



Tax & Regulatory Updates – Key developments of April 2023

DIRECT TAXATION: -

1. CBDT order specifies July 01 as the effective date for PAN-Aadhaar non-linkage consequences:- *CBDT Order dated 01 April 2023*

The Central Board of Direct Taxes (CBDT), vide order dated 01 April, 2023, notifies 01 July, 2023 as the 'specified date' from which consequences prescribed under Rule 114AAA(3) on non-linking of PAN & Aadhaar shall take effect and this order is issued by the CBDT in supersession of its earlier order dated 30 March, 2022. On 29 March, 2023, the CBDT had issued Circular No.3 of 2023 to this effect after notifying the amendment in Rule 114AAA wherein sub-rule (3) provides following consequences on non-linking of PAN-Aadhaar:

- (i) Refund of any amount of tax or part thereof, due under the provisions of the Act shall not be made,
- (ii) Interest shall not be payable on such refund for the period, beginning with Jul 1, 2023 and ending with the date on which PAN becomes operative,
- (iii) TDS or TCS shall be deducted or collected at higher rate, in accordance with provisions of Section 206AA or Section 206CC, respectively

2. CBDT notifies 21 jurisdictions under Rule 114F(6) for 'passive non-financial entity' definition:- CBDT Notification No. 17/2023 dated 06 April 2023

For FATCA compliance purposes, CBDT vide Notification No. 17/2023 dated 06 April, 2023, notifies 21 more jurisdictions for the purpose of 'passive non-financial entity' definition under Rule 114F of Income Tax Rules. Earlier, vide Notification No.78/2018, CBDT had notified 87 jurisdictions and now notifies a new list of total 108 jurisdictions and Israel, Turkey, Hong Kong, Oman and Qatar are amongst the new notified jurisdictions.

Rule 114F(6) defines 'reportable account' to mean a financial account which has been identified, pursuant to the due diligence procedures provided in Rule 114H, as held by:

- (a) a reportable person;
- (b) an entity, not based in the United States of America, with one or more controlling persons that is a specified U.S. person;
- (c) a passive non-financial entity with one or more controlling persons that is a person described in clause (8)(b) of this rule.

Further, clause (D) under explanation to sub-rule (6) defines 'passive non-financial entity' to include investment entities which are not located in jurisdictions specified by CBDT for this purpose, subject to meeting certain other conditions.

3. CBDT clarifies employer's TDS obligation under new 'default' personal tax regime:- CBDT Circular No. 04/2023, dated 05th April 2023

CBDT issues clarification regarding employer's TDS liability on salary in the light of new default personal tax regime introduced by the Finance Act, 2023 under Section 115BAC(1A). CBDT directs that an employer, shall seek information from each of its employees having income under Section 192 regarding their intended tax regime and each such employee shall intimate the same to his employer for each year and upon intimation, the employer shall compute the employee's total income and deduct tax at source according to the option exercised. It also clarified that **in the absence of intimation by the employee, it shall be presumed that the employee continues to be in the default tax regime and has not exercised the option to opt out of the new tax regime.** Thus, the employer shall deduct tax at source, on income under section 192 in accordance with the rates provided under 115BAC(1A). Further clarifies that employee's intimation would not amount to exercising option in terms of Section 115BAC(6) and the person shall be required to do so separately in accordance with law at the time of filing of its ROI.

This circular supersedes Circular No. C1 of 2020 dated 13th April, 2020 and shall be applicable for TDS during the financial year 2023-24 and subsequent years.

<https://incometaxindia.gov.in/news/circular-no-4-2023.pdf>

4. CBDT clarifies 'Sikkimese' under amended Sec.10(26AAA) relevant only for IT purpose:- CBDT's Press Release dated 4th April 2023

CBDT, clarifies that the term 'Sikkimese' defined under Section 10(26AAA) as amended by the Finance Act, 2023 is only for the purposes of the Income-tax Act, 1961 and not for any other purpose. The amendment was brought about to give effect to the SC ruling in Association of Old Settlers of Sikkim and Ors.

By Finance Act, 2021 the term 'Sikkimese' under Section 10(26AAA) has been extended to cover an individual:

- (a) whose name does not appear in the Register of Sikkim Subjects but it is established that such individual was domiciled in Sikkim on or before Apr 26, 1975; or
- (b) who was not domiciled in Sikkim on or before the 26th day of April, 1975, but it is established

beyond doubt that such individual's father or husband or paternal grand-father or brother from the same father was domiciled in Sikkim on or before Apr 26, 1975.

5. 5K get I-T notice for claiming bogus tax deductions in Indore division: News Report

The Income Tax department has issued show-cause notices to approximately 5000 taxpayers in Indore division for claiming bogus tax deductions by making donations to political parties in the financial year 2018-19. The taxpayers are alleged to have claimed deductions under sections 80GGC/80GGB and 80G of the Income Tax Act by donating to political parties through cheque/RTGS/NEFT and the money was then re-routed through various layers and returned to the original donor mostly in cash after deducting commission of 1 to 5 per cent.. The department has identified 23 political parties, mostly from Gujarat, involved in the tax evasion racket.

Further, the action by the Income Tax department comes in response to nationwide searches carried out in 2021 and 2022 that showed mostly salaried taxpayers evading taxes by claiming benefits of bogus donations made to political parties. Taxpayers who fail to provide a satisfactory reply to the notice may be asked to file a revised return without claiming the tax deduction, and may also face a hefty penalty of 200% of the tax amount. The department may also issue more notices for abetting tax evasion through bogus deductions in transactions done in the financial year 2019-20.

<https://timesofindia.indiatimes.com/city/indore/5k-get-i-t-notice-for-claiming-bogus-tax-deductions-in-div/articleshow/99199182.cms>

6. CBDT has released 'Interim Action Plan FY 2023-24' requiring immediate action on multiple points including outstanding demand:- CBDT Interim Action Plan for FY 2023-24 dated 11 April 2023

The Central Board of Direct Taxes (CBDT) released an Interim Action Plan (IAP) for FY 2023-24 prescribing key results areas to be achieved by its officers within specified timelines. The IAP provides for immediate response on outstanding demands, approval of refunds and communication to Assesseees in non-responsive cases. The action plan also proposes final settlement of at least 50% of major and 75% of minor internal and Revenue Audit Objections which were received till 31 December, 2022 to be completed by 30 June, 2023. Further, the IAP provides for identification of potential cases for prosecution as result of survey or other information/verification/proceedings carried out in FY 2022-23 and earlier years to be completed by Jun 30, 2023. The IAP further prescribes that VsV appeals shall be disposed of within 15 days of receipt of Form 5 and all pending applications as on 1 April, 2023 and fresh applications for Nil/Lower deduction certificates under Section 195/197/206C to be disposed of within a month. Below is the quick outlay of Action plan laid down by the CBDT:

A. Immediate Action – By Apr 30, 2023

- (i) Response to outstanding demands by Jurisdictional Assessing officer (JAO)
- (ii) Approval of all pending refunds, withheld under Section 241A, where scrutiny assessments have been completed and necessary orders have been passed.
- (iii) Approval by JAO/Range Head of all refunds pending of ITBA e-returns for all AYs
- (iv) Uploading of all base and related documents of all assessments/penalties assigned to NaFAC so as to enable ITBA to transfer these cases to NaFAC
- (v) Centralised communication to assesseees in non-responsive cases
- (vi) Disposal of all CPGRAM grievances older than 30 days

B. Immediate Action – By May 31, 2023

Disposal of E-nivaran and CPGRAM over 30 days

C. By Jun 30, 2023

Demand Verification

- (i) Checking of all demand PAN-wise and year-wise from systems, AST/TMS or manual demand wherever remaining and removal of all duplicate entries
- (ii) Verification and certification in CPC Financial Accounting System (FAS) in cases where notice under Section 245 was issued by CPC up to Mar 31, 2023

CAP Statements

- (iii) Upholding the categorising of demand 'Difficult to recover' and 'demand under dispute' of CAP-I

Audit Objection

- (iv) Final Settlement of at least 50% of major and 75% of minor internal and Revenue Audit Objections which were received till Dec 31, 2022
- (v) Settlement of objections of brought forward audit objections (RAP) as on Apr 1, 2023

Centralisation/ Decentralisation of cases

- (vi) Centralisation/ Decentralisation of cases: (a) Uploading of all documents in cases assigned to NaFAC and (b) all cases which require centralisation/decentralisation through ITBA
- (vii) Identify all cases where seized assets are due for release as per Section 132B and release thereof
- (viii) Identification and transfer of cases falling under the jurisdiction of CCIT(Exemptions), which are still lying at incorrect jurisdictions to respective CITs (Exemptions)
- (ix) Passing of orders in partly set-aside cases in at least 25% cases of total pendency as on Apr 1, 2023
- (x) Processing of cases of prosecution under Section 276CC for defaults in filing of return of income, already identified by systems directorate or identified manually till Mar 31, 2023
- (xi) Processing of all cases where penalty has been confirmed before ITAT during FY 2022-23 for prosecution under Section 276C(1)
- (xii) Processing of all cases of wilful attempt to evade the payment of taxes identified till Mar 31, 2023
- (xiii) Compounding of all prosecution charges other than TDS charges
- (xiv) Weeding out of very old records and sending records which are necessary to be kept in off-site storage and retrieval under Record Management System
- (xv) Identification and transfer of cases falling under the jurisdiction of CCIT (exemptions) which are still lying at incorrect jurisdictions to respective CITs(Exemptions).
- (xvi) Passing of orders in partly set-aside cases in at least 25% cases of total pendency as on Apr 1, 2023

International Tax/ Transfer Pricing

- (xvii) Disposal of assessment in at least 10% of cases where limitation expires on Mar 31, 2024 in International Tax/ Transfer Pricing cases
- (xviii) Disposal of TPO's order in atleast 90% cases where limitation for TPOs order expires on Jul 31, 2023
- (xix) Verification of at least 10% of all 15 CA/CB certificates sent to the field in F.Y. 2022-23 and initiation of action under Section 201(1)/(1A) in appropriate cases

Exemption Units

- (xx) Disposal of all petitions filed up to Mar 31, 2022 seeking condonation of delay in Filing Form 10/10B by Exemption Units
- (xxi) Completion of consequential actions i.e. verifications/issuance of order granting 80G

registration etc. in pursuance of directions/ orders of appellate authorities

NaFAC

(xxii) Disposal of assessments/penalties by NaFAC in at least 10% of cases getting time barred on Sept 30, 2023

(xxiii) Allocation of fresh penalties to FAU by NaFAC

(xxiv) Transfer out of exception cases to JAOs in proceedings getting time barred in FY 2022-23 by NaFAC

TDS Units

(xxv) Reduction out of TDS demands as on Apr 1, 2023 including demand not fallen due, by 25% and collection out of TDS demands as on Apr 1, 2023 including demand not fallen due by 10%

(xxvi) Examination of top 30 cases of short payment (per Assessing Officer) as per MIS report 'SP with unconsumed challans'

(xxvii) Reconciliation of brought forward cases (as on Apr 1, 2023) of TDS reported by AIMS with payment through OLTAS by State AGs based on report available on TRACES portal

(xxviii) Verification of Form No. 27C/I5G/15H received during FY 2022-23

(xxix) 5 Seminars/awareness campaigns per CIT charge to be conducted through webinars

(xxx) Passing of order under Section 201(1)/(1A) in all cases where TDS survey has been conducted upto Mar 31, 2023

(xxxi) Passing order u/s 201(1)/ 201(1 A) in all cases where TDS e-verification was approved till Dec 31, 2022

(xxxii) Processing of identified cases for prosecution under Section 276B/BB in accordance with Scheme approved by the Board, and disseminated to CIT (TDS) - Completion of processing and filing of prosecution complaint in appropriate cases by CIT(TDS) identified till Mar 31, 2023

(xxxiii) Identification of potential cases for prosecution as result of survey or other information/verification/proceedings carried out in FY 2022-23 and earlier years by CIT(TDS) with Addl.CIT(TDS) and AO(TDS)

(xxxiv) Disposal of all other pending prosecution proposals received up to Mar 31, 2023 by CIT(TDS)

(xxxv) Disposal of 25% of compounding applications pending as on Apr 1, 2023 by CCIT(TDS)

CIT(Appeals)

(xxxvi) Disposal of 30% appeals filed before Apr 1, 2019, excluding VsV appeals. The same would be subject to a minimum of 100 disposal, if above disposal falls below 100 then the same may be achieved from other categories to arrive at a minimum of 100 disposals during the quarter.

CIT(Audit)

(xxxvii) Disposal of references for audit certificates for disposal of reward claims in pending references brought forward as on Apr 1, 2023

(xxxviii) Action for settlement of Final Settlement of at least 50% major and 75% minor internal objections which were raised till Dec 31, 2022

PCCIT/CCIT and PCTI/CIT

(xxxix) Completion of all pending reviews for FY 2022-23

(xl) To hold atleast one interdepartmental meeting with Pr.Director (audit) for early settlement of Revenue audit objections

(xli) To hold joint meetings of the field officers/JAOs and the auditors under CIT(Audit) for early settlement of Internal Audit Objections

(xlii) Disposal of at least 25% compounding applications pending as on Apr 1, 2023

(xliii) Annual updation of Asset Register (as on Mar 31, 2023) and submission of information to

Directorate of Information

- (xlv) Identification and withdrawal of non-prosecutable appeals by the collegium of CCITs/DGITs
- (xlv) Holding of all DPCs at all grades within Cadre Control of PCCIT and issue of orders
- (xlv) Final reply in 10% of draft para cases to be submitted to RAP
- (xlvii) Submission of revalidation proposal to Directorate of Infrastructure

Directorate of Intelligence and Criminal Investigation (I&CI)

- (xlviii) Enlistment of potential entities – source to be identified and acted upon by I&CI for augmentation of list of potential entities
- (xlix) Reporting compliance verification – removal of defects in cases identified by DIT (Systems) for FY 2019-20, 20-21 and 21-22 (Form 61A & 61B)
 - (l) Outreach activity for correct & timely filing of Form 61A and Form 61B – Each DIT to conduct atleast 6 outreach programmes in the quarter
 - (li) Outreach activity for e-verification scheme each DIT to conduct atleast 3 outreach programmes
 - (lii) Closure of all Form 61B matters pending verification
 - (liii) Identification of cases requiring verification based on the risk assessment strategy in respect of Form 61B

DGIT(L&R)

- (liv) Pending high court cases with with SQsL to be updated on LIMBS portal

D. By Apr 30, 2023

- (i) Identification and processing of all cases (including search, 153C, Black Money and FT&TR cases) which require centralisation in the Central charges (to be done in ITBA)
- (ii) Sharing of information sought by various LEAs (CBI, ED, SEBI, CBIC/DRI, SFIO, etc) on requests pending as on Dec 31, 2023
- (iii) Delayed rent related proposals to be submitted to DGIT (admn & TPS)
- (iv) Completion of cases of e-verification as per SOP and other cases assigned by Systems for period ending Mar 31, 2023
- (v) 100% implementation of e-office for SLP work

