Direct Tax

CBDT has issued a circular on 9 October 2023 to clarify that;

- The details of Significant Donor may be given with respect to those persons whose total contribution during FY 2022-23 > Rs.50,000 (in other words, if aggregate annual contribution by a donor ≤ Rs.50,000, details of such donor is not required to be given)
- Details of relatives of Significant Donor may be provided if available
- Details of concerns in which Significant Donor has substantial interest may be provided if available

41. Details of specified person* as referred to in sub-section (3) of section 13*

+ Add Details

Download Excel Template

Upload CSV



Edit

Delete

Code of Person referred to in sub-section (3) of section 13

Name of such person

PAN of such person

Aadhar Number of such person, if allotted

Address of such person

If code 2 selected in column (1) specify the amount of contribution made to the auditee

(1)

(2)

(3)

(4)

(5)

(6)

Person referred to in 13(3)	28. Details of specified person** as referred to in sub-section (3) of section 13					
	Code of person referred to in sub-section (3) of section 13 <Refer Note**>	Name of such person	PAN of such person	Aadhaar number of such person, if allotted	Address of such person	If code 2 selected in column (1) specify the amount of contribution made to the auditee

List of codes of persons referred u/s 13(3)

- Author of the trust or founder of the institution
- Any person who has made a substantial contribution to the trust or institution, i.e., any person whose total contribution up to the end of the relevant year > Rs.50,000
- Where such author, founder or person is a Hindu undivided family, a member of the family
- Any trustee of the trust or manager (by whatever name called) of the institution
- Any relative of any such author, founder, person, member, trustee or manager as aforesaid
- Any concern in which any of the persons referred above have a substantial interest

Please [Click Here](#) to read Circular no. 17/2023 dated 9 October 2023.

Option to avail lower tax rate @ 15% for new domestic manufacturing co-operative societies u/s 115BAE of Income-tax Act – CBDT prescribes Form 10-IFA to be submitted by taxpayer before due date of filing Income-tax Return (ITR)

Background

Vide Finance Act 2023, a new section 115BAE was inserted in the Income-tax Act providing an option of concessional tax rate @ 15 % for *new domestic manufacturing co-operative societies* set up in India, provided they:

- Do not avail specified incentives / deductions, and
- Are registered / set up on or after 1 April 2023, and
- Commence manufacture / production on or before 31 March 2024

Income from non-manufacturing activities earned by such co-operative societies are taxable @ 22% (and not 15%) without any deductions / allowances.

The intention behind insertion of above provision was to provide a level-playing field between company and co-operative society form of legal entities. Similar exemption for companies was already existing in the Income-tax Act but not for co-operative societies.

As per section 115BAE(5), the above benefit of lower tax rate of 15% is available only if the co-operative society exercises the option to be governed by section 115BAE by filing a form before due date of filing ITR for the 1st year commencing on or after Assessment Year 2024-25, for which it wants to avail the lower tax rate. Once the option has been exercised for any year, it is not be allowed to be withdrawn for the same or any other year.

Form 10-IFA prescribed by CBDT

CBDT vide notification dated 29 September 2023 has prescribed Form 10-IFA being the application form required to be submitted by a co-operative society electronically, in order to be entitled for the lower tax rate prescribed u/s 115BAE.

Direct Tax

“FORM No. 10-IFA

[See sub-rule (1) of rule 21AHA]

Application for exercise of option under sub-section (5) of section 115BAE of the Income-tax Act, 1961

To,

The Assessing Officer,

.....

.....

Sir/ Madam,

I,....., on behalf of [name and registered address of the co-operative society exercising the option under sub-section (5) of section 115BAE] having Permanent Account Number (PAN)do hereby exercise the option referred to in sub-section (5) of section 115BAE of the Income-tax Act, 1961 for the previous year 20.....-..... and subsequent years,

2. The details of the co-operative society are given below:

- (i) Name of the co-operative society :
- (ii) Whether a resident co-operative society : Yes/No
- (iii) PAN :
- (iv) Registered Address :
- (v) Date of Registration : dd/mm/yyyy
- (vi) Nature of activities :
- (vii) Date of commencement of
manufacturing/ production :

3. I understand that the option under sub-section (5) of section 115BAE, once exercised for any previous year, cannot be subsequently withdrawn for the same or any other previous year.

