



Tax & Regulatory Updates – Key developments of September 2023

DIRECT TAXATION

1. ICAI releases revised Guidance Note on Tax Audit:- ICAI Press Release

The Institute of Chartered Accountants of India (ICAI) has issued the Revised Guidance Note on Tax Audit for 2023, marking the ninth edition of this essential resource. The primary objective of this guidance note is to assist ICAI members in fulfilling their responsibilities effectively and in a timely manner concerning tax audits under the income tax law. The Revised Guidance Note for 2023 offers a comprehensive roadmap, enabling professionals to navigate the intricacies of tax audits strategically and with a well-informed approach. It delves deep into the nuances of audit procedures, providing valuable insights. This updated Guidance Note takes into account amendments introduced up to the Finance Act 2023, as well as the tax audit forms currently applicable (Form

3CA/3CB/3CD).

Further, a tax audit involves a thorough examination of a taxpayer's books of account and relevant records. Its purpose is to ensure that the individual responsible for issuing the tax audit report verifies the accuracy and fairness of the financial statements used for income computation and confirms the accuracy of the information provided in Form No. 3CD. This responsibility is significant, underscoring the need for clear guidance on the audit process and the issuance of tax audit reports. ICAI, as the regulator of the audit profession, has consistently issued Guidance Notes for tax audits to support professionals in carrying out this vital function. It is important to note that tax audits can only be conducted by practicing chartered accountants and serve as a measure to combat incorrect tax practices.

2. IT Dept. issues FAQs for charitable trusts & institutions on filing of audit reports: CBDT FAQs dated 31 August 2023

The Income Tax Department has released Frequently Asked Questions (FAQs) pertaining to the filing of Form 10B and 10BB, as re-notified through Notification No. 7/2023 dated February 21, 2023. These updated forms are applicable for the Assessment Year 2023-24 onwards. The FAQs offer insights into various aspects, including the thresholds for form submission, filing procedures, due dates, mode of verification, and more. Furthermore, the FAQs provide definitions and clarifications for terms like 'auditee' and 'foreign contribution,' and emphasize the option to file revised forms when necessary.

3. Salaried, HNIs, trusts under income tax lens for mismatch in tax filing:- News report dated 07 September 2023

The Income Tax Department has issued intimation / notices to approximately 22,000 taxpayers, including salaried individuals, high net worth individuals, trusts, and Hindu Undivided Families (HUFs), for discrepancies in tax deductions claimed in their returns compared to Form 16, AIS, or department records. These notices pertain to the 2023-24 assessment year and were sent out within the past 15 days.

12,000 notices were sent to salaried taxpayers with discrepancies exceeding Rs 50,000, while 8,000 were sent to HUF filers with disparities exceeding Rs 50 lakh. Additionally, 900 HNIs and 1,200 trusts/partnership firms received notices for significant income disparities exceeding Rs. 5 crore and Rs.10 crore. The primary data analysis identified irregularities in the tax returns of about 2 lakh taxpayers, related to income declarations, expenditures, and bank account details. Non-response to the initial intimation notice may lead to demand notices. Options for resolution include paying outstanding tax or providing clarifications through updated returns.

4. Government expands scope of Section 47(viiab) exemption, includes units of IFSC based ETFs & others for exemption from Capital gains transfer definition:- CBDT Notification No. 71/2023 dated 12 September 2023

Section 47(viiab) of the Income Tax Act, 1961 provides that any transfer of capital assets by a non-resident on a recognised stock exchange located in any IFSC is not treated as transfer provided the consideration is paid or payable in foreign currency. The section lists down the following capital asset for the purpose of exemption i.e., bonds or GDRs as referred to in Section 115AC(1); Rupee

Denominated Bond of an Indian company; and Derivative.

Section 47(viiab) also empowers the Central Government to notify securities eligible for the benefit. Exercising this power, CBDT vide notification dated 05 March 2020, notified the following securities for section 47(viiab):

- Foreign currency denominated bond
- Unit of a Mutual Fund
- Unit of a business trust
- Foreign currency denominated equity shares of a company; and
- Unit of Alternative Investment Fund
- Bullion Depository Receipt with underlying bullion

Now, the board has amended its earlier notification to include the following securities within the scope of exemption i.e., Unit of investment trust; Unit of a scheme; Unit of Exchange Traded Fund launched under IFSCA (Fund Management) Regulations, 2022.

“Investment Trust” will have the same meaning as assigned to it in clause (d) of sub-regulation (1) of Regulation 83 of the International Financial Services Centres Authority (Fund Management) Regulations, 2022, meaning thereby a REIT or an InvIT, as the case may be and a “Scheme” will have the same meaning as assigned to it in clause (ii) of sub-regulation (1) of regulation 2 of the International Financial Services Centres Authority (Fund Management) Regulations, 2022, meaning thereby a scheme of a fund management entity launched under these Regulations.

5. Global deal to stop MNCs Tax avoidance likely by 2023 end:- News Report

A significant step towards curbing tax avoidance by multinational corporations is on the horizon. A global tax convention, targeting aggressive tax avoidance by the top 100 multinational corporations, is expected to be signed by as many as 138 countries by the end of this year. The implementation of this convention is planned for 2025.

David Bradbury, Deputy Director of the OECD’s Centre for Tax Policy and Administration, shared these insights after a discussion with G20 leaders. A separate framework that allows individual countries to enforce a minimum global corporate tax rate of 15% is also nearing its final stages. The proposed tax reform will consist of two pillars.

6. CBDT extended the due date for charitable institutions' audit to 31 Oct & ITR-7 filing to 30 Nov:- CBDT Circular no. 16/2023 dated 18 September 2023

The CBDT vide Circular No. 16/2023 dated 18 September 2023 extended the due date for furnishing audit reports by a Fund/ Trust/ Institution/ any university/ other educational institution/ any hospital/ other medical institution in Form 10B/Form 10BB for FY 2022-23 to 31 October 2023 from 30 September 2023. CBDT also extended the due date of furnishing income tax return in Form ITR-7 for AY 2023-24 to 30 November 2023 from 31 October 2023.

7. Govt. notifies Top, Upper & Middle Layer NBFCs under Sec.43B & 43D:- Central Government, vide Notification No. 79/2023 and 80/2023, dated 22 September 2023

Central Government notifies all NBFCs falling within the classifications of Top Layer, Upper Layer, and Middle Layer for the purposes of eligibility of deduction towards interest under Section 43B(da) and under special provisions for computation of total income of Financial Institutions of Section 43D pursuant to the amendments made by Finance Act, 2023. This classification of NBFCs aligns with the guidelines provided by the Reserve Bank of India (RBI) as outlined in Circular DOR.CRE.REC.No.60/03.10.001/2021-22 dated October 22, 2021.

The RBI's Circular, effective from October 1, 2022, introduced an integrated regulatory framework for NBFCs under Scale Based Regulation (SBR). This framework categorizes NBFCs into four layers based on their size, activities, and perceived riskiness, which are as follows: Base Layer, Middle Layer, Upper Layer, and Top Layer. Furthermore, as per the notification, there are adjustments to the regulatory minimum net owned fund (NOF) requirements for various categories of NBFCs:

- NBFC- Investment and Credit Companies, NBFC-Micro Finance Institution, and NBFC-Factors are required to maintain a minimum NOF of Rs. 10 Crores.
- For NBFC-Peer to Peer Lending Platforms, NBFC-Account Aggregators, and NBFCs with no public funds & no customer interface, the minimum NOF requirement remains at Rs. 2 Crores.