E. By May 31, 2023

- (i) Reporting of appeal cases, filed before Apr 1, 2019 where there are specific procedural/systematic difficulties in disposal by CIT(A) by May 20 to PCCIT of the region, who shall furnish a consolidated report to NFAC mentioning the difficulties.
- (ii) Transfer of PANs to correct jurisdictions both within and out of international taxation
- (iii) Spot verification in case of non-filers and defaulting Res
- (iv) 100% filing of revenue appeals/petitions before High Court and ITAT in e-filing mode

F. Others

- (i) Uploading/handing over of all survey reports (preliminary/final) completed before Mar 31, 2023 alongwith relevant documents including impounding order/statements/inventories/ working sheets – within 60 days from date of survey
- (ii) Disposal of applications under Section 154 filed by Assessee pending as on Apr 1, 2023 – Jun 30, 2023 or as per time limit prescribed under the Act, whichever is earlier
- (iii) Giving appeal effects in all eligible cases pending as on Apr 1, 2023 – Within time limit prescribed under Section 153(5)
- (iv) Submission of information in requests received after Apr 1, 2023 – within 15 days of receipt of request from CBDT, Inv Division
- (v) Disposal of all pending applications as on Apr 1, 2023 and fresh applications for Nil/Lower deduction certificates under Section 195/197/206C – within a month of receipt of same

- (vi) Creation of complete hierarchy for all field formations of International taxation and TP in system module – May 15, 2023
- (vii) Completion of consequential action by AO in all cases wherein condonation has been allowed by CIT for delay in filing Form 9A, 10, 10B, 10BB – one month from the end of the month in which condonation order is passed by CIT
- (viii) All pending inspection reports for work done during FY 2020-21, 2021-22 & 2022-23 to be completed in accordance with the administrative clarification – May 15, 2023
- (ix) Submission of rent related proposals to be submitted to Directorate of Infrastructure - 6 months prior to expiry of date of earlier agreement
- (x) VsV appeals for which Form-5 has been received – within 15 days of receipt of Form-5
- (xi) Disposal of references for audit certificates for disposal of reward claims in cases other than brought forward references – within 1 month from date of receipt of request by concerned PCIT.
- (xii) Uploading of base orders for penalty proceedings with Faceless Assessment Units (FAU) – within 3 days of request by FAU
- (xiii) Decision on Form 68 application – within 30 days of application
- (xiv) Uploading of order on Form 68 – within 3 days
- (xv) Grievance redressal disposal of e-nivaran and CPCGRAM over 30 days – weekly monitoring

7. Law Ministry issues Corrigenda to Finance Act, 2023: Ministry of Finance

The Ministry of law and justice issued a corrigenda to the Finance Act, 2023. The Corrigenda is as follows:

- Section 10(4H) now uses the term "leasing" instead of "lease" in reference to a unit of an International Financial Services Centre engaged primarily in aircraft leasing business.
- The phrase "before, it was" has been replaced with "before it was" in Section 246 in regard to the transfer of an appeal to Joint Commissioner (Appeals) and Commissioner (Appeals).
- The proviso to Section 115A(a)(A) pertaining to TDS on income by way of dividend earned by a non-resident Indian person other than a company now correctly reads "referred to in" instead of "referred to in to in".
- The phrase "sub-section (I)" has been corrected to "sub-section (1)" in Section 115A(a)(A), which concerns TDS on income by way of dividend earned by a company.

8. CBDT notifies 348 as provisional Cost Inflation Index for FY 2023-24: CBDT via Notification No. 21 /2023/F.No.370142/5/2023-TPL, dated 10 April 2023.

CBDT issued a notification which states that the Cost Inflation Index (CII) for the financial year (FY) 2023-24 has been set at 348. This index is used to calculate the inflation-adjusted purchase price of an asset, which is important for computing long-term capital gains tax. The notification further states that the new CII will come into effect from April 1, 2024, and will be applicable to the assessment year (AY) 2024-25 onwards. This means that taxpayers will need to use the new CII for computing their tax liability on long-term capital gains from the sale of assets acquired on or after April 1, 2024.

9. Bombay High Court calls for CBDT's view on low tax-effect Circular vis-a-vis TDS cases

Bombay HC directs Revenue to obtain a specific clarification from the CBDT as to whether Circular No. 17 of 2019, dt. Aug 08, 2019 and other circulars prescribing monetary limits for withdrawal of appeals would apply to TDS cases or not. Further it asks CBDT's clarification as to whether the opinion expressed by the Chief Commissioner Income-tax (International Taxation) [CCIT(I-T)] that the monetary limits prescribed under said circulars would not apply to TDS cases, was correct.

HC had disposed of Serum Institute's appeals by order dt. Aug 26, 2022 with liberty to the Revenue to have the appeal revived in case the withdrawal was not specifically found to be covered under Circular No.17 of 2019 and further notes that the Revenue sought the revival of the appeal on the ground that the circular does not apply to the present set of appeals in view of the opinion expressed by CCIT(I-T). Also, it takes note of the opinion of CCIT(I-T) stating that the monetary limits prescribed under Circular No. 3 of 2018, dt. July 11, 2018 followed by the successive circulars, would not apply to TDS cases and considers assessee's contention that the appeals in question are squarely covered under Circular No. 17 of 2019 and also allowing Revenue's request for a minimum period of eight weeks for obtaining said clarification from CBDT.

10. Supreme Court holds 'substantial question of law' lies before High Court on comparable selection & ALP determination:- SAP Labs India Pvt. Ltd. & Others [TS-225-SC-2023-TP]

The Apex Court reverses/sets aside Karnataka HC judgment in a batch of matters led by Softbrands/SAP Labs on issue of comparables selection and whether it constitutes a 'substantial question of law'. On the question of law arising in the present case, SC rules that "... there cannot be any absolute proposition of law that in all cases where the Tribunal has determined the arm's length price the same is final and cannot be the subject matter of scrutiny by the High Court in an appeal under Section 260A of the IT Act."

Explaining further, the Court states that HC can examine the issues of comparability as also selection of filters, especially whether the same has been done 'judiciously' and based on evidence/material on record. SC observes that "Any determination of the arm's length price under Chapter X de hors the relevant provisions of the guidelines, referred to hereinabove, can be considered as perverse and it may be considered as a substantial question of law as perversity itself can be said to be a substantial question of law". It discards the proposition of law laid down by the Karnataka HC that in the matter of transfer pricing, determination of the arm's length price by the ITAT shall be final and cannot be subject matter of scrutiny by the High Court under Section 260A as no substantial question of law arises in such cases. Thus, it observes, "it is always open for the High Court to examine in each case whether while determining the arm's length price, the guidelines laid down under the Act and the Rules, referred to hereinabove, are followed or not and whether the determination of the arm's length price and the findings recorded by the Tribunal while determining the arm's length price are perverse or not."

Accordingly, it remits the cases back to the concerned High Courts to decide and dispose of the respective appeals afresh in light of the observations made and to examine in each and every case whether the ITAT has followed the guidelines laid down under the Act and the Rules while determining the ALP. While clarifying that it has not expressed any opinion on the ALP determination in specific cases, SC calls for completion of this exercise, preferably **within 9 months** from the date of receipt of the present order by the respective High Courts.

11. DDT rate mentioned u/s 115-O applies to Non-resident shareholders also unless DTAA specifically protects them:- DCIT v. Total Oil India (P.) Ltd. - [2023] 149 taxmann.com 332 (Mumbai - Trib.)(SB)

The question for consideration before the Special Bench of the Mumbai Tribunal was:

"If a domestic company pays dividends to non-resident shareholders, whether the dividend distribution tax (DDT) shall be payable at the rate mentioned in Section 115-O or the tax rate applicable to non-resident shareholder(s) with reference to such dividend income?"

The Mumbai Special Bench of the Tribunal held that the first aspect that needs to be decided is whether DDT is a tax on the company or the shareholder. Can one say it is a tax payable by the shareholder, whose liability is discharged by the domestic company in the form of payment of DDT?

It has held that the Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd. [2010] 194 Taxman 203 (Bombay) held that legal characteristics of DDT are a tax on a company paying the dividend and "is chargeable to tax on its profits as a distinct taxable entity. The domestic company paying DDT does not do so on behalf of the shareholder, and the company does not act as an agent of the shareholder in paying the tax under Section 115-O. Although the Supreme Court reversed the Bombay High Court ruling, the observations of the Bombay High Court regarding the legal characteristics of DDT that it is a tax on a company paying the dividend cannot be said to have been diluted or overruled. Thus, it can be concluded that the charge under section 115-O is on the company's profits and not income in the hands of the shareholder.

Regarding the applicability of DTAA, the bench held that the domestic company resident in India pays DDT. It is a tax on its income and not tax paid on behalf of the shareholder. In such circumstances, the domestic company under section 115-O does not enter the domain of DTAA at all. If the domestic company has to enter the domain of DTAA, the partner countries should have agreed specifically in the DTAA to that effect. For instance, in the Treaty between India and Hungary, the Contracting States extended the Treaty protection to the DDT. It has been specifically provided in the protocol to the Indo-Hungarian Tax Treaty that when the company paying the dividends is a resident of India, the tax on distributed profits shall be deemed to be taxed in the hands of the shareholders, and it shall not exceed 10 per cent of the gross amount of dividend. Therefore, the DTAA is not triggered when a domestic company pays DDT under section 115-O.

Accordingly, the bench held that where the dividend is declared, distributed or paid by a domestic company to a non-resident shareholder(s), DDT shall be payable by the domestic company at the rate mentioned in Section 115-O. However, the domestic company can claim the benefit of DTAA if the Contracting States extend the treaty protection to the domestic company paying dividend distribution tax.

12. Income Tax department sends notices over donations to charitable trusts:- News Report

The Indian Income Tax Department has reportedly sent notices to around 8,000 taxpayers who have claimed exemption for donations made to charitable institutions in the financial year 2019-20. The notices have been sent based on an analysis of tax returns filed by individuals and entities, where it was found that some taxpayers have shown donations that exceed their annual income. Such donations are often used as a means to evade taxes.

The Income Tax Department has urged taxpayers to respond to the notices within the given timeframe, failing which appropriate actions will be taken. Taxpayers who receive the notices are required to submit relevant documents and explanations to prove the authenticity of their claims of donations made.

This move by the Income Tax Department is part of the government's efforts to curb tax evasion and increase tax compliance. Taxpayers are expected to comply with tax laws and regulations and are required to submit accurate and truthful information in their tax returns. Non-compliance can result in penalties, fines, and legal action.

[income tax department news: Income Tax department sends notices over donations to charitable trusts - The Economic Times \(indiatimes.com\)](#)

13. Angel investment at high premium under Income-Tax department scanner:- News Report

Indian start-ups that raised capital from domestic investors at an excessive premium between AY 2018-19 and 2020-21 have come under the income-tax department scanner. The tax department has asked a considerable number of start-ups, including those in the financial technology and education space, to justify their shares issued at a premium to domestic investors under angel tax provisions in

a recent communiqué. The excess premium received on the sale of shares by an Indian unlisted company to either foreign or domestic investors will be construed as income from other sources and liable for angel tax.

https://www.business-standard.com/finance/investment/devil-s-in-angel-investment-at-excessive-premium-123041801105_1.html

14. Indian IRS asked NRI's to tally funds in A/Cs to filings closer scrutiny on their tax filings:- News Report

The income tax department in India is scrutinizing the transactions of non-resident Indians (NRIs) who are suspected of not paying due taxes. An unusually high number of NRIs have received notices from tax authorities in recent weeks, requiring them to correlate the funds in their bank accounts or investments with the incomes reported in their tax filings. The notices are being sent under Section 148(A), which means the authorities believe certain income has escaped assessment and that more tax may be payable. Further, these notices could be precursors to assessment orders seeking higher taxes. The authorities have also asked some foreign investors to share information on the capital infusion they have made in Indian firms and the price at which the shares have been bought. NRIs must pay tax and file returns in India on any income arising in the country. The use of data analytics and facilities like automatic exchange of information has given the tax authorities a larger pool of information on NRIs' transactions.

<https://www.financialexpress.com/money/income-tax/asked-to-tally-funds-in-a-cs-to-filings-closer-scrutiny-on-tax-filings-of-nris/3054673/>

15. No proposal before govt for overhaul of capital gains tax, clarifies I-T department:- News Report

The Income Tax Department of India stated that there is currently no proposal before the government regarding the capital gains tax. Earlier today, a news report by Bloomberg said that the centre is working to increase capital gains taxes for top income earners and claimed that at the heart of the rework are potential increases in capital gains taxes for top income earners. For instance, while India levies a tax of as much as 30% on income, it taxes gains on certain asset classes, such as equity funds and stocks, at a lower rate. A panel may be appointed to build on proposals submitted to the Finance Ministry in 2019 with an eye to implementing them in 2024, though no final decisions have been made, which some sources claim goes against the principle of equity. The report also said that with a new direct tax code, the government is looking to replace India's complicated tax system with a simpler law to draw in companies looking to shift their operations out of China amid growing tensions between Washington and Beijing. While the centre had accepted that there was a need to reform the capital gain tax, officials from the finance ministry refused any such discussion at present.

https://economictimes.indiatimes.com/news/economy/policy/income-tax-department-clarifies-no-proposal-for-capital-gains-tax-before-government/articleshow/99591367.cms?utm_source=ETTopNews&utm_medium=HPTN&utm_campaign=AL1&utm_content=23

16. I-T lens on big spenders, aims to widen taxpayer base by 10% in FY24:- News Report dated 27th April 2023

According to latest news reports, the big money spenders might soon be feeling the heat from the Central Board of Direct Taxes (CBDT), as in order to broaden their tax base, the CBDT is planning to focus on statements pertaining to expensive purchases or spendings, such as foreign travels, designer clothes, fertility clinic services, exorbitant electricity bills and similar such spendings.

An elaborate central action plan is in the works on tax-broadening measures such as scrutinising statements on specified financial transactions by reporting entities in the case of high-value purchases, tightening the organised collection of data from various agencies and third parties, and proper checks on statements on tax deducted at source/tax collected at source by certain entities and such other aspects. The government is planning to widen the taxpayer base by 10 per cent to 86 million in the FY 24. High value spendings were cast under the scrutiny of Income Tax department when the demonetisation took place in 2016. The department identified those who made several high-value transactions during the year after the demonetisation took place in 2017-18 but did not file their tax returns.