4. I do hereby affirm that-

- (i) the business has not been formed by splitting up or reconstruction of a business already in existence;
- (ii) the business does not use any machinery or plant previously used except as provided in *Explanation 1* and *Explanation 2* of sub-section (2) of section 115BAE of the Act;

Direct Tax

(iii) the co-operative society is not engaged in any business other than the business of manufacture or production of any article or thing and research in relation to, or distribution of, such article or thing manufactured or produced by it as specified against point 2(vi) above.

5. I do hereby further affirm that the conditions stipulated in section 115BAE, in addition to the above conditions, shall be satisfied by the aforesaid co-operative society.

Place:

Date:

Yours faithfully,

Signature of Principal Officer

Name

Designation

Address

Note: This form shall be signed by the principal officer.

[Notification No. 83/2023/ F. No.370142/32/2023-TPL]

AMRIT PRITOM CHETIA, Under Secy.(Tax Policy and Legislation Division)

Note : The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) *vide* Notification Number S.O. 969 (E) dated the 26th March 1962 and were last amended *vide* Notification Number G.S.R 697(E) dated 27th September, 2023.

Please [Click Here](#) to read Notification no. 83/2023 dated 29 September 2023.

Special audit u/s 142(2A) of the Income-tax Act – CBDT prescribes Form 6D for audit report on inventory valuation to be furnished by taxpayer

Background

Special audits u/s 142(2A) of the Income-tax Act are audits conducted on the direction of tax officer during the course of scrutiny proceedings of a taxpayer. If at any point of time during the scrutiny proceedings, tax officer having regard to the nature, complexity, volume of accounts, doubts about its correctness and in the interest of the revenue is of the opinion that it is necessary to do so, may direct the taxpayer to get his accounts audited by an auditor nominated by the revenue and furnish the audit report.

Direct Tax

[Amendment by Finance Act 2023 to plug tax avoidance through valuation of inventory](#)

It is possible for taxpayers to reduce their tax liability by undervaluing inventory. A need was felt to equip the tax department to prevent such practice. Accordingly, vide an amendment (addition) made in section 142(2A) by Finance Act 2023, tax officer has been equipped during the course of scrutiny proceedings to direct the taxpayer to get its inventory valued by a cost accountant nominated by the Commissioner of Income-tax.

[Guidelines prescribed by CBDT vide Notification no. 82 dated 27 September 2023 for inventory valuation](#)

CBDT has prescribed *Form 6D* as the format in which inventory valuation audit report would be required to be produced by the taxpayer. Remuneration payable by the taxpayer to the auditor / cost accountant shall range between Rs.3,750 to Rs.7,500 per hour (to ensure quality deliverable).

The inventory valuation report shall consist of detailed information such as:

- Audited financial results for the relevant year
- Details of raw material for the period under reporting
- Valuation of finished goods, stock-in-trade, by-products, work-in-progress, intermediate products, etc.
- Valuation of special categories of assets held as inventory (such as shares, debentures, agricultural products, livestock, mineral oils, etc.)

Please [Click Here](#) to read Notification no. 82/2023 dated 27 September 2023 prescribing the detailed audit report in Form 6D along with accompanying annexure for inventory valuation.

Angel tax u/s 56(2)(viib) – CBDT notifies new valuation rules (i.e, amended Rule 11UA of Income-tax Rules, 1962) for equity shares & compulsorily convertible preference shares (CCPS)

[Background](#)

- Prior to amendment by Finance Act 2023, section 56(2)(viib) of the Income-tax Act provided that where a closely held company received from a Resident, any consideration for issue of shares exceeding the face value of such shares, the consideration amount exceeding the fair market value of the shares, would be taxable as 'income from other sources' in the hands of the company
- The Finance Act 2023 has amended the above provision with effect from 1 April 2023, bringing even Non-Resident Investors within the ambit of angel tax as an anti-abuse provision. This created much hue and cry within the industry especially start-ups, since it is common for start-ups to receive premium money at a nascent stage from overseas investors

Direct Tax

Consequently, CBDT has issued Notification nos. 29 and 30 on 24 May 2023 notifying certain categories of investors and investees which are exempt from the clutches of angel tax with effect from 1 April 2023 onwards. Please [Click Here](#) to read our Tax Edge for the month of May 2023 mentioning the categories of such investors and investees.