It is imperative for NBFCs to conduct a thorough internal assessment of their capital needs, ensuring that they are commensurate with the inherent risks associated with their business operations. Additionally, NBFCs are mandated to ascertain that borrowers have obtained the necessary approvals from relevant government, local authorities, or statutory bodies, where applicable, particularly in cases involving real estate-related loan proposals. To strengthen the compliance culture within NBFCs, it is now mandatory for them to appoint a Chief Compliance Officer (CCO) who holds a senior position within the organizational hierarchy. A Board-approved policy specifying the roles and responsibilities of the CCO must be established with the objective of promoting robust compliance practices within the organization.

Lastly, when an NBFC is identified for inclusion in the NBFC-Upper Layer, the Department of Regulation at the Reserve Bank of India will notify the NBFC of its new classification. The NBFC will then be subject to the regulations applicable to the Upper Layer. It is worth noting that a decision regarding the inclusion of eligible Government NBFCs meeting the specified criteria into the Upper Layer will be made at a later stage. Until such a decision is made, the guidelines applicable to the NBFC-Middle Layer shall continue to apply. These regulatory changes have been introduced to enhance the stability and governance of NBFCs, ensuring they align with the evolving financial landscape. We urge all NBFCs to diligently comply with these guidelines and make the necessary adjustments to their operations to adhere to the revised requirements.

8. Revenue seeks Special Bench reference on shipping income vis-a-vis treaty benefits:- *ITAT Order dated 20 September 2023*

The Chennai ITAT is considering a Special Bench to discuss treaty benefits on shipping income for Pacific International Lines P. Ltd. due to conflicting views taken by coordinate bench in Bengal Tiger Line and Hyderabad ITAT in PACC Container Line on the scope of Article 8 read with Article 24 of India-Singapore DTAA. This was prompted by a request from the tax department. The parties involved will present their arguments on September 27, 2023.

9. CBDT notifies Angel Tax rules with new valuation methods & safe harbour:- CBDT Notification No. 81 of 2023 dated 25 September 2023 & CBDT Press release dated 26 September 2023

The Finance Act, 2023, brought in an amendment to bring the consideration received from **non-residents** for issue of shares by an unlisted company within the ambit of section 56(2)(viib) of the Income-tax Act, 1961 ("the Act"), which provides that if such consideration for issue of shares exceeds the Fair Market Value (FMV) of the shares, it shall be chargeable to income-tax under the head 'Income from other sources' (commonly known as Angel Tax). Taking into consideration the suggestions and feedback received from stakeholders and general public on the Draft Rule 11UA for valuation of methods for calculating the FMV and detailed interactions held with stakeholders, Rule 11UA for valuation of shares for the purposes of section 56(2)(viib) of the Act has been modified vide notification no. 81/2023 dated 25 September 2023. The amended Rule 11UA is broadly categorised into the following categories:

A. In case of Investment by Residents in Unquoted Equity Shares [Rule 11UA(2)(A)(a), (b), (c), or (e)]

- a) In addition to the already existing valuation methods namely, Discounted Cash Flow (DCF) and Net Asset Value (NAV) method applicable to investment received from a resident, the amended Rules provides 2 more valuation options to the Assessee with respect to investment in VC undertaking and investment from entities notified under clause (ii) of first proviso to Section 56(2)(viib). VC Undertaking is defined under SEBI (Venture Capital Funds) Regulations, 1996 as domestic company: (i) whose shares are not listed on a recognized stock exchange in India and (ii) which is engaged in the business for providing services, production or manufacture of article or things or does not include such activities or sectors which are specified in the negative list by SEBI with the approval of the Central Government. **[Clause (a) & (b)].**
- b) The valuation of investment received by a VC undertaking for issue of unquoted equity shares, from a VC fund or a VC company or a specified fund, the price of the equity shares at the option of VC undertaking, be taken as the fair market value of the equity shares to the extent it does not exceed the aggregate investment so received. This would be acceptable if the investment is received by the VC undertaking within a period of 90 days of the date of issue of shares which are under valuation dispute. **[Clause (c)].**

Illustration: *If a Venture Capital (VC) undertaking receives a consideration of INR 50,000 from a Venture Capital (VC) company for issue of 100 shares at the rate of INR 500 per share, then such an undertaking can issue 100 shares at this rate to any other investor within a period of 90 before or after the receipt of consideration from VC company.*

- c) "Specified fund" means a fund established or incorporated in India in the form of a trust or a company or a LLP or a body corporate which has been granted a certificate of registration as a Category I or a Category II Alternative Investment Fund and is regulated under the SEBI (Alternative Investment Fund) Regulations, 2012 or regulated under the International Financial Services Centre Authority (Fund Management) Regulations, 2022.
- d) The valuation of investment received by a company from entities notified under clause (ii) of first proviso to Section 56(2)(viib) also works in the same manner as that of investment in VC undertaking by a VC fund/ company or a specified fund as specified above in clause (c).

- e) CBDT Notification No. 29/2023 dated 24 May 2023 notified following entities for this purpose:
- Government and Government related investors,
 - Banks or Entities involved in Insurance Business,
 - Any of the following entities, which is a resident of a 21 countries or specified territories (specified in the Annexure to the said notification) having robust regulatory framework i.e.,
 - Entities registered with SEBI as Category-I Foreign Portfolio Investors,
 - Endowment Funds associated with a university, hospitals or charities,
 - Pension Funds created or established under the law of the foreign country or specified territory,
 - Broad Based Pooled Investment Vehicle or Fund where the number of investors in such a vehicle or fund is more than 50 and such fund is not a hedge fund or a fund which employs diverse or complex trading strategies.

B. In case of Investment by Non-residents in Unquoted Equity Shares [Rule 11UA(2)(A)(a), (b), (c), (d) or (e)]

- a) For investment by non-residents, the aforementioned four valuation clauses specified above also apply.
- b) fifth one that applies only on investment made by non-residents is the valuation determined by a merchant banker in accordance with any of the 5 following methods, namely: **[Clause (d)]**
- **Comparable Company Multiple Method**
It is commonly used in financial analysis and investment valuation to determine the worth of a company's shares in the market. It involves comparing the target company to similar publicly traded companies to determine a reasonable valuation.
 - **Probability Weighted Expected Return Method**
It is a valuation method that estimates the fair market value of a company by considering the probability of different future outcomes. The method is based on the assumption that the value of a company is equal to the present value of its expected future cash flows, weighted by the probability of each outcome.
 - **Option Pricing Method**
It is a valuation method that estimates the fair market value of shares by considering the value of the option to purchase or sell those shares in the future. The method is based on the assumption that the value of a share is equal to the present value of its expected future cash flows plus the value of the option to purchase or sell the share at any time.
 - **Milestone Analysis Method**
It is used for computing the FMV of shares, particularly in the context of start-ups or companies with limited operating history. This method involves identifying specific milestones a company aims to achieve in its business plan or development roadmap. These milestones could include product launches, user acquisition targets, revenue goals, or other significant achievements.
 - **Replacement Cost Method**
It is a valuation method that estimates the FMV of shares by considering the cost of replacing the company with a similar company. The method is based on the assumption that a buyer will not pay more for a company than the cost of replacing it with a similar company.

C. In case of Investment in Compulsorily Convertible Preference Shares [Rule 11UA(2)(B)]

- a) The FMV of compulsorily convertible preference shares, where investor is a resident, shall be the value on the valuation date in accordance with sub-clause (b), (c), or (e) of clause (A), at the option of the assessee, OR based on the FMV of unquoted equity shares determined in accordance with sub-clause (a), (b), (c), or (e) of clause (A), at the option of the assessee.
- b) The FMV of compulsorily convertible preference shares, where investor is a non-resident, shall be the value on the valuation date in accordance with the provisions of sub-clauses (b) to (e) of clause (A), at the option of the assessee, OR based on the FMV of unquoted equity shares determined in accordance with sub-clauses (a) to (e) of clause (A), at the option of the assessee.