Further, the CBDT is going to review a draft of the taxation document submitted to it this week for approval, following which the plan is likely to be effective from this month. The idea behind the new taxation plan is to have a verification process to ensure that the specific financial transactions that are to be reported are in line with the tax provisions.

https://www.business-standard.com/economy/news/cbd-t-to-tighten-noose-on-high-value-transactions-to-add-10-new-tax-filers-123042701072_1.html

17. Government to come out with angel tax rules before April 30 to address industry's concerns:- *News Report*

The Income Tax Department is likely to make announcements to address concerns related to angel tax on start-ups. The government may release a detailed circular soon, the report cited senior officials from the finance ministry. He said, "Rules are likely to be notified before April 30. Our effort is to address all the concerns." Earlier, minister of state for electronics and information technology Rajeev Chandrasekhar had admitted that the angel tax was an "aberration" and reforms were under consideration, the report added. It is important to note that angel tax refers to an income tax levied at the rate of 30.6 per cent. The tax has to be paid when an unlisted company issues shares to an investor at a price that is more than its fair market value. In the past, angel tax was only applicable to resident investors. However, Budget 2023-24 introduced provisions to extend angel tax to non-resident investors from April 1, 2024. The report cited an unnamed government official who said start-ups recognised by the Department for Promotion of Investment and Internal Trade (DPIIT) would be exempted from the new provisions.

<https://www.thehindubusinessline.com/economy/govt-to-come-out-with-angel-tax-rules-before-april-30-to-address-industrys-concerns/article66784858.ece>

https://www.business-standard.com/industry/news/government-to-come-up-with-angel-tax-rules-for-start-ups-before-april-30-123042800275_1.html

18. United Nations invites Public Comment on International Tax Cooperation Plan:- *News Report*

The United Nations (UN) Secretary-General António Guterres on 17 February 2023, invited the public to comment on its plan to develop a new international tax cooperation framework by 10 March 2023. General Assembly Resolution 77/244, Promotion of Inclusive and Effective Tax Cooperation at the United Nations, reaffirms earlier international commitments to scale up international tax cooperation, fight illicit financial flows and combat aggressive tax avoidance and evasion, according to the United Nations, "The effort will begin an intergovernmental discussion at the United Nations headquarters in New York on ways to strengthen the inclusiveness and effectiveness of international tax cooperation."

The Secretary-General's report, expected to be released in September 2023, will take into account the public's input. "The report will analyze all relevant international legal instruments, other documents and recommendations that address international tax cooperation, evaluate options to strengthen the inclusiveness and effectiveness of such cooperation and their viability and outline potential next steps", a UN statement said. The public is invited to email comments

to taxreport2023@iun.org. This development follows separate recent efforts initiated by the Organisation for Economic Cooperation and Development/G20 Inclusive Framework (OECD/G20 IF) to tackle the same issues and reform international taxation rules. On 8 October 2021, 136 Inclusive Framework members met and jointly signed a new statement committing to join a two-pillar solution towards addressing the tax challenges arising from the digitalization of the economy. Since then, a handful of additional jurisdictions have committed to the joining the pact and efforts in this regard are in full swing.

<https://www.un.org/development/desa/financing/tax-report-2023>

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INDIRECT TAXATION

1. SOP issued for investigations ahead of launch of GST Appellate Tribunal:- News Report dated 31st March, 2023

Over the past couple of years, while the government has taken several steps to prevent tax evasion, the number of legal challenges mounted by taxpayers in various High Courts and the Supreme Court have also been rising, because of the absence of the dedicated GST Tribunal that was predicted since the GST regime's launch in July 2017.

The Parliament cleared the decks for the establishment of the Goods and Services Tax Appellate Tribunal to resolve such rising disputes under the nearly six-year-old indirect tax regime, the Revenue Department is in the process of finalizing a standard operating procedure (SOP) for officers undertaking intelligence and investigation work. The GST Investigation wing of the Central Board of Indirect Taxes and Customs (CBIC), which deals with policy issues relating to enforcement actions such as search, seizure, prosecution and arrest, is drafting the manual and will include various SOPs and instructions for field formations to abide by and will be published shortly.

<https://www.thehindu.com/business/Economy/ahead-of-gst-appellate-tribunals-launch-an-sop-for-investigations/article66679936.ece>

2. Tax probes against insurers may go on despite IRDAI's new commission norms: News Report dated 4th April 2023

Despite the industry regulator adopting new regulations, the income tax and goods and services tax authorities would continue to look into transactions involving 30 or so insurance businesses that total more than 760,000 crores. The tax department is looking into them for alleged tax fraud by breaking rules established by the Insurance Regulatory and Development Authority of India while the GST authority is looking into them for fictitious input tax credits. (IRDAI). According to the report, both departments are looking into transactions worth over R5,500 crore that have a combined value of 760,000 crore.

As per the new regulations announced by IRDAI on payment of commission to insurance agents and expenses of management (EoM) give insurers more flexibility in managing their expenses. The rules came into effect on April 1st but since the changes are not with retrospective effect, the new regulations would not affect the ongoing cases, legal experts and tax officials said. Some of the companies under probe include HDFC Ergo, ICICI Lombard, and Aditya Birla Sun Life amongst others.

As per the report, the ongoing inquiries, involving both life and non-life insurers, are about insurance companies that are allegedly using what the tax authorities refer to as "shell companies" to pay high commissions to agents and allegedly accounting for these payments as marketing or advertising expenses to lower the tax outlay. According to a senior official with knowledge of the investigation, the industry standard for commission is 15%, but some insurers paid substantially more, with around 15% of that amount going through legitimate channels and the remaining amount going through shell firms and being reported as marketing or advertising expenses, he added. Around 5,000 would be the total amount of responsibility these businesses would be responsible for, including the return of incorrectly claimed input tax credits, penalties, and interest in the actual GST case.

https://cfo.economictimes.indiatimes.com/news/tax-legal-accounting/tax-probes-against-insurers-may-go-on-despite-irdais-new-commission-norms/99229005?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etcfo_news_2023-04-04&dt=2023-04-04&em=Z2FyZy5yYWh1bEBhc2lyZS5pbG==

3. Finance Ministry to review GST systems on April 4:- News Report

The finance ministry chaired by Revenue Secretary Sanjay Malhotra called a meeting to review the functioning of the Goods and Services Tax (GST) Portal and the systems on April 4, 2023 (Friday). The meeting focused more on the GST portal issues and the systems. Recently, there were many issues reported by the taxpayers and also many updating were done. Last year the taxpayers reported the back end issues resulted in the slow functioning of the portal. A record amount of GST was reportedly collected in the month of March 2023. It is the second largest monthly collection. ₹1,60,122 were collected as a whole. Central GST total is at ₹29,546, State GST came in at ₹37,314 and Integrated GST came in at ₹82,907. Prior to the GST collection for the new financial year, this meeting will check that all processes and the GSTN portal are functioning properly. In light of the GST's record-breaking collection, it is the responsibility of the financial ministry to address the problems carefully.

<https://www.moneycontrol.com/news/business/economy/finance-ministry-to-review-gst-systems-on-april-4-sources-10359121.html>

4. Non-submission of reply to SCN can't be a ground for cancellation of registration:- Agarwal Construction Company v. Commissioner of State Tax [2023] 149 taxmann.com 42 (Allahabad)

The petitioner was engaged in business of civil construction was registered under GST Act. The GST Department issued a show cause notice directing petitioner to furnish a reply to notice within seven working days from the date of service of the notice. The reply was not submitted and the registration was cancelled by the department. The petitioner filed writ petition challenging order whereby GST registration had been cancelled on ground that it failed to submit reply to show cause notice.

The High Court noted that in the instant case, the cancellation order was self-contradictory as in one line it was stated that petitioner had submitted his reply to the show cause notice while in the very next line it was noted that petitioner had not submitted reply to the show cause notice.

Moreover, the Court observed that in case of Technosum India Pvt. Ltd. v. Union of India [2022] 145 [taxmann.com](https://www.taxmann.com) 653 (Allahabad), this Court held that non-submission of reply to show cause can't be a ground for cancellation of registration. Therefore, the petitioner was also entitled for same relief and cancellation of registration order was liable to be set aside. The Court also permitted the petitioner to appear before department along with reply to show cause notice and directed the department to pass a fresh order in accordance with law.

5. GST to be discharged under RCM if residential dwelling is rented to a registered person irrespective of its purpose:- Authority for Advance Rulings, Odisha Indian Metals & Ferro Alloys Ltd., In re - [2023] 149 taxmann.com 80 (AAR-ODISHA)

The applicant was a registered person who received service by way of taking residential premises on rent for use as its guest house for employees of company. It filed an application for advance ruling to determine whether service received by a registered person by way of renting of residential premises used as guest house of registered person would be subject to GST under Forward Charge Mechanism (FCM) or Reverse Charge Mechanism (RCM).

The Authority for Advance Ruling observed that the applicant was a registered person and it had taken on rent certain premises to use premises as guest house for employees. The houses taken on rent for guest house purposes were located in the residential areas. As per Notification No. 05/2022 Central Tax (Rate) dated 13-7-2022, if residential dwelling is rented to a registered person whether for residential purposes or otherwise, the tenant has to discharge GST liability irrespective of purpose of use under RCM. Therefore, it was held that the applicant would be liable to pay GST under RCM.

6. Principles of natural justice were not in violation when assessee had no bona fide intention to produce documents: *Debabrata Das v. Additional Commissioner, Central Goods & Service Tax and Central Excise - [2023] 149 taxmann.com 133 (Calcutta)*

The petitioner was aggrieved by the Order-in-Original passed by the Additional Commissioner and it filed writ petition stating that the said order was passed without giving any reasonable opportunity of hearing to the petitioner. The department contended that the notice was issued following which reply was submitted after lapse of almost 10 months. It was also contended that multiple opportunities of personal hearing were granted but adjournment was sought on account of non-availability of relevant details and on account of COVID.

The High Court noted that on each and every occasion the petitioner replied to the notices and requested adjournment on account of non-availability of necessary details from his accountant. Thereafter, order-in-original was passed against which no appeal was preferred and after expiry of period to file appeal, the writ petition was filed seeking relief.

The Court observed that there was not any violation of principles of natural justice since adjournments were sought all along but the necessary documents were never produced before the authority either in person or via virtual mode. Thus, it was held that matter was not required to be remanded for reconsideration as conduct of assessee did not appear to be bona fide and there was no violation of principle of nature justice.

7. GSTN issues advisory on time limit for reporting invoices on the IRP Portal: *GSTN Update dated April 13th, 2023*

The GSTN has issued advisory to inform that a time limit is imposed on reporting old invoices on the e-invoice IRP portals for taxpayers with AATO greater than or equal to 100 crores. It is stated that to ensure timely compliance, the taxpayers in this category will not be allowed to report invoices older than 7 days on the date of reporting.

For example, if an invoice has a date of April 1st, 2023, it cannot be reported after April 8th, 2023. However, this restriction will only apply to the document type invoice, and there will be no time restriction on reporting debit/credit notes.

Moreover, this change would be implemented from May 1st, 2023 onwards in order to provide sufficient time for taxpayers to comply with this requirement. Earlier, it was mentioned that there will be no time restriction on reporting debit/credit notes. However, in this updated advisory, it is specifically mentioned that this restriction will apply to the all document types for which IRN is to be generated.

8. Model All India GST Audit Manual, 2023 released:

The Model All India GST Audit Manual, 2023 is released which is prepared by Committee of Officers on GST Audits. The guidelines provided in the manual are intended to enable audit officers to carry out effective audits in a uniform, efficient and comprehensive manner adopting the best practices of the States and the Centre, as well as international practices.

9. DGGI to soon issue tax notices to companies using metal scrap, agri inputs for claiming fake credit:- *News report, dated 18th April 2023*

The Goods and Services Tax (GST) intelligence wing has detected many fake invoicing cases wherein metal scrap, agricultural items are used for industrial use and is set to issue show cause notices to such companies using metal scrap and agricultural inputs to claim fake input tax credit. These sectors are prone to fake invoicing, as there is no GST on metal scrap due to wear and tear, and traders of agricultural produce often claim fake ITC to reduce payment liability in cash and is often used in claiming fake ITC for agricultural items like cotton, where full liability is discharged in

cash. Data analytics and supply chain analysis have been used to identify companies utilizing fake ITC. The government is taking steps to crack down on such fraudulent activities and ensure compliance with GST regulations.

<https://www.moneycontrol.com/news/business/economy/dggi-to-soon-issue-tax-notice-to-companies-using-metal-scrap-agri-inputs-for-claiming-fake-credit-sources-10433131.html>

10. SLP to be granted against order of Orissa HC in case of Safari Retreats; matter listed for regular hearing:- Chief Commissioner of Central Goods and Service Tax v. Safari Retreats (P.) Ltd. - [2023] 149 taxmann.com 319 (SC)

The High Court of Orissa had earlier held that the taxpayers would be entitled to utilise input credit tax charged on purchases made in construction of shopping mall for set off against GST payable on rent received from tenants. The revenue filed Special Leave Petition (SLP) against this decision before the Apex Court and challenged the order. The Supreme Court granted SLP and listed the matter on April 20th, 2023 in the regular hearing list.

11. Bombay High Court upheld the constitutional validity of Section 13(8)(b) and Section 8(2) of IGST, 2017:- Dharmendra M. Jani v. Union of India - [2023] 149 taxmann.com 317 (Bombay)

The petitioner was engaged in providing marketing and promotion services to customers located outside India. It was providing services only to the principal located outside India and in lieu thereof receiving consideration in convertible foreign currency from the principal located outside India. The petitioner contended that the transaction entered into by it with the foreign customers would be one of export of service from India earning valuable convertible foreign exchange for the country by an intermediary. However due to deeming fiction by Section 13(8)(b) of IGST Act, the place of supply shall be the location of the supplier of services which is in India and levy of CGST and SGST would arise. It filed writ petition assailing the constitutional validity of section 13(8)(b) of the IGST Act.

The coram of Division Bench of Bombay High Court was of two judges. One Judge of Division Bench Bombay High Court observed that Section 13(8)(b) of IGST Act not only falls foul of overall scheme of CGST Act and IGST Act but also offends Articles 245, 246A, 269A and 286(1)(b) of Constitution. Thus, as per one opinion, the provision is unconstitutional, other has expressed his disagreement and has rendered his separate opinion. Therefore, in view of such difference in opinion, the matter was placed before the Chief Justice.

The Bombay High Court observed that the fiction which is created by Section 13(8)(b) would be required to be confined only to the provisions of IGST and ruled that Section 13(8)(b) and Section 8(2) of the IGST Act are legal, valid, and constitutional. However, the court has also held that these provisions can only be applied to the IGST Act and can't be used to levy tax on intermediary services under the CGST and SGST Acts.

12. Services, including services of common employees, by branch to head office in another State or vice versa liable to GST:- Profisolutions (P) Ltd., In re - [2023] 149 taxmann.com 337 (AAR-Tamil Nadu)

The applicant is registered in the state of Karnataka and has its branch office registered in the State of Tamil Nadu (Chennai). The branch office provides support services like engineering services, design services, accounting services etc. to the head office in Karnataka through the common employees of the company. The employees are appointed and working for the company as a whole and not employed for head office or the branch specifically. The applicant approached the Authority of Advance Ruling of Tamil Nadu (hereafter referred to as 'TN AAR') on the taxability of the services provided by the branch office in one state to the head office in another state through the common employees.