[Amendment to Rule 11UA - Public consultation document issued by CBDT in May 2023](#)

On 26 May 2023, CBDT issued draft of amended Rule 11UA of the Income-tax Rules, 1962 as below, for public comments.

- Rule 11UA currently prescribed 2 valuation methods with respect to valuation of shares namely, Discounted Cash Flow (DCF) and Net Asset Value (NAV) method for resident investors. It was proposed to include 5 more valuation methods (in addition to DCF and NAV) as below, available for non-resident investors:
 - ✓ Comparable company multiple method
 - ✓ Probability weighted expected return method
 - ✓ Option pricing method
 - ✓ Milestone analysis method
 - ✓ Replacement cost method
- Further, where any consideration is received by a company for issue of shares from any *non-resident entity notified by the Central Government*, such price / consideration may be adopted as the benchmark fair value of equity shares for resident and non-resident investors subject to the following:
 - ✓ To the extent such consideration from does not exceed the aggregate consideration that is received from the notified entity, and
 - ✓ The consideration has been received by the company within 90 days of issue of shares which are the subject matter of valuation

On similar lines, price matching for resident and non-resident investors would be available with reference to investment by venture capital funds or specified funds.

- The valuation report by a merchant banker would be acceptable, if it is not more than 90 days' old prior to the date of issue of shares which are subject matter of valuation (currently, the DCF valuation report by merchant banker must be issued as on the date of issue of shares)
- To account for foreign exchange fluctuations, bidding processes and variations in other economic indicators, etc. which may affect the valuation of the unlisted equity shares during multiple rounds of investment, a safe harbor of 10% variation in value had been proposed

CBDT had sought public comments on the above draft by 5 June 2023.

Direct Tax

Final amendment in Rule 11UA notified by CBDT on 25 September 2023

Finally, CBDT on 25 September 2023 has notified the new Rule 11UA with following significant changes viz-a-viz the draft amendment issued in May 2023 for public comments:

- Bringing parity between valuation of unlisted equity shares and CCPS (except for NAV method which applies only to unlisted equity shares)
- Clarifying the ambiguity on window period of 90 days for price matching facility
- There is no change in the safe harbor tolerance limit of 10% proposed in May 2023.

The new Rule 11UA is applicable from 25 September 2023 onwards. Applicability of the new Rule on shares issued between 1 April 2023 to 24 September 2023 may be disputed. Further, the new Rule may be disputed on some other grounds as well, such as why the 5 new methods of valuation are restricted to investment by non-residents only. This may create practical challenge and discrimination for resident investors even if issue price is same for both category of investors.

Please [Click Here](#) to read Notification no. 81/2023 dated 25 September 2023.



International Tax



International Tax

Form 10F can now be submitted electronically by non-residents without the need to hold PAN

India has entered into Double Taxation Avoidance Agreements (DTAAs) with various countries, which allow income earned by non-residents from India to be taxable in India at a comparatively lower rate of tax. In order to claim benefit under the DTAA, however, a non-resident has to submit Form 10F with the India tax authorities.

Form 10F is a self-declaration that a non-resident taxpayer must provide along with a tax residency certificate from the government of its home country. According to the Income-tax Act of India, non-resident taxpayers can claim the advantages of a DTAA only if they furnish a valid tax residency certificate from their country of residence. If the tax residency certificate does not include all the necessary information, non-residents must submit Form 10F.