D. Deemed Valuation Date [Rule 11UA(3)]

Where the date of merchant banker's valuation report (required for DCF and 5 new methods specified above) is not more than 90 days prior to the date of issue of shares under valuation dispute, then such date at the option of the assessee shall be deemed to be the valuation date. However, where such an option is exercised under this sub-rule, the provisions of Rule 11U(j) shall not apply. (Rule 11U(j) defines 'valuation date' as the date on which the property or consideration, as the case may be, is received by the assessee.)

E. Safe Harbours [Rule 11UA(4)] - Applicable to Unquoted Equity Shares and Compulsorily Convertible Preference Shares

- a) For investment by residents, 10% safe harbour is applicable on valuation arrived at by NAV or DCF methods where the issue price of the shares exceeds the value of shares.
- b) For investment by non-residents, 10% safe harbour is applicable on valuation arrived at by NAV or DCF or five new valuation methods (point 6 above) where the issue price of the shares exceeds the value of shares.

Illustration: Where the unquoted equity shares are issued at INR 1,100 per share, the angel tax shall not be levied as long as the FMV of such shares is above INR 1,000 per share. Issue price means the consideration received by the company for one share. The notified Rule provides for expansion of the valuation methodologies to include globally accepted methodology and provide a broad parity to resident and non-resident investors.

10. DIT(Systems) notifies e-procedure for Sec.197 Lower/Nil Withholding Tax Certificate:- CBDT, Directorate of Income-tax (Systems) Notification No.02/2023 dated 27 September 2023

Section 197 of the Income-tax Act provides that an assessee (deductee) can apply to the Assessing Officer (AO) to issue a Nil or lower TDS certificate. Rule 28 of the Income-tax Rules provides that the application for the issue of a Nil or Lower TDS certificate is to be filed in **Form No. 13**. Such a form can be filed online under Digital Signature or through Electronic Verification Code. Further, Rule 28AA(4) provides that a certificate for lower or nil deduction of tax shall be issued directly to the person responsible for deducting the tax under advice to the person who made an application for issue of such certificate. Proviso to Rule 28AA(4) also provides that if number of persons responsible for deducting the tax is likely to exceed 100 and the details of such persons are not

available with the person making such application, the certificate may be issued to the applicant authorizing him to receive income after deduction of tax at a lower rate.

The Director General of Income-tax (Systems) is empowered to lay down procedures, formats and standards for issuance of certificates under proviso to sub-rule (4) of Rule 28AA. In the exercise of such powers, the DGIT (Systems) vide this notification specified the following procedure, format and standards for electronic filing of Form 13 with Annexure – II. The process for the generation of certificates through TRACES is also notified. The change will be applicable from 01.10.2023.

A. Procedure for electronic filing of Form 13 with annexure-II shall be as follows:

- For making an application in Form 13 with Annexure II the taxpayer/ Deductee shall login into the TRACES website (www.tdscpc.gov.in), for grant of certificate for deduction of Income-tax at any lower rate or no deduction of Income-tax under section 197(1) of the Income tax Act, 1961.
- The tax-payer/ Deductee who is not registered at TRACES website shall have to first register with his Permanent Account Number ("PAW) at TRACES (www.tdscpc.gov.in) for login and filling application in Form 13 along-with Annexure II, Detailed procedure for registration can be accessed through the link <https://contents.tdscpc.gov.in/en/taxpayer-registration-Loginetutorial.html>
- The tax-payer Deductee shall login at TRACES website (www.tdscpc.gov.in) and submit the Form No. 13 along-with Annexure II with supporting documents using any of the following: (i) Digital Signature, (ii) Electronic Verification Code, (iii) Aadhar based Authentication, (iv) Mobile OTP.
- Applicants accessing TRACES website from outside of India shall login at TRACES website (www.nriservices.tdscpc.gov.in) and submit application in Form No. 13 along with supporting documents using Digital Signature only.
- The applicant can track the status of the application through option 'Track Request for Form13/ ISC/ ISD' under the tab 'Statements/Forms'.

B. Procedure for assignment of application to the TDS Assessing Officer (AO):

- The application will be assigned to the TDS AO based on details furnished by the applicant in Form 13.
- For application filed in Delhi, Mumbai, Chennai, Kolkata, Bangalore, Hyderabad, Ahmedabad and Pune, cases where revenue foregone exceeds a sum of Rs. 50 Lakh, the applications shall be assigned to the DCIT / ACIT exercising jurisdiction over TDS matters, and in other cases, the applications shall be assigned to the ITO exercising jurisdiction over TDS matters. If the jurisdiction orders are, otherwise, the applications shall be assigned in accordance to such jurisdiction orders.
- For application filed in remaining cities/ towns/ jurisdictions, the application where revenue foregone exceeds a sum of Rs. 10 Lakh, application shall be assigned to the DCIT / ACIT exercising jurisdiction over TDS matters, and in other cases, the applications shall be assigned to the ITO exercising jurisdiction over TDS matters. If the jurisdiction orders are otherwise, the applications shall be assigned in accordance to such jurisdiction orders.

- Once the application in form 13 has been successfully submitted, the following data will be obtained by CPC-TDS: (i) Processed data of Income Tax Returns of previous 4 financial years (if available). (ii) PAN Demand. (iii) E-filed Income-Tax Returns of previous 4 financial years. (iv) Audit Report (along with form 3CD if accounts are audited) of previous 4 financial years. (v) Assessment Orders of previous 4 financial years (if available).
- The applications shall be assigned to the TDS AO exercising jurisdiction over TDS matters in respect of the applicant as explained above. However, if the jurisdiction orders are otherwise, the assigned AO can transfer the applications to the AO concerned on AO Portal.

C. Processing of the taxpayer /Deductee's request by the AO, Range Heads and Commissioners of Income-tax:

- The AO shall process the application through TRACES-AO Portal after login using his/her credentials.
- If the AO requires any further information or documents or clarification from the applicant for arriving at a decision, the same shall be obtained online using the option "Seek Clarification" available within the functionality.
- The query raised by the AO shall be forwarded to the applicant through systems for furnishing a suitable response. The query will be available to the applicant at TRACES Portal through the path 'Taxpayer Login -> Statements/ Forms -> Track Request for Form 13/15C/15D -> Request Number -> Status -> Clarification required by AO'.
- Based on the parameters defined in rule 28AA/28AB of the Income-tax Rules, 1962 an estimated rate of tax will be suggested by the system functionality. However, the AO shall be free to arrive at an independent rate based on his/her method of calculation or by taking into consideration any other information available with him/her. The AO shall allow the deduction at such rate as evidenced in the "Permitted Tax Rate Table" by making any adjustments in respect of the rate, if required. The AO may state the reason for arriving at a modified rate, if so, is the case.
- The AO shall approve/reject the application based on the parameters defined in rule 28AA/28AB of the Income-tax Rules, 1962 as well as any other instructions/ guidelines in this regard. After approval/rejection of the application, as the case may be, it will be forwarded to the supervisory authority, i.e., the Range Head or Range Head & CIT for according administrative approval.
- The Range head shall process the application through TRACES-AO Portal after login using their credentials for granting administrative approval to the recommendation of the AO or otherwise.
- After a decision on the application has been taken by the Range Head, if the revenue foregone is within the powers conferred upon the Range Head (as per CBDTs Instructions on the subject) to accord administrative approval, the application will be marked back electronically on TRACES-AO Portal to the AO for issuance of the certificate or rejection of the application. However, if the revenue foregone is within the powers conferred upon the CIT (as per CBDTs instructions on the subject) to accord administrative approval, the application shall be forwarded to the CIT for a decision in the matter.