The TN AAR observed that service of an employee working in a branch flows only through the branch to the head office. It is further added that as long as the employee is deployed in a branch of an entity, his services that is rendered directly to head office will be in his representative capacity as an employee of the branch.

Given the above, the TN AAR held that the services of employees deployed in a registered place of business to another registered premises of the same person will attract GST, as the employees are treated as 'related person' in terms of explanation to Section 15 of the CGST Act, 2017 and treated as supply by virtue of Entry 2 of Schedule I of the CGST Act, 2017.

13. Non-constitution of GST Tribunal would not deny stay benefit under statute where petitioner made pre-deposit:- *Bablu Kumar v. Union of India - [2023] 149 taxmann.com 362 (Patna)*

The petitioner filed writ petition before the Patna High Court under Article 226 of the Constitution of India. The petitioner is seeking for the quashing of order where the petitioner is prevented from availing the benefit of stay of recovery of the balance amount of tax upon the deposit of the pre-deposit amount. Whereas, the Department argued based on the fact that GST Tribunal has not been constituted. \

The High Court referred to the case of Angel Engicon Private Limited v. The State of Bihar & Anr., wherein the Court had disposed of a similar writ petition with certain observations and directions, allowing the petitioner to avail the statutory benefit of stay under Section 112(9) of the BGST Act upon depositing the pre-deposit amount of a sum equal to 20% of the remaining amount of tax in dispute. The court also directed the petitioner to file an appeal before the Appellate Tribunal under Section 112 of the BGST Act once the Tribunal is constituted and made functional. Based on the aforesaid case, the Patna High Court disposed off the given writ petition.

14. SC takes stock of e-filing before ITAT, CESTAT; Sets target-date of June 30:- [TS-143-SC(DEL)-2023-GST]

SC taking into account data in relation to e-filing of appeal at various fora, issues additional directions for compliance by Income Tax Appellate Tribunal (ITAT) and Customs, Excise & Service Tax Appellate Tribunal (CESTAT); Gliding through the note on e-filing at various levels viz. HC, ITAT, CESTAT as also statistics provided by CBDT and CBIC revealing data of appeals/petitions in the e-filing mode, SC instructs that "the Ministry of Finance shall depute a senior officer to engage with the Acting President of the ITAT. If the rules are required to be amended, they should be amended to incorporate e-filing requirements"; SC instructs proper training to Members of ITAT to handle e-filed cases as also requests CESTAT, President to ensure implementation of e-filing by June 30, 2023; Accordingly, directing submission of a status report, lists the matter for July 28.

15. Government to announce national retail trade policy, accident insurance scheme for GST: News Report Dated 24th April 2023

The Indian government is set to announce a national retail trade policy and an accident insurance scheme for GST-registered traders soon. The proposed policy would help provide better infrastructure and more credit to the traders. The policy is expected to provide support to small retailers, improve infrastructure, and boost the e-commerce sector in India. It might include clauses that guarantee simple and quick access to affordable credit, ease the modernization and digitization of retail trade, support modern infrastructure for topics like distribution chain, encourage skill development and boost labour productivity, and offer a reliable mechanism for consultation and grievance redressal. Under the proposed policy, a single window clearance mechanism for traders may be developed, besides a centralised and computerized inspection management system.

<https://cfo.economictimes.indiatimes.com/news/tax-legal-accounting/govt-to-announce-national-retail-trade-policy-accident-insurance-scheme-for-gst-registered-traders->

[soon/99719861?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etcfo_news_2023-04-24&dt=2023-04-24&em=Z2FyZy5yYWh1bEBhc2lyZS5pbG==](https://www.financialexpress.com/economy/gst-dept-work-with-meity-to-track-offshore-online-gaming-cos/3064304/)

16. GST department work with MEITY to track offshore online gaming cos: News Report Dated 27th April 2023

The Goods and Services Tax (GST) department in India is working with the Ministry of Electronics and Information Technology (Meity) to track offshore online gaming companies that are operating in India without paying GST. The move comes after tax officials found that many offshore gaming companies operating in India were not registered on the Online Information Database Access and Retrieval platform and not paying due taxes in India.

The GST officials are now working on ways to tackle tax evasion by these offshore entities, including restricting their access to Indian users by blocking their websites and apps and are planning to use data analytics and artificial intelligence to identify these offshore gaming companies and track their activities. The Meity will provide technical support for the initiative. The department has already sent notices to several such companies, asking them to register with the GST network and pay the appropriate taxes.

This move is expected to help the Indian government increase its tax revenue from the online gaming industry, which has been growing rapidly in recent years. The move will also help create a level playing field for domestic gaming companies that are already paying GST.

<https://www.financialexpress.com/economy/gst-dept-work-with-meity-to-track-offshore-online-gaming-cos/3064304/>

17. GSTN Advisory on Bank Account Validation:- GSTN Update dated April 24th, 2023

The GSTN has issued an advisory to inform that the functionality for bank account validation is now integrated with the GST System. This feature is introduced to ensure that the bank accounts provided by the taxpayer is correct. The bank account validation status can be seen under the Dashboard→My Profile→Bank Account Status tab in the FO portal. Tax Payers will also receive the bank account status detail on registered email and mobile number immediately after the validation is performed for his declared bank account.

18. GSTN introduces new facility to verify document Reference Number on offline communications of State GST authorities:- GSTN Update dated April 28th, 2023

The GSTN has issued a new facility to verify document Reference Number (RFN) mentioned on offline communications issued by State GST authorities in order to enable the taxpayers to ascertain that an offline communication (i.e. one which is not system-generated) was indeed sent by the State GST tax officer or not. It is informed that in order to verify a Reference Number mentioned on the offline communications sent by State GST officers, the taxpayers can navigate to Services > User Services > Verify RFN option and provide the RFN which need to be verified. In case the RFN is of an offline communication generated by the State GST officer, the details with the valid RFN will be displayed.

19. Pre-import condition in Foreign Trade Policy for availing benefit of exemption is not arbitrary or unreasonable:- Union of India v. Cosmo Films Limited - [2023] 149 taxmann.com 473 (SC)

The Directorate of Revenue Intelligence initiated investigation and issued summons to the manufacturers on the ground that exemption claimed from all custom duty levies, including IGST and compensation cess was not admissible. It was argued that exemption was not allowed when goods manufactured were exported first in anticipation of licence/authorisation, with duty-free

import against the authorisation having been undertaken later. The assessee approached the High Court against it and challenged the pre-import condition.

The Gujarat High Court had struck down the 'pre-import' condition in Foreign Trade Policy for availing benefit of exemption from levy of integrated tax and GST compensation cess on import under Advance Authorisation (AA) as unconstitutional. The Revenue filed appeal before the Apex Court. The Supreme Court noted that inconvenience caused to exporters by paying two duties and claim refunds could not be a ground to hold the 'pre-import' condition as arbitrary. Therefore, the Apex Court set aside Gujarat High Court judgment and held that pre-import condition in Foreign Trade Policy for availing benefit of exemption is not arbitrary or unreasonable.

However, the Supreme Court has directed the Revenue to permit the manufacturer-exporters who were enjoying interim orders, till the impugned judgments were delivered, to claim refund or input credit and they shall approach the jurisdictional Commissioner and apply with documentary evidence within six weeks from the date of the judgment.

20. Onus on GST authority to prove that e-way bill was reused to levy tax and penalty: *BI Agro Oils Ltd. v. State of U.P.* - [2023] 149 [taxmann.com](https://www.taxmann.com) 434 (Allahabad)

A transport vehicle carrying goods of the petitioner was intercepted by the department and seizure order was passed on the ground that invoice and e-way bill dated 23.10.2017 were bearing packing date of 26.10.2017 and hence, the documents did not relate to the goods intercepted.

The petitioner submitted reply and stated that while under transportation earlier, the goods were damaged on the way and oil contained therein spilled over other packaging and, thus, same were brought back and thereafter properly packed goods were supplied through the same invoice and e-way bill. The department levied penalty which was paid by the petitioner under protest and appeal was filed. However, the appeal was rejected and it filed writ petition to challenge the order of penalty.

The High Court noted that the seizing authority had to establish by evidence that e-way bill was being reused but there was no evidence produced by such authority. The mere assertion made at the end of the seizure order that it was clearly established that the assessee had made double use of the e-way bills would be merely a conclusion drawn bereft of material on record. Therefore, the Court held that the impugned order was liable to be set aside.

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REGULATORY

1. RBI launches PRAVAAH to speed up approvals for entities:- News Report

The RBI Governor Shaktikanta Das has announced a secured web based centralised portal within the regulatory framework of the statement on Developmental and Regulatory Policies under which an “Enhancing Efficiency of Regulatory Process” is charted taking forward the Budget 2023-24 proposal of ease and reduction of compliance by financial sector regulators within laid down time limits to decide on application of laws. The RBI regulates the financial sector comprising commercial banks, financial institutions and non- banking companies and fintech companies. Fintech companies are subject to RBI Regulation either directly through the issuance of NBFC licences to them or indirectly through the regulation of banks and NBFCs connected to fintech. The organisation must fulfil a number of standards in order to receive licensure from the RBI. Currently, the processes for entities to make an application seeking licence/authorisation or regulatory approval from the Reserve Bank under various statutes/regulation take place in both online and off-line modes.

“This measure will bring greater efficiencies into regulatory processes and facilitate ease of doing business for the regulated entities of the Reserve Bank’ Das said. “Various entities are required to obtain license, authorization to carry out activities regulated by RBI.

The Union Budget for 2023-24 has announced the need to simplify, ease and reduce cost of compliance by the financial sector, therefore, it has been decided to develop a secured web based centralised portal named “ PRAVAAH” (Platform for Regulatory Application, Validation and Authorisation) which will gradually extend to all the types of application made to RBI across all functions. Other than facilitating ease of application for approvals, the portal will also show time limits for deciding on the applications/approvals sought. "This measure will bring greater efficiencies into regulatory processes and facilitate ease of doing business for the regulated entities of the Reserve Bank," Das further said. The Central Bank announced 5 Additional Developmental And Regulatory Policy Measures RBI that included Development of Web portal for unclaimed deposits, Grievance Redress Mechanism relating to Credit Information Reporting, Operation of Pre-Sanctioned Credit Lines at Banks through the UPI and Developing an Onshore Non-deliverable Derivative Market.

https://cfo.economictimes.indiatimes.com/news/policy/rbi-launches-pravaah-to-speed-up-approvals-for-entities/99317287?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etcfo_news_2023-04-08&dt=2023-04-08&em=Z2FyZy5yYWh1bEBhc2lyZS5pbG==

2. Government modifies requirement of furnishing PAN/Aadhaar while opening Saving Account:- The Ministry of Finance Notification dated 31 March 2023

PAN and Aadhaar number has become mandatory for making investments in small saving schemes like PPF, Sukanya Samriddhi Yojana (SSY), Post Office Saving Scheme, Senior Citizens Saving Scheme (SCSS), etc. In this regard, The Ministry of Finance has issued a notification on 31st March 2023 wherein these changes have been notified as part of KYC (Know Your Customer) for small saving schemes. Prior to this central government's notification, investment in small saving schemes was possible without submission of one's Aadhaar number. But, from now onwards, one will have to submit at least Aadhaar enrolment number for making investment in government-backed small saving schemes. The notification also made it clear that one will have to furnish PAN card on investment above a certain threshold.

As per Finance Ministry's notification, small savings subscribers will have to submit one's Aadhaar number by 30th September 2023, if they have not submitted their Aadhaar number while opening PPF, SSY, NSC, SCSS or any other small savings account. The notification further made it clear that new subscribers who wish to open any of the small saving scheme without Aadhaar number, they

will have to furnish Aadhaar number within six months of account opening. In case of non seeding of Aadhaar number or Aadhaar enrolment number, one's small savings account will be freezed after six months of account opening. For existing subscribers, their account will be freezed from 1st October 2023, if they fail to furnish their Aadhaar number with their small savings account within the given deadline. The notification went on to add that PAN has to be submitted at the time of small savings account opening and in case the PAN is not submitted at the time of account opening, it must be submitted within two months of account opening in following cases:

- 1] The balance at any point of time in the account exceeds fifty thousand rupees; or
- 2] The aggregate of all credits in the account in any financial year exceeds one lakh rupees;
- 3] The aggregate of all withdrawals and transfers in a month from the account exceeds ten thousand rupees.

"In the event of failure of the depositor to submit the Permanent Account Number (PAN) within the specified period of two months, his account shall cease to be operational till the time he submits the Permanent Account Number to the Accounts Office," the notification further added.

3. No profession tax in Maharashtra on monthly Salary upto Rs. 25000 of women:- RNI No. MAHENG /2009/35528 dated 20 March 2023

The Government of Maharashtra notified the Maharashtra State Tax on Professions, Trades, Callings, and Employments (Amendment) Bill, 2023 in the Maharashtra Legislative Assembly, which comes into effect from 01st April 2023. The bill proposes to amend the rates of profession tax in Maharashtra and the limits of deduction increased, which are as follows:-

Male Monthly Salary or wages	Amount Payable
Less than Rs.7,500	Nil
Rs.7,500 to Rs.10,000	Rs.175 per month
Rs.10,001 & above	Rs.2500 per annum to be paid in following manner:- a) Rs.200 per month except for February b) Rs.300 for February

Female Monthly Salary or wages	Amount Payable
Less than Rs.25,000	Nil
Rs.25,001 & above	Rs.2500 per annum to be paid in following manner:- a) Rs.200 per month except for February b) Rs.300 for February

4. Tax refund scheme for exports may be extended beyond September:- News Report

The Indian government is planning to extend the expanded duty remission scheme for exporters beyond the 30th September 2023 deadline, providing relief to the pharmaceutical, steel, and chemical sectors. The Remission of Duties and Taxes on Exported Products (RoDTEP) Scheme, which was expanded in December last year to include pharmaceutical, chemical, and steel products and stipulated that the additional products will be eligible for tax refunds up to 30th September 2023, and we wanted to gauge if it had an adequate outlay to fund the tax remission for FY 2023–24. The monthly refund claims under the RoDTEP scheme are about INR 1200 crore. So the budgetary allocation of INR 15,069 crore for FY 2023–24 should be enough to continue to extend the benefit to the sectors that are included later.