Form 10F can be submitted as per below conditions:

- If non-resident has *PAN in India*, it can submit Form 10F online through the Income-tax portal
- If non-resident *does not have PAN in India*, it can submit Form 10F manually (this relaxation was provided by Central Board of Direct Taxes till 30 September 2023)

Now, from 1 October 2023 onwards, there was a state of confusion as to how non-residents can claim DTAA benefits since timeline to submit Form 10F without the need to hold PAN has expired.

CBDT considering the above difficulty has enabled non-residents who do not have a PAN to e-file Form 10F on the Income-tax portal by creating an account without the requirement of first obtaining a PAN. A new option of '*Non-Residents not holding and not required to have PAN*' is now available on the income tax portal's registration tab although there is no official notification on this.

International Tax

The screenshot shows the e-Filing portal interface. At the top, there is a logo for 'e-Filing Anytime Anywhere' and the text 'Income Tax Department, Government of India'. On the right, there are links for 'Call Us', 'English', and a language selection dropdown. Below the logo, there is a navigation bar with options: 'Home', 'Individual/HUF', 'Company', 'Non-Company', 'Tax Professionals & Others', 'Downloads', and 'Help'. A progress bar below the navigation bar shows four steps: 1. Get Started, 2. Fill Details, 3. Verify Details, and 4. Secure Your Account. The main content area is titled 'Let's Get Started' and includes a 'Register as' section with 'Taxpayer' and 'Others' buttons. Below this is a 'Category' dropdown menu, which is highlighted with a red box and shows the selected option 'Non-Residents not holding and not req...'. There are 'Continue' and 'Cancel' buttons below the dropdown. To the right of the registration form, there is an icon of a person with a document and a rupee symbol, and text indicating that the user can be a Chartered Accountant, External Agency, Tax Deductor and Collector, e-return Intermediary, or TIN 2.0 Stakeholders. A small box on the right side of the page says 'TaxG Good I am' em hi queri'.

Procedure for registration for online submission of Form 10F

- Step 1 – Open the window <https://www.incometax.gov.in/iec/foportal/>. Click on 'Register' at top right.
- Step 2 – Click on 'Others' under 'Let's get started' option
- Step 3 – Select 'Non-Residents not holding and not required to have PAN' in the drop-down menu under 'Category'. Click on 'Continue'
- Step 4 – Proceed to fill the relevant details
- Step 5 – Verify contact details (email address and mobile number via one time password)
- Step 6 – Upload documents like tax residency certificate, address proof, identity proof, etc.

After following the above steps, an account will be created for the non-resident taxpayer which can then proceed to submit Form 10F online.

Requirement to submit Form 10F had created hurdle for non-residents who wish to claim benefits of DTAA. Eliminating the need for holding a PAN has provided comfort to non-residents to engage in cross-border transactions with India and claim tax benefit with greater ease.

Our detailed position paper on Form 10F issued in the month of March 2023 can be accessed by [clicking here](#).

International Tax

Supreme Court's decision (in case of M/s Nestle SA) on applicability of Most Favoured Nation (MFN) clause in India's Double Taxation Avoidance Agreement (DTAA) with other countries

Background

India has entered into DTAA's with various countries, which ensures that income earned by non-residents from India is free from double taxation. Certain DTAA's have the 'MFN' clause.

What is 'MFN' clause?

- 'Most-Favoured-Nation' or 'MFN', 'as the name suggests, means that such country is given preferential benefits as compared to other countries. It means that if after signature / entry into force of the DTAA with a given country ('2nd country', India being the '1st country'), India enters into a DTAA on a later date with a 3rd country, *which is an Organization for Economic Co-operation and Development (OECD) member* providing a beneficial tax rate or restrictive scope for taxation of passive income (such as dividend, interest, royalty, etc.), such similar benefit should be available to the 1st country as well
- India has MFN clause in DTAA's with 13 countries (including Netherlands, France, Switzerland, Spain, Hungary)

Issue before Supreme Court

- Whether MFN clause is effective *automatically* or *only after a notification is issued* by India; and
- Whether there is any right to invoke the MFN clause with respect to provisions of a 3rd country with which India has entered into DTAA, *if such 3rd country was not an OECD member at the time of entering into such DTAA*