- The CIT shall process the application through TRACES-AO Portal after login using their credentials for granting administrative approval to the recommendation of the AO/Range Head or otherwise.
- If any clarification is required by the CIT, the application may be sent back to the Range Head through TRACES-AO Portal. The Range Head may either send back the application to the AO for obtaining the clarification or submit the case to the CIT along with the clarifications as required by the CIT through TRACES-AO Portal.
- After a final decision in the application has been taken by the CIT, the application will be marked back electronically on TRACES-AO Portal to the AO for issuance of the certificate or rejection of the application.

D. Issuance of Certificate:

- On receipt of administrative approval of the competent authority, the AO shall generate a certificate on TRACES-AO Portal
- The generated certificates shall be available for download to the applicant on the TRACES through the path 'Taxpayer login->Downloads-> Download 197, 206C(91 or 195(31 Certificate'. The certificate will be system generated and hence will not require a signature.
- The onus of sharing the certificate to the respective deductor(s) will be on the applicant.

E. Consumption/ Tracking of Certificate:

- The certificate reported by deductor(s) (who have received certificate from the applicant) in the TDS statements, will be consumed on the basis of processing of TDS statements as per FIFO (First in First Out) principle.
- The deductor(s) is/are advised to verify/track consumption status of the certificate before furnishing certificate details in TDS statement(s) through the path 'Deductor login ->Statement/ Payments -> History -> Validate Lower Deduction Certificate u/s 197/ 195(3)/ 195(2)' to avoid any defaults.
- The consumption status of certificate can be viewed by the applicant at his login at TRACES website.

**11. CBDT notifies Form 6D for Inventory Valuation Report under Section 142(2A):-
CBDT'S Notification No. 82/2023 dated 27 September 2023**

CBDT has issued Notification, amending Rule 14A to provide Form 6D as a Report of Inventory Valuation required to be furnished under Section 142(2A)(ii). The rule also amends Rule 14B, providing guidelines for determining expenses for a special audit to apply for inventory valuation too. As a result, every Chief Commissioner of Income Tax (CCIT) is required to maintain a panel of Cost Accountants.

12. CBDT notifies Form 10-IFA for Sec.115BAE concessional tax-rate, applicable to new co-operative societies:- CBDT Notification No. 83/2023 dated 29 September 2023

The Finance Act 2023 introduced a new tax scheme u/s 115BAE for resident cooperative societies involved in manufacturing or producing an article or thing. This scheme will be applicable for AY 2024-25 and requires eligible societies to choose a new tax scheme before the due date for furnishing the first income return u/s 139(1). The CBDT has inserted a new Rule 21AHA in the Income-tax (Twenty-Third Amendment) Rules, 2023, which allows resident co-operative societies to choose a new tax scheme by furnishing Form 10-IFA electronically, either under a digital signature or an electronic verification code. The Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems) will specify the filing procedure, data structure, standards, and generation of electronic verification code, as well as formulate and implement appropriate security, archival, and retrieval policies for Form 10-IFA.

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INDIRECT TAXATION

1. Amendment in Rule 89(4) introducing comparison of tax invoice and shipping bill is not clarificatory in nature:- *Tata Steel Ltd. v. Union of India - [2023] 154 taxmann.com 76 (Jharkhand)*

In this petition, the refund claim of petitioner was rejected on the ground that while processing refund claims in case of exports, lower of values indicated in tax invoice and shipping bill should be taken into account. It filed writ petition and contended that amendment brought in rule 89 (4) of CGST Rules, 2017 which introduced comparison between values indicated in tax invoice and shipping bill would have a prospective effect.

The High Court noted that the CBIC has inserted a new stipulation for comparison between two values being values indicated in tax invoice and shipping bill. A policy can be changed only by way of an amendment under parent Act and not by a circular and policy change will be effective from date of amendment.

Moreover, no retrospective date has been indicated in Notification No. 14/ 2022-Central Tax dated 5-7-2022 for bringing amendment under Rule 89 (4). Therefore, by way of amendment, a substantive change has been brought in law and it ought to operate prospectively since mere use of term explanation will not be indicative of fact that amendment is clarificatory/declaratory. Thus, the Court held that the period involved in the instant case was prior to amendment and the impugned order deserved to be quashed and set aside.

2. Refund to be allowed on providing book keeping, payroll, and accounting services to entity incorporated in UK:- *Boks Business Services (P.) Ltd. v. Commissioner of Central Goods and Services Tax - [2023] 154 taxmann.com 72 (Delhi)*

The petitioner was engaged in business of providing bookkeeping, payroll, and accounting services through use of cloud technology to its affiliated entity incorporated in United Kingdom. It filed a refund application for refund of unutilized input tax credit in respect of the export of services.

The department issued notice proposing to reject the claim for refund of unutilized ITC in respect of export of services on ground that petitioner was an intermediary. However, the petitioner's explanation was not accepted and the claim for refund of input tax credit was rejected. It filed a writ petition and challenged the refund rejection order.

The High Court noted that the petitioner contracted to provide the services of bookkeeping, payroll, and accounts through the use of cloud technology. The petitioner acted as principal service provider as per the agreement between parties and not as agent or intermediary. Therefore, the Court directed the department to process a refund within a period of four weeks from date of the order.

3. Valuation Rules notified for supply of online gaming and actionable claims in casino:- *Notification No. 45/2023-Central Tax, dated 06 September 2023*

Following the 51st GST Council meeting, the CGST (Third Amendment) Rules 2023 introduce Rule 31B and Rule 31C under the CGST Rules for the valuation of supply by way of online gaming and actionable claims in casino respectively.

Rule 31B provides that the value of online gaming, including online money gaming, would be the total amount paid to the supplier by the player. Rule 31C provides that the value of actionable claims in casinos would be based on the total amount paid by the player for purchase of the tokens, chips, coins, or tickets, by whatever name called, for use in casino or participating in any event, including game, scheme, competition or any other activity or process, in the casino, in cases where the token, chips, coins or tickets, by whatever name called, are not required.

Notably, for both the above rules, the amount refunded by supplier/casino would not be deductible from the value of supply of. Further, if a player uses winnings for further play without withdrawal, it won't be considered as an amount paid to the supplier and hence not taxable.

4. Government constitutes State Benches of GST Appellate Tribunal:- Ministry of Finance Notification F. No. A-50050/150/2018-CESTAT-DoR dated 14 September 2023

After a wait of six years from the enactment of the GST law, the Ministry of Finance, notified the establishment of the 31 state benches of the GST Appellate Tribunals for 28 states and 8 union territories vide Notification dated 14 September 2023, in accordance with the Central Goods and Services Tax Act, 2017. Currently, the taxpayers aggrieved with decisions of tax authorities are required to move to the respective High Courts under Writ jurisdictions. The resolution process takes longer time as High Courts are already burdened with backlog of cases and do not have a specialised bench to deal with GST cases. The number of State Benches is determined for each state as per the table below, specifying the state, the corresponding number of benches, and their respective locations.