The scheme refunds central, state, and local levies incurred in the manufacture and export of products not covered by any other incentive scheme and it is based on the globally accepted

principle that exports can be exempt from taxes and levies imposed can be refunded. The scheme is also compliant with the World Trade Organisation (WTO) norms. The scheme covers 10,342 export products, constituting about 15% of the overall merchandise dispatches. It is seen as critical to improving the country's export competitiveness and achieving the \$1 trillion merchandise export target by 2030.

https://cfo.economicstimes.indiatimes.com/news/tax-legal-accounting/tax-refund-scheme-for-exports-may-be-extended-beyond-september/99330977?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etcfo_news_2023-04-08&dt=2023-04-08&em=Z2FyZy5yYWh1bEBhc2lyZS5pbG==

5. Sensitising Authorised Dealer (AD) branches of Indian banks about facilities in IFSC: IFSCA Circular No. F.No.598/IFSCA/Communication with IBUs/2022-23/1, dated 31 March 2023

The International Financial Services Authority (IFSCA) release a circular wherein it was observed that the onshore branch of the AD Bank was refusing to route a foreign exchange transaction through the IBU due to the lack of clarity by the branch on whether IBUs fall within the definition of "a foreign branch of Indian bank" as per the relevant RBI circular. This lack of knowledge about IFSC and the status of IBUs at the AD branch level is likely to frustrate efforts to make IFSC the hub for India related foreign exchange transactions.

Subsequently, to address this issue, the IFSCA has directed all AD banks to undertake structured sensitization programs for staff of the AD branches to make them aware of the legal and regulatory status of IBUs and transactions that may be routed through IBUs instead of foreign branches of Indian banks. The authority has also sent a separate communication to the top management of the banks to support this process.

Further, IBU Heads have been directed to give top priority to the contents of the circular, and support may be sought from IFSCA officials as speakers in such programs if needed. A quarterly report should be submitted to the Authority indicating the number of sensitization programs conducted during the quarter, starting from the quarter ended June 30, 2023. This directive is in line with the primary objective of IFSCA Act, 2019, which aims to bring back financial transactions and financial services carried out in offshore financial centers to India by providing the best-in-class business and regulatory environment.

6. Govt. notifies regulations for arbitrators' empanelment with India International Arbitration Centre:- Notification F. No. A-60011/3/2023-IIAC dated 31.03.2023

The government notifies India International Arbitration Centre (Criteria for Admission to the Panel of Arbitrators) Regulations, 2023, stipulating inter alia that the empanelment of an arbitrator with the India International Arbitration Centre ('IIAC') shall be for a period of 5 years. The panel shall consist of members who are experienced arbitration practitioners of repute, at national and international level, and persons having wide experience in the area of ADR states that the Chamber of Arbitration shall empanel arbitrators and maintain the panel of arbitrators from amongst persons who are proficient and willing to serve as arbitrators, subject to their expertise and experience for either domestic or international arbitration or both, as may be determined by the Chamber.

The criteria for re-empanelment, the Regulations also stipulate that the Govt. may from time to time issue practice directions which may be considered necessary for the purposes of empanelment of arbitrators by the Chamber of Arbitration and such practice directions may be published on the website of IIAC for the information of all concerned. Further, vide another Notification, Govt. notifies the India International Arbitration Centre (Transaction of Business) Regulations, 2023, whereby the IIAC may meet as often as may be considered necessary for transaction of its business

but shall ordinarily meet at least once in every quarter at such place, date and time as may be decided by the IIAC. IIAC shall be determined by a majority of votes, the Regulations mandate 3 IIAC members to be present in person or any other available mode to constitute the quorum for any of the IIAC's meetings.

7. Handbook of Procedure 2023 issued by the Government:- Public Notice No. 01/23 Dated 01.04.2023

The government released the Foreign Trade Policy 2023 (FTP 2023) on 31 March 2023, and it is effective from 1 April 2023 onwards. The detailed guidelines and procedure for the operationalisation of the provisions of the FTP 2023 are now notified in the Handbook of Procedure 2023 (HoP 2023) by the Director General of Foreign Trade(DGFT). Parallely, the relevant exemption notifications and non-tariff notifications under the Customs Act, 1962 have been notified as well by the Central Board of Indirect Taxes and Customs (CBIC) for the operationalisation of FTP 2023. These have also come into effect from 1 April 2023. HoP 2023 outlines the detailed contours for the operationalisation of FTP 2023. Certain key changes in HoP 2023 are outlined below along with notifications issued by the CBIC:

1. There have been changes in the Chapters, we now have a total of 11 Chapters. Apart from the old provisions of Advance Authorisation, EPCG, and others, 3 New Specific Chapters have been added.
 - a. Chapter 3 – Developing Districts as Export Hubs
 - b. Chapter 9 – Promoting Cross Border Trade in Digital Economy (E-commerce)
 - c. Chapter 10 - SCOMET: Special Chemical, Organisms, Materials, Equipment & Technologies
2. The eligibility criteria for Status Holder Certificate have been revised as below:
 - a. One Star Export House – 3 million USD {No Change}
 - b. Two Star Export House – 15 million USD {Previously it was 25 million USD}
 - c. Three Star Export House – 50 million USD {Previously it was 100 million USD}
 - d. Four Star Export House – 200 million USD {Previously it was 500 million USD}
 - e. Five Star Export House – 800 million USD {Previously it was 2000 million USD}
3. Considering a large number of transactions under Merchanting Trade, FTP has now defined Merchanting Trade under Chapter 2 of the FTP.
4. A dedicated Chapter 3 is created on Developing Districts as Export Hubs. The Policy highlights the intent to make every district as Export Hubs and promote specific products from each identified district.
5. Norms ratified by Norms Committee (NC) on or after 01.04.2023 in respect of Advance Authorisation obtained under para 4.07 shall be valid for **a period of 3 years** from the date of ratification.
6. Every case under the Quality Complaints and Trade Disputes will now have a Case officer assigned for monitoring purpose from the designated Regional Authority.
7. In line with the current business trends, Chapter 9 has been introduced to promote the Export of Goods & Services via E-Commerce. Necessary Definitions and details are provided under the same. The per consignment limit for exports via courier is also raised to Rs. 10 Lakhs.
8. A New Chapter is dedicated to SCOMET products. The procedure and authority to apply for issuance of Authorisation for export / import products under the SCOMET category are provided in the chapter.

8. ROC (Tamil Nadu) levied Rs. 15 lakh penalty for failure to carry out actuarial valuation for gratuity, leave encashment:- ROC/CHN/ADJ Order/S.134(3)(f)2022, dated 09th February 2023

In the matter of TBF Nidhi (Kumbakonam) Ltd., ROC (Tamil Nadu) imposes a total penalty of Rs. 15 lakhs on a Nidhi Company and its 4 directors for failure in carrying out the actuarial valuation for gratuity and leave encashment for the FYs 2017-18 to 2019-20 and non-disclosure of the auditors remarks / reservation in the Boards Report in violation of Sec. 134(3)(f) of the Companies Act.

During the inspection of the Company u/s 206(5) of the Act, it was observed that in the Independent Auditor's Report, the auditor has reported that the company has not complied with Accounting Standard 15 specified u/s 133 of the Act r.w. Rule 7 of the Companies (Accounts) Rules, where no actuarial valuation was done for gratuity and leave encashment for the FYs 2017-18, 2018-19 and 2019-20. Registrar highlights that Sec.134(3)(f) of the Act lays down that there shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made –

(i) by the auditor in his report; and

(ii) by the company secretary in practice in his secretarial audit report.

Accordingly, asserting that “Hence the company has not complied with section 134(3) (f) of the Companies Act, 2013. Therefore, the company and every Officer who is in default are liable for penal action under Section 134(8) of the Companies Act, 2013.”, Registrar imposes a penalty of Rs. 9 lakhs on the Company and Rs. 6 lakhs on the Directors in terms of Sec. 134(8) of the Act.

Apart from the violations stated above, the company was also adjudicated for violation of section 118(1) of the Act r.w. Rule 25 of Companies (Management and Administration) Rules, 2014, wherein every company shall maintain minutes of each meeting of directors, members and creditors. Therefore, the ROC has imposed a penalty of Rs. 1.35 Lakhs on the company and its officers in default using the powers under section 454 (1)&(3) vide Roc/CHN/TBF/S.118/Adj/2022 dated 09 February 2023.

<https://www.mca.gov.in/bin/dms/getdocument?mcs=Pycj1hg8VtI8R%252BB09QS8yQ%253D%253D&type=open>

9. ICAI issues Technical Guide on Disclosure & Reporting of KPIs in offer documents: Technical Guide dated 11th April 2023

The CA Institute has come out with a technical guide on disclosure and reporting of key performance indicators (KPIs) in offer documents. The technical guide has been developed by the Auditing and Assurance Standards Board (AASB) of ICAI on the request of SEBI. The guide has been developed by AASB in consultation with SEBI, sources said.

Requirements for Disclosing KPIs:

The ICDR Regulations specify several conditions that must be met before KPIs can be disclosed in offer documents. These include:

(i) Approval of the KPIs by the issuer company's audit committee, and

(ii) Certification of the KPIs by professionals such as statutory auditors, chartered accountants, or firms of chartered accountants or cost accountants.

KPIs are numerical measures of the issuer company's historical financial or operational performance and financial or operational positions. KPIs can be broadly classified into following four categories:

(i) GAAP financial measures,

(ii) Non-GAAP financial measures

- (iii) Non-financial measures (part of financial reporting) and
- (iv) Operational measures (not part of financial reporting).

Key role of Management:

The management of the issuer company is responsible for designing, implementing, and maintaining adequate internal controls over KPIs and testing of such controls

The technical guide provides guidance to practitioners in reporting requirements relating to KPIs disclosed under offer documents in case of IPO in India in accordance with the ICDR Regulations. It is also applicable to issuer companies for disclosing KPIs in offer documents as per the requirements of ICDR (Issue of Capital and Disclosure Requirements) Regulations.

Sanjeev Kumar Singhal, Chairman, AASB, said that India has taken a path breaking step of mandating presentation of KPIs in offer documents and requiring assurance opinion on the same.

It's essential to monitor the KPIs used during private equity investments or other means in past versus KPIs used during IPOs and in future for bringing clarity/transparency for the basis of issue price used during IPO. "The requirement will go a long way in protecting the interest of investors. The technical guide on KPIs issued by ICAI provides guidance to both issuer companies and members of ICAI".

Technical guidance

Technical guide provides guidance on segregation of KPIs among GAAP financials measures, non-GAAP financial measures and non-financial measures. "It will help in strengthening the control environment around identification and reporting of KPIs by the issuer companies and will provide requisite technical guidance to the auditors and practitioners," he added.

The issuer company and the lead merchant bankers (LMs) are primarily responsible to ensure disclosure of KPIs in offer documents in accordance with ICDR regulations and to ensure compliance with other requirements of ICDR regulations. Further, KPIs disclosed in the offer document need to be approved by the audit committee of the issuer company.

KPIs disclosed in the offer document are required to be certified by the statutory auditor(s) or chartered accountants or firm of chartered accountants.

The technical guide has been issued on April 6. The guide is applicable only to IPO as outlined in the ICDR Regulations. It has been developed considering the offer or sale of securities in India to prospective Indian investors only. It does not apply to offering or sale of securities outside India, sources added.

Overview of the Technical Guide

The Technical Guide provides comprehensive guidance on various aspects of disclosing KPIs in offer documents, including:

- (i) KPIs that can be disclosed based on different industries
- (ii) The roles and responsibilities of bankers, issuer companies, and practitioners and
- (iii) Reporting requirements related to KPIs, including illustrative formats of KPI reports.

The Technical Guide is applicable to both practitioners and issuer companies for disclosing KPIs in offer documents as per the requirements of the ICDR Regulations. Practitioner refers to a Practicing Chartered Accountant or a Firm of Chartered Accountants that holds a peer reviewed certificate issue from ICAI.

Applicability of the Technical Guide

The Technical Guide is applicable only to initial public offerings (IPOs) as outlined in the ICDR Regulations and is developed considering the offer or sale of securities in India to prospective Indian investors only. It does not apply to offerings or sales of securities outside India.

Moreover, the Technical Guide should be read in conjunction with the Guidance Note on Reports or Certificates for Special Purposes (Revised 2016) issued by ICAI for guidance on various aspects of such engagements, including engagement acceptance procedures, planning, materiality, and written representations.

Conclusion

The ICAI's Technical Guide on Disclosure and Reporting of KPIs in Offer Documents is an essential resource for practitioners and issuer companies looking to comply with the ICDR Regulations. By providing detailed guidance on various aspects of KPI disclosure and reporting, the guide ensures that KPIs are presented in a manner that is informative, easy to read, and search engine friendly.

<https://resource.cdn.icai.org/73533aasb59362.pdf>

10. IFSCA: Funds of client availing portfolio management services can be maintained in FME's account: IFSCA/2022-23/GN/REG034 dated 11th April 2023

IFSCA notifies amendments to the International Financial Services Centres Authority (Fund Management) Regulations, 2022 w.e.f. April 11, 2023 which states that the funds of a client availing portfolio management services (other than those availing only advisory services) may be maintained in:

- i. a specific bank account of the Fund Management Entity ('FME') in a Banking Unit,
- ii. a specific bank account of the client in a Banking Unit, a bank in India or a Foreign Jurisdiction or,
- iii. any other manner as may be specified by the Authority

Further, explains that when funds are maintained in the specific bank account of a client, the FME operating as portfolio manager shall ensure that it is duly authorized to operate the said bank account either by itself or through a custodian and that it shall provide the details of all such bank accounts including transactions carried out thereunder, to the Authority, whenever directed to do so.

11. RBI simplifies process for registration of Core Investment Companies: RBI Press Release No. 2023-24/44 dated 10 April 2023

RBI simplified the application process for registration as Core Investment Companies (CICs) to make it structured and aligned with the existing CIC regulations, with a view to making the registration process smoother and hassle-free. It also reduced the number of documents to be furnished along with the application form from the existing set of 52 to 18 to make the registration process user-friendly.

The revised application form, together with an indicative list of documents and information to be furnished along with the application, has been uploaded on the RBI website and specifies that the documents to be furnished along with the application are indicative and not exhaustive. Further, RBI stipulated that, if necessary, it would call for further document(s) to satisfy itself on the eligibility of the company seeking registration as a CIC and in the event of RBI calling for further documents in addition to those mentioned in the list, the applicant company must respond within a stipulated time of one month.

12. RBI unveils Framework for acceptance of Green Deposits: Circular no. RBI/2023-24/14 DOR.SFG.REC.10/30.01.021/2023-24, dated 11.04.2023

The RBI has released a framework for acceptance of Green Deposits by Regulated Entities (REs) to encourage them to offer green deposits to customers to be effective from 01 June, 2023, *inter alia* stating that the financial sector can play a pivotal role in mobilising resources and their allocation in green activities/projects. As per the framework, entities regulated by RBI can accept

green deposits from customers and the proceeds shall be allocated for projects undertaken in sectors like renewable energy, energy efficiency, promoting climate resilience, and improvement of natural ecosystems and biodiversity. RBI adds that the framework shall be applicable to:

(a) Scheduled Commercial Banks including Small Finance Banks (excluding Regional Rural Banks, Local Area Banks and Payments Banks) and

(b) all deposit taking NBFCs registered with the RBI, including HFCs registered under section 29A of the National Housing Bank Act, 1987.