Ruling by Supreme Court

The Supreme Court has predominantly ruled in favour of the revenue (i.e, against the taxpayer), as below:

- MFN clause is not effective automatically. It can be enforced only after a notification is issued by the Indian Government
- To claim benefit of MFN clause, based on the DTAA between India and a 3rd country *that is an OECD member*, the relevant date to be considered is the date when the DTAA was entered into with India, not a later date when the 3rd country becomes an OECD member

Please [Click Here](#) to read the complete ruling dated 19 October 2023 pronounced by Supreme Court.

International Tax

New reporting requirement (quarterly) in Form 15CD prescribed for outbound remittances to be made by Unit of an International Financial Services Centre (IFSC)

Background

As per the Income-tax law, following declarations are required to be submitted online by a taxpayer making (outbound) remittances from India to overseas / non-residents:

- Form 15CA (self-declaration, having 4 parts):
 - ✓ Part A – In case aggregate amount of outbound remittance in a FY \leq Rs.500,000
 - ✓ For payments $>$ Rs. 500,000;
 - ❖ Part B – In case lower withholding tax order / certificate has been obtained
 - ❖ Part C – If Chartered Accountant's certificate in Form 15CB has been obtained
 - ❖ Part D – If payment is not taxable in India
- Form 15CC (to be furnished by authorised dealers)

New reporting requirement for outbound remittances to be made by Unit in an IFSC

With effect from 1 January 2024 onwards Unit in an IFSC is;

- Exempted from the requirement to submit Form 15CA (Part D) if the payment is not taxable in India
- Required to submit information in new *Form 15CD* online on a quarterly basis in respect of outbound remittances to non-residents. The Form 15CD has been duly prescribed by CBDT and contains details such as PAN, Tax Deduction Account No. (TAN), status of the Unit, contact details, details of the remittance, etc.

International Tax

“Form No. 15CD

(See rule 37BB)

[e-Form]

Quarterly statement to be furnished by a unit of an International Financial Services Centre, as referred to in sub-section (1A) of section 80LA, in respect of remittances, made for the quarter of of (Financial Year)

1. Name of the Unit:.....
2. Permanent account number of the Unit:.....
3. Tax deduction/collection account number of the Unit:.....
4. Status of the Unit:.....
5. Residential status of the Unit:.....
6. Complete address, email and phone number of the Unit:.....
7. Details of remittances made:

Sl. No.	Details of the remitter, if different from the Unit referred in 1 above		Name of the remitter	Permanent account number ^g or Aadhar ^h Number of the remitter	Complete address, email ⁱ and phone number ^j of the remitter	Country of which the remitter is resident ^k	Country to which remittance is made		Date of remittance	Amount of remittance		Nature of remittance	Purpose Code as per RBI ^l
	Name of the remitter	Permanent account number of the remitter					Country	Currency		In foreign Currency	In Indian Rs.		

Verification

I, _____ (full name in block letters), son/daughter of solemnly declare that to the best of my knowledge and belief, the information given above are correct and complete.

and/or

(applicable in case where the Unit referred in 1 is the remitter)

I/We*, _____ (full name in block letters), son/daughter of _____ in the capacity of _____ (designation) solemnly declare that the information given above is true to the best of my/our* knowledge and belief and no relevant information has been concealed. In a case where it is found that the tax actually deductible on the amount of remittance has not been deducted or after deduction has not been paid or not paid in full, I/We* undertake to pay the amount of tax not deducted or not paid, as the case may be, along with the interest due. I/We* shall also be subject to the provision of penalty for the said default as per the provisions of the Income-tax Act, 1961.

I/We* further undertake to submit the requisite documents for enabling the income-tax authorities to determine the nature and amount of income of the recipient of the above remittance as well as documents required for determining my/our* liability under the Income-tax Act as a person responsible for deduction of tax at source.

Place:

Signature:

Date:

Name and Designation:

Please [Click Here](#) to read Notification no. 89/2023 dated 16 October 2023.