S. No.	State Name	No. of Benches	Location
1	Andhra Pradesh	1	Visakhapatnam and Vijayawada
2	Bihar	1	Patna
3	Chhattisgarh	1	Raipur and Bilaspur
4	Delhi	1	Delhi
5	Gujarat	2	Ahmedabad, Surat and Rajkot
6	Dadra & Nagar Haveli & Daman & Diu		
7	Haryana	1	Gurugram and Hissar
8	Himachal Pradesh	1	Shimla
9	Jammu and Kashmir	1	Jammu and Srinagar
10	Ladakh		
11	Jharkhand	1	Ranchi
12	Karnataka	2	Bengaluru
13	Kerala	1	Ernakulum and Trivandrum
14	Lakshadweep		
15	Madhya Pradesh	1	Bhopal
16	Goa	3	Mumbai, Pune, Thane, Nagpur,

17	Maharashtra		Aurangabad and Panaji
18	Odisha	1	Cuttack
19	Punjab	1	Chandigarh and Jalandhar
20	Chandigarh		
21	Rajasthan	2	Jaipur and Jodhpur
22	Tamil Nadu	2	Chennai, Madurai, Coimbatore and Puducherry
23	Puducherry		
24	Telangana	1	Hyderabad
25	Uttar Pradesh	3	Lucknow, Varanasi, Ghaziabad, Agra and Prayagraj
26	Uttarakhand	1	Dehradun
27	Andaman and Nicobar Islands	2	Kolkata
28	Sikkim		
29	West Bengal		
30	Arunachal Pradesh	1	Guwahati Aizawl(Circuit) Agartala(Circuit) Kohima (Circuit)
31	Assam		
32	Manipur		
33	Meghalaya		
34	Mizoram		
35	Nagaland		
36	Tripura		

Locations shown as 'Circuit' shall be operational in such manner as the President may order, depending upon the number of appeals filed by suppliers in the respective States.

5. Government Imposes 30-Day Invoice Reporting Limit for Large Taxpayers:- Advisory dated 13 September 2023

The Indian Government has introduced a significant change in the reporting of invoices on the e-invoice IRP portals. Taxpayers with an Aggregate Annual Turnover (AATO) exceeding Rs. 100 crores will now face a strict time limit for reporting invoices. The GST Department has issued an Advisory related to Time limit for Reporting Invoices on the IRP Portal. It's a measure primarily aimed at large businesses and aims to ensure better compliance in this segment means the small businesses are kept out of this new requirement.

The government has decided to impose a time limit on reporting old invoices for taxpayers falling under the category of AATO greater than Rs. 100 crores. This decision aims to enhance compliance and streamline the reporting process. Such taxpayers will have a limited reporting window of 30 days. This means that invoices older than 30 days on the date of reporting will not be accepted by the e-invoice IRP portals. This restriction applies to all document types, including invoices, credit notes, and debit notes.

The IRP Portal will incorporate a validation mechanism to enforce this rule and it will not allow reporting of invoice older than 30 days. Hence, the taxpayers must ensure timely reporting to avoid any complications. The implementation is scheduled to begin from November 1, 2023, onwards.

6. Section 16(4) of CGST Act is constitutionally valid & not violative of Articles 19(1) (g) or Article 300-A of Constitution of India:- *Gobinda Construction v. Union of India - [2023] 154 taxmann.com 311 (Patna)*

In the present petition, the petitioner challenged the constitutional validity of Section 16(4) of the Central Goods and Services Tax (CGST) Act, 2017 which denies entitlement of Input Tax Credit (ITC) in respect of any invoice or debit note for supply of goods or services or both after 30th November following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier. It was contended that this provision was violative of Articles 14 and 300A of the Constitution of India.

The High Court noted that the language of Section 16 of CGST Act suffers from no ambiguity and clearly stipulates that ITC shall be available subject to conditions and restrictions put thereunder. In order to invoke Article 300-A of Constitution by a person, two circumstances must jointly exist i.e. deprivation of property of a person and lack of sanction of law.

However, the provision under sub-section (4) of section 16 is one of conditions which makes a registered person entitled to take ITC and by no means it can be said to be violative of article 300-A of Constitution of India. Further, the fiscal legislation having uniform application to all registered persons, cannot be said to be violative of Article 19(1)(g). Thus, the Court held that the sub-section (4) of section 16 of CGST Act is constitutionally valid and not violative of Article 19(1)(g) and Article 300-A of Constitution of India.

7. Goods & conveyance to be released after payment of nominal penalty as there was typographical error in e-invoice:- *Tvl.T M Steel v. Deputy State Tax Officer - [2023] 154 taxmann.com 281 (Madras)*

The petitioner had received an order for supply of goods and in turn it placed order for supply of above consignment with its supplier with instruction to directly send consignment to client. The supplier while raising e-invoice for supply of the said goods committed a typographical error in e-invoice and the vehicle was detained by the department and order of penalty under Section 129 was issued. It filed writ petition and challenged the demand.

The High Court noted that the supplier had in 'billed to' column, correctly mentioned name of recipient with correct address and GST number. However, in 'shipped to' column, instead of Tvl. T. Balaji, it had mentioned Tvl. T M Steel, but in address column, it had clearly mentioned address of Tvl. T. Balaji.

The Court further noted that it could be considered as typographical error only. Moreover, it was not mistake of petitioner, but mistake committed by supplier. Further, the department had left goods in vehicle for 10 days, thereby damaging vehicle and goods and had not passed order under Section 129(3) of CGST Act within 7 days from date of service of notice. Thus, the detention of goods was against the provisions of the CGST Act. Therefore, the Court held that the impugned order was to be

modified directing petitioner to pay Rs. 5,000 only as penalty and vehicle & goods of petitioner to be released.

8. Geocoding Functionality for the Additional Place of Business is now available for all taxpayers:- GSTN Update dated 19 September 2023

The GSTN has issued an update to inform that the geocoding functionality for the "Additional Place of Business" address is now active across all States and Union Territories. This builds upon the geocoding functionality earlier implemented for the principal place of business, operational since February 2023. This is a one-time activity, and post-submission, address revisions are not permitted. The taxpayers who have already geocoded their addresses through new registration or core amendment would not be required to do this as on the GST portal their address will be shown as geocoded.

9. Clarification on e-Invoicing for Government Supplies:- Press Release dated 14 14 September 2023

The Government has clarified that the tax payers, notified for generation of e-invoices and supplying goods or services to government departments / agencies, need to generate B2B e-Invoices with the GSTIN of the Government department/agency. Accordingly, the registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, is required to issue e-invoices for the supplies made to such Government departments or establishments/ government agencies/ local authorities/ PSUs, etc under rule 48(4) of CGST Rules.

10. Provisional attachment must cease to subsist once final order of assessment had been passed under section 74:- Rina Jaiswal v. Commissioner of Central Tax - [2023] 154 taxmann.com 329 (Telangana)

In the present case, the petitioner's bank accounts and properties were provisionally attached by the GST department under Section 83 of CGST Act, 2017. Subsequently an order-in-original was passed against which petitioner had preferred appeal but it was unable to deposit the amount pre-deposit. It filed a writ petition seeking release of attachment of bank accounts.

The High Court noted that as per section 107(6) of CGST Act, no appeal can be filed unless appellant has paid full tax admitted by him and ten per cent of remaining amount of tax in dispute arising from said order, in relation to which appeal had been filed. However, Section 107(7) of CGST Act provides that where appellant had paid amount under sub-section (6), recovery proceedings for balance amount shall be deemed to be stayed.

It is settled law that once a final order of assessment had been passed, in that case, order of provisional attachment must cease to subsist. In the instant case, the order-in-original was passed under Section 74 of CGST Act. Therefore, the Court held that the impugned orders of attachment were liable to be quashed and set aside.

11. GSTN Advisory: Temporary/Short period pause in e-Invoice auto population into GSTR-1:- GST Update dated 27 September 2023

The GSTN has informed that auto population of e-Invoice in GSTR-1 is temporarily halted due to essential system upgrades, which will involve the implementation of e-Invoice JSON download functionality. This will have a temporary impact on the e-Invoice data auto population in GSTR-1 which will not be available from 26 September 2023 to 29 September 2023 from all six IRP portals.

The data for this period will be auto-populated on 30th September 2023 and will not impact GSTR-1 filing for next month and it is requested to avoid manually adding invoices in this period as the break will be only of a temporary nature.