It defines a "green deposit" as an interest-bearing deposit received by the RE for a set length of time, the revenues of which are earmarked for green finance. It states that REs must issue green deposits as cumulative/non-cumulative deposits and must implement a detailed Board-approved policy on green deposits that details all aspects of green deposit issuance and allocation. Further, it states that revenues from green deposits would be allocated according to the official Indian green taxonomy, and it names nine areas of green initiatives to which the proceeds will be allocated. Furthermore, the distribution of these monies during a fiscal year must be subject to independent Third-Party Verification/Assurance, also requires REs to place a report before their BoD within 3 months from end of FY.

13. RBI issues Master Circular on Bank Finance to NBFCs: Notification No. RBI/2023-24/09 DOR.CRE.REC No. 07/21.04.172/2023-24 dated 03.04.2023

The RBI issues the Master Circular on Bank Finance to Non-Banking Financial Companies ('NBFCs,' which lays out the RBI's regulatory policy governing bank financing of NBFCs, and is applicable to all Scheduled Commercial Banks (except Regional Rural Banks). It indicates that Bank Finance to NBFCs does not require registration with the RBI, and it elaborates that banks may make credit decisions based on standard variables such as the purpose of lending, the kind and quality of underlying assets, the repayment capacity of borrowers, risk perception, and so on. The RBI outlines the activities that are not suitable for bank credit, such as bills discounted / rediscounted by NBFCs, with the exception of rediscounting of bills discounted by NBFCs deriving from the sale of commercial vehicles and two or three wheelers. Furthermore, NBFCs' present and long-term investments in any firm / entity in the form of shares, debentures, etc., as well as unsecured loans / inter-corporate deposits by NBFCs to / in any company.

Other prohibitions on bank finance to NBFCs include bridge loans / inter finance, which states that banks should not grant bridge loans of any kind, or interim finance against capital / debenture issues and / or in the form of bridging loans pending raising long-term funds from the market through capital, deposits, and so on to all categories of NBFCs. It further states that banks should not engage in Zero Coupon Bonds issued by NBFCs unless the issuer NBFC establishes and invests a sinking fund for all accumulated interest in Government bonds.

14. SEBI notifies formulation of price bands for first day of trading after IPO: SEBI Circular No. SEBI/HO/MRD-TPD1/CIR/P/2023/55 dated 11 April 2023

SEBI has notified the formulation of price bands for the first day of trading pursuant to an initial public offering (IPO) and re-listing in a normal trading session. Call auction sessions are conducted on multiple stock exchanges, and the discovered price or equilibrium price pursuant to such auction sessions could be different on each exchange. It was remarked that if the difference in these discovered prices is significant, there could be a situation wherein price bands on individual exchanges are far apart from each other, giving an incorrect picture of the price band to investors.

In this regard, after discussion with the stock exchange and SMAC, a call auction session would continue to be conducted separately on individual exchanges, and orders would be matched by respective exchanges after computation of the equilibrium price. If the difference in the equilibrium price between exchanges in percentage terms is greater than the applicable price band for the scrip, a common equilibrium price (CEP) would be computed by exchanges. The CEP shall be a volume-

weighted average of equilibrium prices on individual exchanges as determined by the call auction, and the exchanges shall set the aforesaid CEP in their trading systems and apply uniform price bands based on the CEP, as applicable. The provisions of this circular shall take effect after 60 days from the date of issuance of the circular.

15. SEBI Directs AIFs to provide option of ‘Direct Plan’ to investors: Circular no. SEBI/HO/AFDPoD/CIR/2023/054 dated 10th April 2023

To provide flexibility to investors for investing in AIFs and to bring transparency in expenses and curb mis-selling, Security Exchange Board of India (SEBI) notified direct plan for schemes of Alternative Investment Funds (AIFs) along with trail model for distribution commission in AIFs; SEBI vide circular laid down that – (i) AIF schemes shall have an option of ‘Direct Plan’ for investors, (ii) such Direct Plan shall not entail any distribution fee/ placement fee, (iii) AIFs shall ensure that investors who approach the AIF through a SEBI registered intermediary which is separately charging the investor any fee (such as advisory fee or portfolio management fee), are on-boarded via Direct Plan only.

Additionally, SEBI from May 1, 2023 onwards mandates that AIFs disclose distribution/ placement fees to investors of the AIF/scheme of AIF at the time of on-boarding and that Category III AIFs shall charge distribution/ placement fees to investors only on an equal trail basis, meaning that no upfront distribution fee/ placement fees shall be charged by Category III AIFs directly or indirectly to their investors. SEBI also stipulates that Category I and Category II AIFs may pay up to one-third of the total distribution/ placement fees on upfront basis and the remaining fee shall be paid to distributors on equal trail basis over the tenure of the fund.

16. SEBI clarifies on usage of brand name/ logo by investment advisers, research analysts: Circular no. SEBI/HO/MIRSD/MIRSD-PoD-2/P/CIR/2023/052 dated 6th April 2023

SEBI, found that few investment advisers and research analysts are using the brand name/ trade name/ logo more prominently in their advertisements, websites, publications, correspondences with clients and various documents while marketing their services rather than their name as registered with SEBI, thus SEBI vide its circular clarified that Investment Advisers (‘IAs’) and Research Analysts (‘RAs’) may use brand name/ trade name/ logo, however, in order to ensure the transparency in such a usage of brand name, directed them to ensure that the information such as name of the IA/ RA as registered with SEBI, its logo, its registration number and its complete address with telephone numbers shall be prominently displayed on portal/ website, if any, notice/ display boards, advertisements, publications, KYC forms and client agreements;

According to SEBI, the brand name, trade name, or logo may or may not be connected to the name of the IA or RA as registered with SEBI, which may confuse and deceive investors; Accordingly, the Regulator mandates that the disclaimer "Registration granted by SEBI, membership of BASL (in case of IAs), and certification from NISM in no way guarantee performance of the intermediary or provide any assurance of returns to investors" be mentioned on any portal or website, notice/display boards, publications, KYC client forms, client agreements, statements or reports, or any other form of correspondence with the client; Finally, stating that IA/RA may not use the SEBI logo. The provisions of this circular will be applicable w.e.f. May 1, 2023.

17. SEBI prescribes advertisement code for investment advisers and research analysts: SEBI Circular No. SEBI/HO/MIRSD/ MIRSD-PoD-2/P/CIR/2023/51 dated 05 April 2023

SEBI notified an advertisement code for investment advisers (IAs) and research analysts (RAs) while directing them to ensure compliance with the said code w.e.f. 01 May 2023, with a view to further strengthening the conduct of IAs and RAs. An advertisement shall include all forms of

communications, issued by or on behalf of IA/RA, that may influence investment decisions of any investor or prospective investor. The forms of communications to which advertisement code will be applicable, include pamphlets, circulars, brochures, notices, research reports, or any other literature, document, information, or material published or designed for use in any publication or display, etc.

SEBI further lays down that the advertisement shall contain the information and disclosures such as the name of the IA/RA as registered with SEBI, the registered office address, the SEBI Registration No., the logo, brand name, or trade name of the IA/RA, and the CIN of the IA/RA, if applicable, information that is accurate, true, and complete in unambiguous and concise language, and the standard warning in legible fonts that states "Investment in securities market are subject to market risks. Read all the related documents carefully before investing". No addition or deletion of words shall be made to or from the standard warning, etc. The advertisement shall not contain anything that is prohibited for publication under the law: statements that are false, misleading, biased, or deceptive based on assumptions or projections; any misleading or deceptive testimonials; statements that, directly, by implication, or by omission, may mislead the investor, etc.

SEBI stipulates that prior approval for the advertisement or material shall be obtained from a SEBI recognised supervisory body before issue, and in the event of the suspension of any IA or RA by SEBI and/or a SEBI recognised supervisory body, the IA or RA so suspended shall not issue any advertisement either singly or jointly with any other IA or RA during the period of suspension. Also, the IA/RA shall not engage in games, leagues, schemes, competitions, etc. that may involve the distribution of prize monies, medals, gifts, etc., and a copy of the advertisement shall be retained by the IA/RA for a period of five years in terms of Regulation 19(2) of the SEBI (Investment Advisers) Regulations, 2013 and Regulation 25(2) of the SEBI (Research Analysts) Regulations, 2014, respectively.

18. SEBI Issues Guidelines regarding exclusion of investors from investing in AIF: SEBI's Circular No. SEBI/HO/AFD-1/PoD/P/CIR/2023/053 dated April 10, 2023

SEBI issues Guidelines w.r.t excusing or excluding an investor from an investment of AIF, taking into account the recommendations of Alternative Investment Policy Advisory Committee. Accordingly, laying down the circumstances in which an AIF may excuse its investor from participating in a particular investment, and specifies that, if the investor, - (i) based on the opinion of a legal professional/ legal advisor, confirms that its participation in the investment opportunity would be in violation of an applicable law or regulation, or (ii) as part of contribution agreement or any other agreement signed with the AIF, had disclosed to the manager that, participation of the investor in such investment opportunity would be in contravention to the internal policy of the investor.

Further provides that an AIF may exclude an investor from participating in a particular investment opportunity, if the manager of the AIF is satisfied that the participation of such investor in the investment opportunity would lead to the scheme of AIF being in violation of applicable law or regulation or would result in material adverse effect on the scheme of the AIF, where the manager shall record the rationale for such exclusion, along with the documents relied upon, if any. Lastly, SEBI also stipulates that, if the investor of an AIF is also an AIF or any other investment vehicle, such investor may be partially excused or excluded from participation in an investment opportunity, to the extent of the contribution of the said fund/ investment vehicle's underlying investors who are to be excused or excluded from such investment opportunity.

19. SEBI releases framework on upfront collection from issuers for LPCC's Settlement Guarantee Fund:- SEBI's Circular No.SEBI/H O/D DH S/DDH S-RAC PO D1 /CI R/P/2023/56 dated April 13, 2023

SEBI lays down the framework for upfront collection of amounts from eligible issuers of debt securities to build the Settlement Guarantee Fund of the Limited Purpose Clearing Corporation ('LPCC') and states that the eligible issuers shall be notified by the LPCC as per its risk management. Further, it highlights that an amount of 0.5 basis points of the issuance value of debt securities per annum based on the maturity of debt securities shall be collected by the Stock Exchanges and placed in an escrow account prior to the allotment of the debt securities.

Moreover, SEBI specifies that Stock Exchanges shall transfer the amounts so collected to the bank account of the LPCC within one working day of the receipt of the amount and inform the details of the same to LPCC and clarifies that the details of the amount so collected shall also be disclosed by the Stock Exchanges on their websites. Lastly, directing LPCC to provide an illustration of the calculation of the amounts to be contributed by the eligible issuers, SEBI stipulates that the provisions of this Circular shall come into force for the offer documents filed on or after May 1, 2023, for private placement/public issues of debt securities by such eligible issuers as specified by the LPCC.

20. Portfolio Manager can issue 'research report' to 'public' without registration as Research Analyst:- SEBI In the matter of LGT Wealth India Pvt. Ltd.

The Securities and Exchange Board of India (SEBI), in an Informal Guidance issued to a portfolio manager ("LGT Wealth India Pvt. Ltd."), clarified that a Portfolio Manager can issue 'research report' to public, without obtaining certificate of registration as a Research Analyst, subject to certain compliances. SEBI notes that the applicant company provides discretionary services and non-discretionary portfolio management services to its clients under the regulatory framework of the Portfolio Managers ('PMS') Regulations, and provides referral services by making client referrals to various financial products/service providers including but not limited to third party PMS products and alternative investment fund (AIF) products. As to whether the term "research recommendation, or an opinion concerning securities" as per Regulation 2(w) of the Research Analyst Regulations includes making buy/sell/hold recommendation and/or giving price target in respect of securities, SEBI states that as per Regulation 2(1)(w), research report means any communication, written or electronic, that includes research analysis, research recommendation and opinion concerning securities that provide a basis of investment decision, and the said activities will be covered by the definition of 'research report'.

Further, explaining whether the company can provide separate Research Analyst services without registration as an RA, the Regulator highlights that by virtue of Regulation 3(1) read with 2(1)(g) of the RA Regulations, Portfolio Managers registered under the PMS Regulations shall be exempted from obtaining a certificate of registration as an RA, subject to compliance with Chapter III of the RA Regulations, for issuance, circulation or distribution of research report to public. SEBI adds that however, in order to issue research report/recommendation to "any person", identified or selected, the Portfolio Manager shall need to obtain a certificate of registration under the RA Regulations. Lastly SEBI concludes that thus, RA Regulations restrict the exemption to certain intermediaries, only w.r.t. issuance, circulation or distribution of research report to specific clients or identified or selected persons, and states that for the purpose of availing such limited exemption under the provision, such intermediaries will have to comply with Chapter III of the RA Regulations.

21. EPFO extends timeline for linking of Aadhar with UAN of EPF members up to 31.03.2024:-Notification No.BKG-27/5/2021-BKG/E-38791/, dated: 18.04.2023

The Employee Provident Fund Organisation (EPFO) has granted an extension for mandatory linking of Aadhaar with the Universal Account Number (UAN) of EPF members for filing of ECR (Electronic Challan cum Return) up to 31.03.2024. The extension applies to certain classes of establishments

including Beedi making, Building and Construction and Plantation Industries and to the North Eastern Region comprising of States of Assam, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland & Tripura.

22. Retired Employees to apply for higher pension under up to May 3, 2023:- EPFO Update dated 21st April 2023

Pursuant to an order of the Supreme Court dated 4th November 2022, the members of the Employees' Provident Fund Organization (EPFO) who are also members of the Employees' Pension Scheme might contribute more to their pensions if certain conditions are met. This has ended several years of uncertainty caused by judgements issued by multiple high courts that overturned an EPFO notification issued on August 22, 2014, in this regard.

Accordingly, EPS EPFO extended the deadline for Retired Employees to apply for higher pension up to May 3, 2023.

Eligible Employees:

According to the Supreme Court, the employees who fall under following categories may apply:

(a) Any individual who joined the Employees' Provident Fund (EPF) Scheme on or after September 1, 2014, will not be eligible to join the Employees' Pension Scheme (EPS) if their basic salary exceeds Rs 15,000 per month

(b) The maximum pensionable salary for the purposes of calculating the pension is still Rs 15,000 per month as notified by the EPFO in 2014. This means that even if the basic salary is higher than Rs 15,000 the employer's contribution to pension will continue to be calculated on a basic salary of Rs 15,000.

Employees who were members of the EPS as of September 1, 2014 and had been making a greater contribution to the EPS – i.e., contribution on their actual wage if it was more than Rs 15,000 per month – received a one-time relief under the judgment. To continue making payments on the greater sum, these employees must now provide the EPFO with a joint declaration, along with their employer. This declaration must be made within four months of the judgment date. November.