Corporate Law & Regulatory



Ministry of Corporate Affairs (MCA)'s integration with National Single Window System (NSWS) for incorporation of companies & limited liability partnerships (LLPs) in India

MCA has announced its integration with NSWS for incorporation of companies and LLPs in India. Going forward, NSWS website (<https://www.nsws.gov.in>) can also be used for incorporation of companies and LLPs. The integration is likely to simplify / expedite the process for registration, thereby contributing to Government's initiative towards ease of doing business in India.

Please [Click Here](#) to read Notification dated 23 October 2023.

The Mediation Act, 2023 receives President's assent

Mediation has arisen to be an effective tool for resolution in relation to commercial disputes. It is fast, efficient and inexpensive. However, there was no formal law to regulate the same even though Courts have admitted to its effectiveness in judicial precedents. In view of the same, the Mediation Bill was introduced in the Parliament and was passed by both the houses in the 1st week of August 2023.

Highlights of the Mediation Bill passed in August 2023

- It mandates individuals to attempt the settlement of civil or commercial disputes through mediation prior to going for a formal court / tribunal proceeding
- After 2 mediation sessions, a party can withdraw from the mediation process
- The mediation process must conclude within 180 days, which can be extended by another 180 days upon mutual agreement
- Under the Bill, the Mediation Council of India shall be constituted
- The Bill governs 2 forms of mediation: (a) voluntary, and (b) mandatory
- Voluntary mediation involves parties seeking mediation through a written agreement, either as part of a contract or independently
- Mandatory mediation is required in specific areas, obligating parties to mediate before approaching a court or tribunal
- Certain disputes are excluded, like serious allegations of fraud, criminal offenses, matters reserved for the National Green Tribunal, and issues related to competition, telecom, securities, electricity law, and land acquisition

Corporate Law & Regulatory

- The Central or State Government cannot be mandated to mediate unless the dispute is of a commercial nature
- The provisions of the Bill do not prevent a court from referring disputes to mediation if deemed appropriate

Now, the Ministry of Law & Justice has published the Mediation Act in the official gazette of India on 15 September, 2023, after receiving assent from the President of India. The Central Government may by notification appoint different dates for coming into force of different provisions of the Mediation Act, 2023.

Please [Click Here](#) to read Notification dated 15 September 2023.

Bureau of Indian Standards (BIS) develops standards on biofuel to achieve clean energy goals of the Government of India

The BIS has developed following standards on biofuels to support the ethanol blending program and objectives of the Global Biofuel Alliance (GBA):

- IS 15464:2022 - Anhydrous Ethanol for Use as Blending Component in Motor Gasoline
- IS 15607:2022 - Biodiesel B-100 - Fatty Acid Methyl Esters (FAME)
- IS 16087:2016 - Biogas (Biomethane)
- IS 16531:2022 - Biodiesel Diesel Fuel Blend B8 to B20
- IS 16629:2017 - Hydrous ethanol for use in ED95 automotive fuel
- IS 16634:2017 - E85 fuel (Blend Of Anhydrous Ethanol And Gasoline)
- IS 17021:2018 E 20 fuel - Admixture of anhydrous ethanol and gasoline - As fuel for spark ignited engine powered vehicles
- IS 17081:2019 Aviation turbine fuel (Kerosene Type, Jet A - 1) containing synthesized hydrocarbons; and
- IS 17821:2022 - Ethanol as a Fuel for Use in Positive Ignition Engine Powered Vehicles

Please [Click Here](#) to read the notification dated 15 September 2023.

Corporate Law & Regulatory

Prevention of Money Laundering (Maintenance of Records) Rules, 2005 – Amendment by Ministry of Finance to strengthen anti-money laundering laws in India

Background

With the objective to strengthen anti-money laundering laws in India, the Ministry of Finance has notified amendments in the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 of the Prevention of Money-Laundering Act, 2002.