12. No more double taxation on ocean freight; CBIC amends IGST Rate Notifications:- Notification No. 11/2023- Integrated Tax (Rate), Notification No. 12/2023- Integrated Tax (Rate) & Notification No. 13/2023- Integrated Tax (Rate) dated 26 September 2023

The CBIC has amended IGST Rate notifications in order to provide that IGST will not be levied on importer under RCM on supply of ocean freight services by foreign shipping line to foreign exporter. In this regard, three notifications have been issued and these notifications shall be effective from October 1st, 2023. Notably, these changes are incorporated to give effect to decision of Apex Court in case of Mohit Minerals since the Government has already amended place of supply provisions for services of transportation of goods by vessel.

13. Govt. notifies 01 October 2023 as effective date of applicability of CGST (Amendment) Act, 2023:- Notification No. 48/2023-Central Tax, dated 29 September 2023

The Government has notified that the amendments made in the CGST Act, 2017 via the CGST Amendment Act, 2023 would be effective from 01-10-2023. Based on the recommendations of the 50th and 51st GST Council meeting, certain changes were introduced to the CGST Act, 2017 through the CGST Amendment Act, 2023.

However, the effective date of the same was not notified. Now, the Government has notified that the said amendments would be effective from 01-10-2023. Parallel amendments were made in the IGST Act, 2017 and the effective date of the same has also been notified as 01-10-2023. Notably, the amendments majorly relate to the taxability of the specified actionable claims such as online gaming, casinos, etc., and the place of supply provisions in case of supply made to unregistered persons.

14. Time of supply for online gaming etc. would be earlier of date of invoice or date of payment:- Notification No. 50/2023-Central Tax dated 29 September 2023

The CBIC has issued notification to provide that the time of supply for specified actionable claims such as online money gaming would be earlier of date of issue of invoice or date on which supplier receives payment.

15. CBIC notifies Central Goods and Services Tax (Third Amendment) Rules, 2023 w.e.f 01 October 2023:- Notification No. 51/2023-Central Tax dated 29 September 2023

The CBIC has issued notification u/s 15(5) to notify that the valuation of supply of online gaming, online money gaming and actionable claims in casino will be determined in a notified manner. In

this regard, Rule 31B and Rule 31C have been inserted under the CGST Rules to provide the manner of determining the value of supply of online gaming (including online money gaming) and supply of actionable claims in casino respectively and will be made effective from 01 October 2023.

Section 15(5) empowers the Government to notify certain supplies, the valuation of which shall be determined in a prescribed manner. The same would be notified based on the recommendations of the Council. In this regard, the Government has now issued a notification under Section 15(5) of the CGST Act to notify that the valuation of supply of online gaming, online money gaming and actionable claims in casino would be determined in a prescribed manner.

Further, Rule 31B and Rule 31C has been inserted under the CGST Rules to prescribe the manner of valuation of supplies relating to online gaming, online money gaming and casinos. Notably, the said rules were earlier inserted vide Notification No. 45/2023-Central Tax, dated 06-09-2023. However, the given notification has now been superseded vide Notification No. 51/2023-Central Tax, dated 29-09-2023. The given rules have been inserted again but with effect from 01-10-2023.

16. 28% GST shall be levied on online gaming and Casinos w.e.f 1.10.2023:- Notification No. 11/2023-Central Tax (Rate) dated 29 September 2023

The government has issued a notification to provide that the actionable claims classified as 'specified actionable claims' under Section 2(102A) of the CGST Act, 2017 would be leviable to GST at the rate of 28% with effect from 01-10-2023. This includes the supply of actionable claims involved in or by way of betting, casinos, gambling, horse racing, lottery, and online money gaming.

It has further been notified that where a word or expression is not defined in the rate notification, notification no. 01/2017- Central Tax (Rate), but the same has been defined in the GST law, the same meaning would be assigned to it for the purpose of the rate notification.

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REGULATORY

1. If joint audit is to be brought in, there should be complete clarity on auditors' responsibilities:- *News Report*

National Financial Reporting Authority (NFRA) Chairperson Ajay Bhushan Pandey has emphasised the need for a clear-cut provision for responsibilities in a mandatory system of joint auditing for firms and believes that the government should decide whether joint audits should be mandatory and that clarity on the responsibilities of joint auditors is crucial. Further, it also emphasises that users of financial statements should have a clear view of which auditor is behind an assertion, which should be true and fair. Pandey also noted that joint audits can take various forms, but there is no single approach due to their popularity in the global market.

Joint audits involve two auditors conducting a statutory audit and preparing a joint audit report, aimed at improving audit quality amid accounting scams and corporate failures and enhancing market competition. It can be in its purest form, supervised by a lead joint auditor, or a highly diluted version of multiple joint auditors, each responsible for areas allocated to them. The choice of a joint audit model depends on the main objective, such as addressing audit failures, poor quality audits, increasing audit market concentration, or building the scale and depth of audit firms. In India, joint audits were always mandatory for public sector banks and insurance companies, but in April 2021, the RBI made them applicable for all financial entities with assets over Rs 15,000 crore. A government panel has proposed mandatory joint audits for public-interest companies.

2. MCA notifies revised LLP Form 3 and Form 4:- *MCA Notification No. G.S.R. 644(E) dated 01 September 2023*

MCA notifies the LLP (Second Amendment) Rules, 2023, to revise LLP Forms 3 and 4. In Form 3, adds a field for providing information with regard to initial LLP Agreement. Revises Form 4 to provide for Notice of appointment, cessation, change in name/ address/designation of a designated partner or partner and consent to become a partner/designated partner'.

3. FinMin amends “Principal Officer” definition under PMLA Rules:- *Notification No. G.S.R. 652(E), dated 04 September 2023*

The Ministry of Finance notified the Prevention of Money-laundering (Maintenance of Records) Second Amendment Rules, 2023 to amend the Prevention of Money-laundering (Maintenance of Records) Rules, 2005, which provides for management-level functionary as 'Principal Officer' responsible for providing information to the financial intelligence unit. According to the notification, under rule 2 clause (f) describes the meaning of a “Principal Officer”. The amendment specifies that apart from being an officer designated by a reporting authority, that officer should also be a management level officer. Also, rule 9 relating to Client Due Diligence have been revised:

- Sub-rule (3) clause (b)- in case where the client is a partnership firm, the beneficial owner is the natural person, who acts along/ together through one or more judicial person and has ownership/ entitlement to more than 10% of capital/ profit of the partnership or who exercises control through other means. Here, “Control” includes the right to control the management or policy decision.

- In case of Trust, the reporting entity shall ensure that trustees disclose their status at the time of commencement of an account-based relationship or when carrying out transactions.

4. SEBI revises format for disclosures in abridged prospectus for greater clarity:- SEBI vide Circular No. SEBI/HO/DDHS/PoD1/CIR/P/2023/150, dated 04 September 2023

SEBI has introduced a new abridged prospectus format for public issuance of non-convertible debt securities. This format aims to enhance clarity and consistency in disclosure across various documents. Here are the key highlights of the new format:

- **Front Page Focus:** The critical information about the securities offering will now be prominently featured on the front page of the offer document. This change ensures that investors can quickly access essential details.
- **QR Code Integration:** Issuers or merchant bankers involved in the offering must include a Quick Response (QR) code in the abridged prospectus. Scanning this QR code will provide direct access to the full prospectus, enhancing convenience for investors.
- **Revised Content:** The revised format necessitates disclosure of key information such as instrument type, base size, face value, oversubscription options, coupon details, issue opening and closing dates, instrument rating, and the listing exchange on the front page of the abridged prospectus (DRHP or RHP).
- **Additional Disclosures:** Besides the front-page disclosures, issuers must provide information about promoters, their qualifications and experience, board of directors, business overview, risk factors, objectives of the issue, and issue procedures.
- **Online Accessibility:** A copy of the abridged prospectus will be made available on the issuer's, merchant bankers', and registrar to the issue's websites. Additionally, there must be a link for downloading the prospectus in the public issue advertisements.
- **QR Code Inclusions:** In addition to the QR code in the abridged prospectus, issuers or merchant bankers should include QR codes on documents such as the front outside cover page and advertisements as they deem appropriate.