New Extended Date for Applying:

Earlier, there were apprehensions that March 3, 2023 is the last date for opting for higher pension. However, all eligible members can opt and apply jointly with their employers for higher pension till May 3, 2023, at **unified members' portal of retirement fund body EPFO**.

Process to apply:

Late last month, the EPFO activated the URL of the unified members' portal which states that subscribers seeking a higher pension can apply for it by May 3, 2023.

Steps to apply for higher pension on EPFO portal:

- Visit the member e-Sewa portal – <https://unifiedportal-mem.epfindia.gov.in/memberinterface/>
- Click on the pension on higher salary: exercise of joint option.
- Then, select application form for joint options.
- Enter your UAN, name, DOB, Aadhaar number, Aadhaar-linked mobile number and captcha.
- Enter the OTP received on your Aadhaar-registered mobile number.
- Submit the application.

23. Application for name removal to be made to Registrar (CPACE), w.e.f. May 1: MCA notification dated April 17, 2023

The Ministry of Corporate Affairs (MCA) vide its notification dated April 17, 2023 has notified Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2023 which will come into force with effect from May 01, 2023, which states that an application for striking off u/s 248(2) of the Companies Act, 2013, shall be made to the Registrar, Centre for Processing Accelerated Corporate Exit (“CPACE”) in Form No. STK-2 with a fee of Rs. 10,000. The Ministry states that the Registrar, CPACE, will be the Registrar of Companies for the purposes of exercising functional jurisdiction of processing and disposal of applications made in Form No. STK-2 and all matters related thereto u/s 248 having territorial jurisdiction all over India. In line with these amendments, MCA also revised Forms STK-2 (Application by company to ROC for removing its name from register of Companies), STK-6 (public notice of striking off by ROC) and STK-7 (Notice of striking off and dissolution) with effect from May 01, 2023. The amendments *inter alia* provide below mentioned changes:

1. Rule 4(1) has been substituted and states that “an application for removal of name of company under section 248(2) shall be made to Registrar, Centre for processing Accelerated Corporate Exit in Form No. STK-2 along with fee of Rs. 10,000/- “.

The CRC has been vested the powers of the matters related to Incorporation of Companies and LLPs however, to accelerate the process of removal of name of the company, the matters related to Striking-off have also been assigned to CRC.

2. Rule 4(3)(iv) omitted, consequently, the application in Form STK-2 shall not be accompanied by a copy of the Special Resolution duly certified by each of the directors of the company to obtain consent from 75% of the members of the company in terms of paid-up share capital as on the date of application.

In other words, the requirement of calling the General Meeting of the members has now been omitted and the consent may be obtained from members by circulating a letter of approval.

A new sub-rule 3A has been inserted to rule 4, which states that “the Registrar Centre (CRC) for Processing Accelerated Corporate Exit established under section 396 (1) shall be the Registrar of Companies for the purpose of exercising functional jurisdiction of processing and disposal of applications made in Form no. STK-2 and all matters related thereto under section 248 having territorial jurisdiction all over India”.

24. IFSCA prescribes reporting requirements for IFSC Insurance Offices’ undertaking life insurance businesses:- Notification No. IFSCA/2022-23/GN/REG039 dated 19th April 2023

The IFSCA on 20th April 2023 notified the International Financial Service Centres Authority (Asset, Liability, Solvency Margin and Abstract of Actuarial Report for Life Insurance Business) Regulations 2023. These regulations specify the requirements related to capital Solvency and submissions of an abstract of actuarial report by an IIO for undertaking a life insurance business.

The following has been stated:

These regulations shall be applicable to International Financial Service Centre Insurance Offices (IIOs), undertaking life insurance business. Provided that for an IIO set up in an unincorporated form, solvency margin, and related requirements under these regulations shall not be applicable and such IIO shall comply with related requirements as stipulated under regulation (17)(4) of the IFSCA (Registration of Insurance Business) Regulations, 2021 provided however that the reporting formats specified under these regulations shall continue to be applicable for such IIOs.

An IIO shall prepare and submit to the authority the statements with such periodicity as may be specified are mentioned in the documents.

- (a) A statement of admissible assets in Form ALSM-L-A, as specified in Schedule- I.
- (b) A statement of the amount of liabilities in Form ALSM-L-L, as specified under Schedule-II
- (c) A statement of solvency margin in Form ALSM-L-SM1, Form ALSM-L-SM2 and Form ALSM-L-SM3, as specified under Schedule-III.

25. SEBI directs MIIs to issue Master Circular consolidating all guidelines every year:- Circular No. SEBI/HO/MRD/POD 3/CIR/P/2023/58 dated 20.04.2023

The Securities and Exchange Board of India (SEBI) issued a circular regarding the Master Circular by Stock Exchanges, Clearing Corporations, and Depositories collectively called Market Infrastructure Institutions (MIIs). To ensure that all market participants, including investors, find all applicable provisions on a specific subject at a place, the MIIs must ensure to issue the respective Master Circulars consolidating all guidelines issued and applicable as on March 31 of every year, segregated subject-wise and take due care to include only the relevant guidelines in the respective Master Circular while reviewing all the existing guidelines on a particular subject.

Such Master Circular shall not include the following:

- Bye-laws, Rules, and Regulations issued by MIIs,
- Status of any compliance by the market participant,
- Actions were taken against any entity,
- Each Master Circular shall contain a list of all guidelines incorporated therein as well as a provision rescinding all such guidelines with effect from the date of implementation of the Master Circular. All such rescinded guidelines shall be archived on the respective websites of the MIIs and
- The regulator stipulates that the Master Circulars shall contain a savings clause

Further, The first Master Circular incorporating all the guidelines applicable as on March 31, 2023, shall be issued on or before June 30, 2023. Subsequently, MIIs shall update the Master Circular incorporating all guidelines issued during the financial year, and issue the same on or before April 30 of each year.

26. Commerce department likely to tweak some SEZ rules in DESH Bill:- News Report

The finalisation of the DESH Bill is still uncertain due to differences between commerce and revenue departments. Further, the Government may consider allowing domestic companies to make payments in rupee for supply of services to DTAs. With the fate of the Development Enterprise and Services Hub (DESH) Bill in limbo, the commerce department is working towards tweaking some rules under the existing special economic zone (SEZ) law to allow use of unutilized spaces in IT/ITES for non-SEZ purposes. The move, when implemented, will free up the land area that is not in demand through partial de-notification of certain floors or buildings, thereby allowing easier exit. The department of commerce is discussing the matter with the revenue department before making changes in the Special Economic Zone Act, 2005. The provision was a part of the draft DESH Bill that proposed denotification of vacant land area even if it is in a contiguous area. This means free spaces in the same building in a “development hub” can be de-notified to use them for other purposes.

The implementation of a revamped SEZ law via DESH Bill has been delayed due to continued disagreements between the commerce and revenue departments. While the commerce department had finalized the first draft of the Bill, it received serious objections from the revenue department over the proposed fiscal incentives. The initial plan was to table the Bill in the monsoon session, after which the internal target of the commerce department was to get it passed in the winter session. The differences between both departments however still remained.

This uncertainty regarding implementation of the new law has also made existing and potential investors in SEZs jittery. The new draft DESH Bill seeks to set up “development hubs” for promoting economic activity, generating employment, integrating with global supply and value chains and maintaining manufacturing and export competitiveness, developing infrastructure facilities, promoting investments, including in research and development (R&D). Such hubs will also include existing SEZs. Another proposal that the government might consider is allowing domestic companies to make payment in rupee for supply of services to domestic tariff areas. The move, if implemented, will boost growth of IT units in SEZs.

https://www.business-standard.com/economy/news/sez-rules-may-be-tweaked-to-implement-land-use-provisions-of-desh-bill-123042600981_1.html

https://news.eepcindia.com/uploads/news_update_pdfs/news_update_pdf_27042023_025352.pdf

27. RBI revises norms for ‘General Credit Card (GCC) Scheme’:- CIRCULAR NO. FIDD.MSME & NFS.BC.NO.06/06.02.31/2023-24 dated 26th April 2023

The Reserve Bank of India (RBI) issued new guidelines on April 25, 2023, regarding the General Credit Card (GCC) Scheme.

What Is GCC & New Guidelines:

All credit cards, such as Artisan Credit Card, Laghu Udyami Card, Swarojgar Credit Card, Weaver's Card, etc., catering to the non-farm entrepreneurial credit needs are covered by the General Credit Card scheme. So, banks must report to RBI about such credits being extended. The GCC scheme “shall henceforth be called **General Credit Card (GCC) Facility**”, RBI needs that each bank floats its own GCC scheme, which must be within RBI’s guidelines.

The terms and conditions of the GCC credit facilities should be as per the banks’ board-approved policies and the framework laid down by RBI. For instance, Punjab National Bank (PNB) has fixed a need-based limit, with a maximum of Rs. 10 lakh, after reviewing the borrower’s credit needs and repaying capacity. PNB’s repayment period for a GCC credit is 12 months. All its branches extend the facility without collateral. On the other hand, the Federal Bank offers GCC credit based on household income, subject to a ceiling of 40 per cent of the annual income of the family members.

In the new guidelines, RBI said, “Individuals or entities sanctioned working capital facilities for non-farm entrepreneurial activities eligible for classification under the priority sector guidelines may be issued General Credit Cards.”

All RBI directions regarding credit cards are also applicable to GCCs. GCC shall be issued in the form of a credit card conforming to the stipulations in the already laid down master direction of the central bank, RBI said.

RBI Rules On Credit Cards:

Card issuers shall prescribe an interest rate ceiling in line with other unsecured loans, including processing and other charges, in respect of credit cards as part of their board-approved policy. In the case of card issuers’ interest rates, which vary based on the payment/default history of the cardholder, there shall be transparency in levying such differential interest rates.

Card issuers shall report a credit card account as ‘past due’ to credit information companies (CICs) and levy penal charges, like late payment and other related charges, if any, when a credit card account remains ‘past due’ for more than three days. There shall not be any hidden charges while issuing credit cards free of charge.

Regarding the recovery of credit card dues, RBI said, “Card-issuers shall ensure that their agents (third-party agencies for debt collection) refrain from actions that could damage their integrity and reputation and observe strict customer confidentiality.

Card-issuers/their agents shall not resort to intimidation or harassment of any kind, either verbal or physical, including acts intended to humiliate publicly or intrude upon the privacy of the credit cardholders' family members or friends.

<https://rbi.org.in/scripts/NotificationUser.aspx?Mode=0&Id=12492>

28. RBI allows Resident Individuals to open Foreign Currency Account in IFSCs under LRS:- A.P. (DIR Series) Circular No.03 dated 26.04.2023

The RBI amends the directions under para 2(ii) of the Circular on remittances to IFSCs in India under the Liberalised Remittance Scheme (LRS). On February 16, 2021, the RBI issued a circular on "Remittances to International Financial Services Centres (IFSCs) in India under the Liberalised Remittance Scheme (LRS)". This circular allowed resident individuals to make remittances under LRS to IFSCs in India, subject to certain conditions. The conditions were as follows –

(a) The remittance shall be made only for making investments in IFSCs in securities, other than those issued by entities/companies resident outside IFSCs in India

(b) Resident Individuals may open a non-interest bearing Foreign Currency Account (FCA) in IFSCs for making permissible investments under LRS. Any funds lying idle in the account for up to 15 days from the date of receipt shall be immediately repatriated to the investor's domestic INR account in India.

(c) Resident Individuals shall not settle any domestic transactions with other residents through these FCAs held in IFSC.

On a review and with the objective to align LRS for IFSCs set up under the IFSCA Act, the RBI has amended the circular. Accordingly, the RBI has withdrawn the condition of repatriating any funds lying idle in the account for a period of up to 15 days from the date of its receipt with immediate effect. Further, the same shall be governed by the provisions of the scheme as contained in the Master Direction on LRS. Accordingly, RBI directed AD Category – I banks to bring the contents of this Circular to the notice of their constituents and customers.

29. NFRA reviews proposals for new accounting standards for insurance contracts:- News Report

The National Financial Reporting Authority (NFRA) will review proposals from the ICAI on a new standard for the accounting of insurance contracts, namely Ind AS 117, which is modelled on IFRS 17, issued by the International Accounting Standard Board (IASB). It is expected to help investors and other stakeholders better gauge the risk exposure and key financial parameters of insurers. NFRA will share its recommendations with the MCA, which will consider Ind AS 117 and notify the standards under the Companies (Indian Accounting Standards) Rules 2015 and once notified, Ind AS 117 will replace the current Ind AS 104, Insurance Contracts.

IFRS 17 is a complete overhaul of the accounting for the insurance industry and is considered the first truly international IFRS Standard for insurance contracts. To help investors and other users better understand insurers' risk exposure, profitability, and financial position, it became effective on 01st January 2023. It is specifically designed to capture the unique features of the insurance and investment contracts of insurance entities and highly insurance product-specific and would entail a paradigm shift in the measurement, presentation, and disclosure requirements.

NFRA Chairman Ajay Bhushan Prasad Pandey said that Indian AS 117 is substantially convergent with the IFRS Standard adopted in over 140 countries. This decision is in line with India's policy to embrace international best practises to enable a level playing field for Indian companies. This standard will enable the Indian insurance industry to present globally comparable financial

information, which augurs well for enhanced investment in the sector needed for increasing insurance penetration in the country.

<https://cfo.economictimes.indiatimes.com/news/policy/nfra-reviews-proposals-for-new-accounting-standards-for-insurance-contracts/99836765>

30. SEBI releases Master Circular for custodians compiling all applicable requirements:- SEBI Circular No. SEBI/HO/AFD/AFD -PoD/P/CIR/ 2023/ 063 dated 27 April 2023

SEBI issues a Master Circular for custodians, in order to enable stakeholders to have access to the applicable requirements specified in various circulars issued to custodians at one place. The board Specifies that in addition to the requirements specified under this Master Circular, the custodians shall be required to independently comply with other requirements specified by SEBI for market intermediaries such as:

- (i) levy of GST on fees payable to SEBI,
- (ii) approach to security market data access and terms of usage of data provided by data sources in Indian securities market,
- (iii) digital mode of payment,
- (iv) information regarding grievance redressal mechanism and
- (v) guidelines on outsourcing of activities by intermediaries etc.