Highlights of the amendment:

Particulars	Detail
Qualification of 'Principal Officer'	Going forward, 'principal officer of a reporting entity' must be an 'officer at the management level' (earlier, it could have been anybody). This amendment aims to ensure that a person with greater authority and responsibility within the organization is responsible for compliance with anti-money laundering laws
Reduction in shareholding percentage of a partnership firm to qualify as 'Beneficial Owner'	<p>The criteria to qualify as 'Beneficial Owner' of a partnership firm has been reduced from 15% to 10%. This would result in greater disclosures and hence more transparency, including prevention of 'benami' activities (i.e., holding assets or property in the name of others) and the operations of shell companies.</p> <p>Further, the definition of 'Beneficial Owner' now includes shareholders who own < 10% of the capital or profits but still exercise control over management or policy decisions.</p>
Strict compliances for client identification and records	To enhance transparency of clients of reporting entities such as banks and financial institutions, going forward, reporting entities are required to determine if a client is acting on behalf of a 'Beneficial Owner' and verify the Beneficial Owner's identity when establishing an account-based relationship. This step adds another layer of due diligence and scrutiny in identifying the true beneficiaries behind financial transactions.

Please [Click Here](#) to read the notification dated 4 September 2023.

Industrial & Labour Law



Employee Provident Fund Organisation (EPFO) notifies Standard Operating Procedure (SOP) for management & regulation of EPF exempted establishments

The EPFO has notified on 6 October 2023, SOP for management and regulation of EPF exempted establishments. EPF exempted establishment implies an employer entity that has set up a private provident fund trust for coverage of its employees and has obtained exemption u/s 17 of the EPF Act, 1952.

The SOP covers the following:

- Responsibilities of establishment / employer, board of trustees of the private provident fund trust, EPFO regional office, zonal office and head office
- Procedures and timelines to be followed by the establishment / employer, regional office, zonal office and head office
- Forms, templates to be used for:
 - ✓ Submission of online return by establishment / employer
 - ✓ Compliance audit of exempted establishment by EPFO, and
 - ✓ Information to be submitted by regional office to zonal office and by zonal office to head office

The SOP supersedes previous instructions and circulars on the matter. Also, couple of new forms RM-5 (balance sheet) and RM-6 (3rd party audit) have been notified which are under preparation and shall be issued separately.

Please [Click Here](#) to read Circular dated 6 October 2023.

Industrial & Labour Law

Exemption by State Government of Punjab to factories from certain restrictions of the Factories Act, 1948

Considering requests from the industry to meet increased work pressure, the State Government of Punjab has issued a notification on 20 September 2023 exempting all factories within the state of Punjab from following provisions of the Factories Act, 1948:

- Section 51 – Weekly hours
- Section 52 – Weekly holiday
- Section 54 – Daily working hours
- Section 56 - Spread over

This would be subject to the following:

Maximum permissible hours	Earlier	Amendment
Maximum permissible working hours (including overtime) in a week	48	60
Maximum permissible working hours in a day	9	12
Maximum permissible spread-over (including interval for rest) in a day	10.5	13
Maximum overtime hours in a quarter	60	115

Further, a proper log-book needs to be maintained for overtime and should be open for inspection.

The above is applicable to all factories within the state of Punjab.

Please [Click Here](#) to read the notification dated 20 September 2023.

Industrial & Labour Law

Employees' State Insurance Corporation (ESIC) introduces biometric authentication to expedite linking of Aadhaar number with primary bank account number of insured persons & their dependants

Aadhaar seeding is a process of linking Aadhaar number with primary bank account number of a person. Reportedly, it has been observed by ESIC that the progress of Aadhaar seeding is not satisfactory. The field officers have not been able to achieve their daily targets. They have frequently raised issues relating to One Time Password (OTP) based authentication, citing reasons like non-receipt of OTP, change of mobile number, etc.

Considering the above, ESIC has decided to introduce biometric authentication in addition to OTP based authentication, in order to speed up Aadhaar seeding in respect of insured persons and their dependents.

Please [Click Here](#) to read the Circular dated 4 October 2023 issued by ESIC.