Further, the new abridged prospectus format will be applicable for all public issues commencing on or after 01 1, 2023. This regulatory update reflects Sebi's commitment to improving transparency and accessibility in India's capital markets. The integration of QR codes and front-page disclosures aims to empower investors and facilitate more informed decision-making.

5. IAC notifies India International Arbitration Centre (Conduct of Arbitration) Regulations:- India International Arbitration Centre's Notification F. No. A-60011/96/2023-Administration(AR)-IAC dated 31 August 2023

The IAC (India International Arbitration Centre) has recently unveiled the India International Arbitration Centre (Conduct of Arbitration) Regulations for 2023. These regulations come into play when parties opt to resolve their disputes through arbitration at the Centre. This choice can be made either before a dispute arises, after it surfaces, or when a court mandates arbitration under the auspices of the Centre.

Under these regulations, arbitration proceedings can commence through two distinct avenues. Firstly, a party can kickstart the process by submitting a request through the Centre's website portal, via email to the Registrar, or through physical filing. Alternatively, the process can begin when a court issues a judgment or order mandating the parties to pursue arbitration at the Centre.

The regulations introduced by IAC incorporate several key features designed to streamline and expedite the arbitration process. Notably, they introduce a Fast Track Procedure as outlined in Regulation 17. Parties can opt for this procedure when mutually agreed upon, and it sets a strict deadline for award issuance within 6 months of the proceedings' initiation. Additionally, provisions for appointing an Emergency Arbitrator are in place to address urgent interim relief needs. Parties can also seek interim protective measures from the Arbitral Tribunal as needed. Regarding the selection of arbitrators, the regulations offer flexibility. Parties have the choice to nominate arbitrators from the IAC's Panel or, in exceptional circumstances, select arbitrators from outside the panel. The Chairperson holds the authority to appoint arbitrators, considering factors such as their qualifications, availability, and efficiency in conducting proceedings.

The regulations address challenges related to the existence or validity of arbitration agreements and the Centre's competence to administer arbitration. They outline a fee schedule applicable to various arbitration matters, including domestic, international, emergency, and ad-hoc cases.

6. SEBI launches a dedicated bank account for seamless credits to IPEF by Market Participants:- *Press Release*

Earlier, SEBI vide its Circular No. SEBI/HO/ISD/ISD/CIR/P/2020/135 dated July 23, 2020 had prescribed that as per Regulation 4(2) of SEBI (Investor Protection and Education Fund) Regulations, 2009, any amount collected by the listed companies, intermediaries and fiduciaries for violation(s) of CoC shall be credited to the SEBI Investor Protection and Education Fund through online mode or by way of demand draft in favour of the Board.

Currently, SEBI vide its Circular No. SEBI/HO/GSD/TAD/P/CIR/2023/149 dated 04 September 2023, has modified the mode of payment for crediting the amount to the SEBI Investor Protection and Education Fund (SEBI IPEF).

SEBI has introduced a new bank account to streamline payments from market participants to SEBI IPEF. Pertaining to this, a link has been made accessible in the Homepage of SEBI website (www.sebi.gov.in) under the head "Click here to make payment to SEBI IPEF". Diverse Payment Options available for funding IPEF. The provided link allows the remitter to complete the payment using any of the diversified methods i.e., Net Banking, NEFT / RTGS, Debit Cards, UPI

7. SEBI introduces template for sharing of information by CRAs to Debenture Trustees:- *Circular No. SEBI/HO/DDHS/DDHS-POD2/P/CIR/2023/151 dated 04 September 2023*

Under the SEBI (Credit Rating Agencies) Regulations, 1999, Credit Rating Agencies (CRAs) are required to share certain information with the Debenture Trustees (DTs). Due to the large quantum of information submitted daily by CRAs to the DTs and the short timelines mandated for the disclosure of this information by DTs, it is essential that the data shared by the CRAs must be structured and submitted in a specified format for easier accessibility and analysis of the submitted

data. In this regard, SEBI has issued an excel template for daily submissions of rating revisions to the DTs. An excel template is attached as an annexure to the circular itself.

Such submissions shall be sent by the CRAs to the DTs on the same day as the day of the rating revisions, on either the generic email ID being used for regulatory purposes, or email IDs/URL as may be communicated for this purpose by the DTs.

The circular shall be effective from 01.10.2023 and CRAs shall report on their compliance with this circular to SEBI within one quarter from the date of applicability of this circular.

8. IFSCA issued a notification regarding Additional AML measures under the International Financial Services Centres Authority (Anti Money Laundering, Counter-Terrorist Financing and Know Your Customer) Guidelines, 2022:- IFSCA Notification

The International Financial Services Centres Authority (IFSCA) on February 23, 2023, issued a notification regarding Additional AML measures under the International Financial Services Centres Authority (Anti Money Laundering, Counter-Terrorist Financing and Know Your Customer) Guidelines, 2022. The Authority specifies the following additional measures to be complied with by all Regulated Entities:

- In a cross-border wire transfer where the amount to be transferred is equal to USD 1000, every bank that is an ordering institution shall also comply with the requirements specified under clause 7.7.3(a) of the Guidelines.
- Clause 7.7.3. (b) of the Guidelines shall apply to all Cross- Cross-Border wire Transfers which are bundled in a batch file.
- The Intermediary Institution shall be required to take all reasonable measures, consistent with straight-through processing, to identify cross-border wire transfers that lack the information required under clause 7.7.6 (a) of the Guidelines.

9. Modification of Section 51A of UAPA Implementation Procedure:- IFSCA Circular No. F. No. 887/IFSCA/UAPA/ 2023-24/03 dated 05 September 2023

The International Financial Services Centres Authority (IFSCA) issued important modifications regarding the implementation of Section 51A of the Unlawful Activities (Prevention) Act, 1967. This circular impacts all regulated entities in the GIFT-IFSC jurisdiction in accordance with their business nature.

It highlights the importance of compliance obligations under international agreements and domestic laws as referred in Clause 11.2 of the IFSCA (Anti Money Laundering, Counter-Terrorist Financing and Know Your Customer) Guidelines, 2022, issued by IFSCA. Reference is also made to the Corrigendum issued by the CFT Cell/CTCR Division of the Ministry of Home Affairs, Government of India, bearing File No. 14014/01/2019/CFT-83 dated 15 March 2023.

Further, the circular informs about further modifications made to the Order dated 2nd February 2021, as amended by the Corrigendum No. 14014/01/2019/CFT-83 dated 15 March 2023. These modifications are introduced through a Corrigendum dated 29 August 2023 by the CFT Cell/CTCR Division of the Ministry of Home Affairs, Government of India. The key modifications include:

- Expanding the scope of individuals/entities to “real-estate agents, dealers of precious metals/stones (DPMS), other Designated Non-Financial Businesses and Professions (DNFBPs) and any other person.”
- Adding a new para (7(i)(a)) requiring DNFBPs to report transactions involving designated individuals/entities and freeze their assets when held.
- Inserting a new para (7(ix)) mandating any person holding funds or assets of designated individuals/entities to immediately freeze related transactions and report to the nearest Police Station, which in turn informs the UAPA Nodal Officer.

The circular specifies that the above modifications to the Order dated 2nd February 2021 apply to Regulated Entities in IFSC, in accordance with the nature of their business, with immediate effect. For any further inquiries or clarifications stakeholders may contact Mr. Ramachander S.S.R. Eranki, UAPA Nodal Officer, and Head, AML & CFT Division, at ramachander.essr@ifsc.gov.in.