With a view to monitor the allocation and utilization of limits for Government and Corporate debt and Upper Tier II instruments, SEBI advises the custodians to submit fortnightly reports and directs the custodians to provide the market value of the securities held in custody with them along with other details on a monthly basis in the requisite format. Further, to monitor the fulfilment of capital requirements, regulator requires all custodians to submit a certified copy of their audited annual accounts / annual report along with a net worth certificate signed by a practicing Chartered Accountant within 6 months of close of each Financial Year. Lastly, stipulating that the custodians shall report details of original maturity wise breakup and residual maturity-wise breakup of FPI holdings in debt securities as on every month end by the 5th day of the next month, SEBI apprises about the Investor Charters for Custodians which inter alia deals with services provided to investors with timelines and general guidance for them, with a view to facilitate awareness among investors about the details of activities carried and services provided by custodians.

https://www.sebi.gov.in/legal/master-circulars/apr-2023/master-circular-for-custodians_70613.html

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CROSS BORDER

1. UAE notifies 'Small Business Relief' to support start-ups, effective from Jun 1:- UAE's Ministerial Decision No. 73 of 2023

UAE notifies Small Business Relief for residents with annual revenue upto AED 3 Mn, starting from Jun 1, 2023. Small Business Relief is meant to support start-ups and other small or micro businesses by reducing their Corporate Tax burden and compliance costs. UAE's Ministry of Finance issues Ministerial Decision No. 73 of 2023 in exercise of powers under Article 21 of the UAE Corporate Tax Law and also stipulates that an artificial separation of business for taking Small Business Relief would amount to an abusive tax practice.

Key Takeaways:

1. Resident taxable persons can claim Small Business Relief if their annual revenue for the relevant and previous tax periods is below AED3 million. However, once a taxable person exceeds the AED3 million revenue threshold in any tax period, then the Small Business Relief will no longer be available.
2. AED3 million revenue threshold is applicable for tax periods starting on or after Jun 1, 2023 and ending on or before Dec 31, 2026.
3. Revenue can be determined based on the applicable accounting standards accepted in the UAE.
4. Small Business Relief will not be available to Qualifying Free Zone Persons or members of Multinational Enterprises Groups (MNE Groups) as defined in Cabinet Decision No. 44 of 2020 on Organising Reports Submitted by Multinational Companies. Here, MNE Groups are groups of companies with operations in more than one country that have consolidated group revenues of more than AED3.15 billion.
5. Where businesses do not elect to apply for Small Business Relief, they will be able to carry forward any incurred Tax Losses and any disallowed Net Interest Expenditure from such tax periods, for use in future tax periods in which the Small Business Relief is not elected.
6. Artificial separation of business for seeking Small Business Relief would amount to obtaining a Corporate Tax advantage under Article 50(1) that pertains to General Anti-abuse Rules of the UAE Corporate Tax Law.

2. Software firms across U.S. facing massive tax bills that threaten tech startup world survival:- News Report

Software startups are being hit with unexpected tax bills as a result of a change in the law related to research and development costs. The root of the issue is the inability of lawmakers to extend a key tax provision that had bipartisan support at the end of last year and allows for full expensing of research and development costs under Section 174 of the tax code. Many small business owners first became aware of the requirement to amortise R&D costs over a period of five years this spring when accountants showed them the huge tax bills they owed the government. The change is affecting software developers and scientific startups, among other companies. Some firms may be forced to make painful financial decisions, such as freezing hiring, contemplating layoffs, or seeking loans or credit extensions. If the R&D full-expensing treatment is not restored, survival may become an issue for many businesses.

The biggest expense for software firms is software development talent, which until tax year 2022 could be fully expensed as R&D rather than amortised over multiple years. However, when the cost of talent overwhelms cash flow and profits, it potentially makes the business model untenable. Some companies are already facing tax bills that have increased their taxable income by up to 400%. Some founders are paying the tax bills by tapping lines of credit with interest rates as high as 9%, while

others have mortgaged their homes. Small software companies are not set up to absorb the cost over five years, and everything is structured around revenue coming in and a lot going back out to employees. Some startups may be forced to make painful financial decisions, such as freezing hiring, contemplating layoffs, or seeking loans or credit extensions, and if the R&D full expense treatment is not restored, survival may become an issue for many businesses.

<https://www.cnn.com/2023/04/18/software-firms-face-huge-tax-bills-that-threaten-tech-startup-survival.html>

3. Brazil plans 'digital tax' on shipments from e-commerce giants:- News report dated 20th April 2023

The Brazilian government is considering imposing a digital tax on shipments from e-commerce giants according to the country's Economy Minister Paulo Guedes after backtracking earlier this week from a decision to tax individual-to-individual shipments of up to \$50. The move comes after President Luiz Inacio Lula da Silva asked his economic team not to proceed with a previously planned ending to tax exemptions for international orders from individuals. Finance Minister Fernando Haddad already stated earlier that the government will seek administrative solutions and increase oversight to close a loophole that Asian e-commerce giants were seen exploiting by sending orders as if they were individual customers in order to take advantage of the tax exemption.

As per the Brazilian government, the suggested move won't involve enacting a new tax but rather improving the collection process. The source made clear that the in question tax is already in place and will be electronically collected prior to the transportation of products.

<https://www.reuters.com/markets/brazil-mulls-digital-tax-shipments-e-commerce-giants-minister-2023-04-20/>

4. European Commission Floats Remote Work Tax Concern:- News Report

The European Commission has suggested a tax on remote work as part of a broader package of tax measures aimed at offsetting the revenue shortfalls caused by the pandemic. The proposed tax would help ensure that employees who work remotely, but not in the same country where their employer is based, are contributing to the public coffers of the country where they are working. The Commission is currently assessing the feasibility of such a tax and has not yet provided details on how it would work. The proposal has sparked concerns among businesses and workers' advocates, who argue that such a tax could discourage remote work and create additional burdens for both employers and employees. Some also question whether the tax would be legal under EU law.

[European Commission Floats Remote Work Tax Concern \(bloombergtax.com\)](https://www.bloombergtax.com/news/european-commission-floats-remote-work-tax-concern/)

5. Global Forum releases maiden report on 'Tax Transparency in Asia': OECD

The Organization for Economic Cooperation and Development (OECD)'s Global Forum on Transparency and Exchange of Information for Tax Purposes has published the first edition of the annual report on Tax Transparency in Asia, acknowledging progress made by Asian countries in implementing transparency and exchange of information for tax purposes between 2009 and 2022. The report was released during the fourth meeting of the Asia Initiative in New Delhi, co-chaired by India and Indonesia. All 22 Asian members of the Global Forum are implementing transparency and exchange of information on request (EOIR) standards, with 16 committing to starting automatic exchange of information (AEOI) exchanges by 2024.

Further, Asian members have reported at least EUR 20.1 billion additional revenues linked to exchange of information (EOI) since 2009, with additional revenues expected in the coming years. The report highlights that the Asian members have built strong exchange of information infrastructures and increased EOI networks, but sustainable capacity building for tax administration

staff needs to continue. Although Asian members have expanded their EOI networks, 94% of the requests sent are from five members, and work remains to ensure all countries in the region participate in the global common reporting standard (CRS) data standard. Technical assistance will continue to be provided to prepare members for their peer reviews and address any gaps identified in the process. In 2023, the Asia Initiative will focus on complementary activities, including effective use of CRS data, EOI on VAT or GST, the wider use of EOI data, the recovery of tax claims, and other forms of cooperation.

6. UAE prescribes 'no PE' conditions under Corporate Tax Law over natural person's presence:- UAE's Ministerial Decision No. 83 of 2023

UAE's Ministry of Finance publishes Ministerial Decision No. 83/2023 dt. Apr 10, 2023 laying down conditions under which presence of a natural person in UAE would not create a Permanent Establishment for a non-resident person under UAE's Corporate Tax Law. The Ministerial Decision is pursuant to Article 14(7)(a) of the Corporate Tax Law and comes into effect 15 days following the date of its publication. As per the Ministerial Decision, the presence of a natural person in the State shall be considered as a consequence of a 'temporary and exceptional situation' where all of the following conditions are met:

- (i) the presence is a consequence of exceptional circumstances of a public or private nature,
- (ii) the exceptional circumstances cannot reasonably be predicted by the natural person or the non-resident person,
- (iii) the natural person did not express any intention to remain in UAE when the exceptional circumstances end,
- (iv) the non-resident person does not have a Permanent Establishment in UAE before the occurrence of the exceptional circumstances,
- (v) the non-resident person did not consider that the natural person is creating a Permanent Establishment or deriving income in UAE as per the tax legislation applicable in other jurisdictions.

Further, the Ministerial Decision also explains 'exceptional circumstances' of public and private nature which are as under-

Exceptional circumstances of public nature:

1. Adoption of public health measures by the competent authorities in the State or in the jurisdiction of the original workplace or by the World Health Organization.
2. Imposition of travel restrictions by the competent authorities in the State or in the jurisdiction of the original workplace.
3. Imposition of legal sanctions on the natural person preventing them from leaving the State's Territory.
4. Acts of war or occurrence of terrorist attacks.
5. Occurrence of natural disasters or force majeure beyond reasonable control.
6. Any other circumstances similar to those provided for in this paragraph as prescribed by the Authority.

Exception circumstances of private nature:

1. Occurrence of an emergency health condition affecting the natural person or their relatives up to the fourth degree, including by way of adoption or guardianship.
2. Any other circumstances similar to those provided for in this paragraph as prescribed by the Authority.

7. Canada's Budget 2023: Business Tax Measures

Canada's Deputy Prime Minister and Minister of Finance, the Honourable Chrystia Freeland, presented the federal government's Budget 2023 on 28 March 2023, which, among other things, will create new clean energy investment tax credits for businesses. The measures described below will apply on or after Budget Day, unless stated otherwise.

Investment tax credit for clean hydrogen

Budget 2023 proposes to create a clean hydrogen investment tax credit (CH investment tax credit) for qualifying projects that produce all, or substantially all, hydrogen through their production process. The measure will apply to property acquired and becoming available for use on or after Budget Day.

Under the Budget proposal, qualifying taxpayers could claim the non-refundable CH investment tax credit when eligible equipment becomes available for use, at the applicable credit rate.

The CH investment tax credit will be phased out starting in 2034, with property that becomes available for use in 2034 being subject to a credit rate that is reduced by 50%. It will be fully phased out for property that becomes available for use after 2034.

Clean technology investment tax credit – geothermal energy

Budget 2023 proposes to expand eligibility for the 30% refundable clean technology investment tax credit proposed in the 2022 Fall Economic Statement, to include geothermal energy systems that are eligible for Class 43.1 of Schedule II of the Income Tax Regulations. If enacted, this measure will apply in respect of property that is acquired and becomes available for use on or after Budget Day, where it has not been used for any purpose before its acquisition. In addition, Budget 2023 proposes to modify the phase-out schedule of the clean technology investment tax credit.

Clean electricity investment tax credit

Budget 2023 proposes to apply the proposed clean technology and clean hydrogen investment tax credits' labour requirements announced in the 2022 Fall Economic Statement to the proposed clean electricity investment tax credit. This measure will apply to work that is performed on or after 1 October 2023.

Investment tax credit for clean technology manufacturing

Budget 2023 proposes to establish a refundable investment tax credit for clean technology manufacturing and processing, and critical mineral extraction and processing, equal to 30% of the capital cost of eligible property associated with eligible activities.

Under this proposed measure, investments made by corporations in certain depreciable property that is used in full or substantially for eligible activities will qualify for the credit.

The tax credit, which will apply to property that is acquired and becomes available for use on or after 1 January 2024, will be gradually phased out starting with property that becomes available for use in 2032 and will no longer be in effect for property that becomes available for use after 2034.

Zero-emission technology manufacturers

Budget 2023 proposes that income from the following nuclear manufacturing and processing activities will qualify for the reduced tax rates for zero-emission technology manufacturers, effective for taxation years beginning after 2023:

- manufacturing of nuclear energy equipment;
- processing or recycling of nuclear fuels and heavy water; and
- manufacturing of nuclear fuel rods.

In addition, Budget 2023 proposes to extend the availability of these reduced rates - which are set to gradually phase out starting in taxation years that begin in 2029 - by 3 years so that the planned phase-out will start in taxation years that begin in 2032 and be fully phased out for taxation years that begin after 2034.

Investment tax credit for carbon capture, utilization and storage

Budget 2023 proposes additional design details in respect of the refundable investment tax credit for carbon capture, utilization, and storage (CCUS tax credit) proposed under Budget 2022. The CCUS tax credit will be available to businesses that incur eligible expenses beginning on 1 January 2022.

Tax on repurchases of equity

Budget 2023 provides the design and implementation details of the proposed 2% tax on the net value of all types of share repurchases by public corporations in Canada.

Under the Budget, the tax will apply to corporations whose shares are listed on a designated stock exchange, excluding mutual fund corporations. In addition, the tax will also apply to the following entities, provided that they have units listed on a designated stock exchange:

- real estate investment trusts;
- specified investment flow-through (SIFT) trusts; and
- SIFT partnerships.

The tax will also apply to publicly traded SIFT trusts or partnerships if their assets were located in Canada. The tax will also not apply to an entity in a taxation year if it repurchased less than CAD 1 million of equity during that taxation year (prorated for short taxation years), as determined on a gross basis (i.e. the de minimis rule). The tax will apply to repurchases and issuances of equity that occur on or after 1 January 2024.

General anti-avoidance rule

Budget 2023 proposes to amend the general anti-avoidance rule (GAAR), which is aimed at preventing abusive tax avoidance transactions while not interfering with legitimate commercial and family transactions.

Dividend received deduction by financial institutions

In general, corporations may claim a deduction for dividends received on shares of other Canadian-resident corporations. Currently, the tax treatment of dividends received by financial institutions on portfolio shares held in the ordinary course of their business is inconsistent with the tax treatment of gains on those shares under the mark-to-market rules of the Income Tax Act.

Budget 2023 proposes to deny the dividend received deduction in respect of dividends received by financial institutions on shares that are mark-to-market property, to align the treatment of dividends and gains on portfolio shares under the mark-to-market rules in the Income Tax Act.

8. Germany's Federal Fiscal Court finds that Capital Gains on Sales of Cryptocurrency Constitute Taxable Income:- *Judgment of February 14, 2023, IX R 3/22*

In its decision (IX R 3/22) of 14 February 2023, the Federal Fiscal Court (Bundesfinanzhof) ruled that capital gains from the sale of various cryptocurrencies constitute taxable income. Further details are provided below.

(a) Facts. The case concerned a German resident couple that had challenged the taxation of EUR 3.4 million derived from the sale of various cryptocurrencies in 2017.

(b) Legal background. Capital gains realized by an individual from private transactions are taxable if the total gains are at least EUR 600 during the tax year and arise from the disposal of movable property (excluding shares and bonds) within 1 year of the date of acquisition.

(c) Issue. The issue was whether cryptocurrency constitutes a movable property as a result of which capital gains derived from the sale of cryptocurrency constitute taxable income.

(d) Decision. The Court dismissed the appeal lodged by the taxpayers and held that capital gains derived from the sale of cryptocurrency within 1 year after purchase constitute taxable income. This rule also applies to the exchange of cryptocurrency.

The court decided on a broad interpretation of the term "movable property" for capital gains taxation purposes, stating that cryptocurrencies constitute economic goods and qualify as a means of payment. The court also noted that cryptocurrency was a marketable means of payment comparable with foreign currency, and that the fact that investments in cryptoassets take place on unregulated markets was held irrelevant. Consequently, the court ruled that the capital gains realized by the plaintiffs within one year after the purchase of the cryptocurrency constitute taxable income.

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