Revision in Madhya Pradesh Minimum Wages effective from 1 October 2023 onwards

The Labour Department, Government of Madhya Pradesh, notifies revision in the minimum wages for workers twice a year, effective from the 1st day of April / Oct. The adjustments in the minimum wages are made in accordance with changes in the Consumer Price Index (CPI).

As per the latest notification issued on 25 September 2023, the minimum wages have been revised for the state of Madhya Pradesh as below, from **1 October 2023 onwards**:

Category of Worker / Employment	Basic Per Month (Rs.) (A)	Dearness Allowance (Rs.) (B)	Total Per Month (Rs.) (C=A+B)	Total Per Day (Rs.)
Unskilled	6,500	3,325	9,825	378
Semi Skilled	7,057	3,625	10,682	411
Skilled	8,435	3,625	12,060	464
Highly Skilled	9,735	3,625	13,360	514

Please [Click Here](#) to read the notification dated 25 September 2023.

Compliance Calendar

Compliance calendar for the month of November 2023

Compliance Due Date	Concerned (Reporting) Period	Compliance Detail	Applicable To
7 th November	October 2023	TDS / TCS deposit	Non-Government Deductors
		Equalization Levy deposit	All Deductors
10 th November		a) GSTR-7 (TDS return under GST)	a) Person required to deduct TDS under GST
		b) GSTR-8 (TCS return under GST)	b) Person required to collect TCS under GST
11 th November		GSTR-1 (Outward supply return)	a) Taxable persons having annual turnover > Rs. 5 crore in FY 2022-23 b) Taxable persons having annual turnover ≤ Rs. 5 crore in FY 2022-23 and not opted for Quarterly Return Monthly Payment (QRMP) Scheme
13 th November		GSTR-6 [Return by input service distributor (ISD)]	Person registered as ISD
		GSTR-5 (Return by Non-resident)	Non-resident taxable person (NRTP)
		Invoice Furnishing Facility - IFF (Details of outward supplies of goods or services)	Taxable persons having annual turnover ≤ Rs. 5 crore in FY 2022-23 and opted for QRMP Scheme
15 th November	July – Sep 2023	Deposit of PF & ESI contribution	All Deductors
		TDS certificate in Form 16A (non-salary)	
20 th November	October 2023	GSTR-3B (Summary return)	a) Taxable persons having annual turnover > Rs. 5 crore in FY 2022-23 b) Taxable persons having annual turnover ≤ Rs. 5 crore in FY 2022-23 and not opted for QRMP scheme
		GSTR-5A [Online Information Database Access and Retrieval (OIDAR) services return]	OIDAR services provider
25 th November		Form GST PMT-06 (Payment of tax for Quarterly filers)	Taxable persons having annual turnover ≤ Rs. 5 crore in FY 2022-23 and opted for QRMP scheme
29 th November	FY 2022-23	Filing of Annual Return in form MGT-7 with ROC	All Companies (whose AGM is held on 30 October 2023).
30 th November		Income-tax Return (where Transfer Pricing is applicable)	All taxpayers subject to Transfer Pricing regulations as per Income-tax Act, 1961

About KrayMan

KrayMan Consultants LLP is an Accounting and multi-disciplinary Advisory Firm founded in 2012 by professionals with Big-4 Consulting and Industry experience. Our forte lies in handholding foreign companies establishing presence in India by demystifying the complex Indian regulatory environment making it easy for them to do business in India. Since inception, we have been delivering value to a mix of multinational Clients from across the globe

The Leadership team comes with rich experience and is supported by a capable & efficient team of professionals including Chartered Accountants, Company Secretaries, Cost Accountants, Advocates and MBAs who are committed in providing timely, professional and quality services to our Clients

We believe that in today's dynamic and ever changing business environment, it is important for accounting, tax & legal professionals to operate with a global approach and mind set. In pursuit of extending global footprints, we have a Japan Desk and an EU Desk to support investments from these countries into India.

In addition, we are members of various associations and forums both at national as well as international levels viz. JCCII, IICCI, IFCCI, CBA, PAN and CII

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