10. MCA extends the tenure of Company Law Committee by another one year till 16 September 2024:- Order No. 2/1/2018-CL-V dated 13 September 2023

Earlier, the Ministry of Corporate Affairs vide an order dated 18.09.2019 constituted the Company Law Committee to examine and recommend various provisions and issues pertaining to the implementation of the Companies Act, 2013 and the LLP Act, 2008. As per the order dated 05.09.2022, the tenure of the Company Law Committee was set to expire on 16 September 2023. However, the MCA has now extended the tenure by one year till 16.09.2024.

11. IRDAI forms Committee on Cyber Security, IRDAI Ref No:- IRDAI/GA&HR/GDL/MISC/170/09/2023, dated 14 September 2023

The Insurance Regulatory and Development Authority of India (IRDAI) has set up a standing committee on cyber security to regularly review the threats inherent in the existing or emerging technologies. The committee has been set up following the issue of the Information and Cyber Security Guidelines dated 24 April, 2023 will also suggest appropriate changes to the framework to strengthen the cyber security posture and resilience of the insurance industry. “Further, the suggestions received from the Regulated Entities in implementation of IRDAI Information and Cyber Security guidelines, 2023 will also be considered by the committee for suggesting appropriate changes in the current framework,” the regulator said.

The 10-member committee, chaired by PS Jagannatham, includes technology professionals from academics, industry experts and representatives of the insurance broking community. External members can also be invited to the committee, if required. The cyber security norms mandated insurers and intermediaries to adopt a risk-based approach & take necessary measures to secure their systems & data against cyber threats. This includes identifying & assessing risks, implementation of appropriate security controls, incident response plans, & regular security audits.

12. SEBI issues framework for exercise of board nomination rights by REITs, InvITs unitholders:- SEBI CIRCULAR NO. SEBI/HO/DDHS-PoD-2/P/CIR/2023/153 & 154, dated 11 September 2023

The SEBI has released a framework for eligible unitholders of Real Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs) allowing them to exercise their board nomination rights. As per the framework, the manager of a REIT/InvIT must review whether the eligible unitholders who have exercised their board nomination right, continue to hold the required number of units of REIT/InvIT and make a report on the same.

As per the SEBI (Real Estate Investment Trusts) Regulations, 2014 and SEBI (Infrastructure Investment Trusts) Regulations, 2014, unitholders holding 10% or more of the total outstanding units of the REIT/InvIT, either individually or collectively must be entitled to nominate one director on the board of directors of the manager or investment manager. Further it outlines that the Manager shall send a written intimation to all unitholders on their email addresses registered either with the Manager or with any depository, within 10 days from the end of September 30, 2023, requesting them to inform the Manager if any eligible unitholders wish to exercise the right to nominate a Unitholder Nominee Director.

As per the framework, the manager of a REIT/investment manager of the InvIT must review whether the eligible unitholders who have exercised their board nomination right, continue to hold the required number of units of REIT/InvIT and make a report on the same. The review must be done within 10 days from the end of each calendar month. Further, the report must be submitted by the manager/investment manager to the trustee of the REIT or InvIT concerned. Also within 6 months, it ensures that the trust deed and the investment agreement of the REIT/InvIT are amended to provide for nomination and appointment of Unitholder Nominee Directors on the Board of Directors of the Manager/Investment Manager by eligible unitholders. The said circulars are effective immediately.

13. SEBI revamps quarterly reporting format for AIFs to streamline compliance reporting:- Circular No. SEBI/HO/AFD/SEC-1/P/CIR/2023/0155, Dated: 14/2023

In order to enable the AIF industry to have uniform compliance standards, ease compliance reporting and for regulatory and developmental purposes, SEBI has revised the quarterly reporting format for AIFs. The said revised reporting format shall be hosted by the AIF associations on their website within 2 working days of the issuance of this circular. Further, the quarterly report must be submitted by AIFs online on the SEBI Intermediary Portal as per the revised format, within 15 calendar days from the end of each quarter.

14. Supreme Court entertains writ against discontinued VC hearing issues notice to HCs, Tribunals & requests SG's assistance:- *Sarvesh Mathur vs. The Registrar General, High Court of Punjab & Haryana [LSI-858-SC-2023(NDEL)]*

The Supreme Court has sought responses from all High courts and certain tribunals regarding the discontinuation of hybrid modes for hearing cases, which allowed lawyers and litigants to participate via video conferencing. The court also sought to know the reasons behind such decisions if they have discontinued hybrid hearings. The court asked the registrar generals to file an affidavit within two weeks.

The bench has also issued notices to the registrars general of all High courts and registrars of the National Company Law Appellate Tribunal (NCLAT), National Consumer Disputes Redressal Commission (NCDRC), and National Green Tribunal (NGT), instructing them to file affidavits. The

bench stated, “An affidavit be filed by the registrars on whether video-conferencing or hybrid hearings are being continued or disbanded.” The court sought a response from the officials of NCLT, NCLAT, NGT to file an affidavit within 10 days.

15. RBI revises Draft Master Direction on treatment of wilful and large defaulters:- RBI Press release dated 21 September 2023

The RBI has issued a revised draft Master Direction concerning the treatment of wilful and large defaulters. This update follows a comprehensive review of existing guidelines, taking into account rulings from the Supreme Court and High Courts, as well as input and suggestions from banks and various stakeholders.

The draft Master Direction significantly broadens the scope for Regulated Entities to classify borrowers as wilful defaulters. It also extends and refines the definition of wilful default, enhancing the precision of the identification process. Notably, it mandates that Regulated Entities review and finalize the aspects related to wilful default within six months of an account being classified as a non-performing asset. Furthermore, the draft Direction provides guidance on the treatment of wilful default loans when sold to Asset Reconstruction Companies and outlines their status under the Insolvency and Bankruptcy Code (IBC).

In line with its commitment to transparency and stakeholder engagement, the RBI invites comments and feedback from Regulated Entities and other interested parties. All feedback is requested to be submitted by 31 October 2023 through email with the subject line ‘Feedback on Master Direction – Treatment of Wilful Defaulters and Large Defaulters.

16. SEBI Board approves proposal to provide flexibility in borrowing-framework for Large Corporates to meet financing needs:- SEBI PR No. 21/2023 dated 21 September 2023

The SEBI in its board meeting has approved a proposal to provide flexibility in the framework for Large Corporates (LCs) to meet incremental financing needs via the issuance of debt securities. A higher monetary threshold has been specified for defining LCs, thereby reducing the number of entities qualifying as LCs.

Further, a removal of penalty has also been approved on LCs which are not able to raise a certain percentage of incremental borrowing from the debt market. As to facilitate ease of compliance and ease of doing business, SEBI Board also decides to retain the requirement that compliance with the framework will be met over a contiguous block of 3 year, as also to dispense with the requirement on LCs for filing a statement identifying itself as an LC and statement regarding compliance with the framework. The Board has also approved the proposal to extend the timeline for compliance with enhanced qualification and experience requirements for Investment Advisers.

Furthermore, the Board approved streamlining the framework for credit of unclaimed amounts of investors in listed entities (other than companies, REITS and InvITs) to the Investor Protection and Education Fund (IPEF) and process of refund from the IPEF. Also, the timeline for compliance, required individual investment advisers, principal officers of non-individual investment advisers and persons who are with the investment advisers and associated with investment advice with enhanced qualification and experience requirements for investment advisers has been extended by

30 September 2023 vide the SEBI (Investment Advisers) (Amendment) Regulations, 2020. Based on the representations received from various stakeholders and in view of the emerging landscape of the domain of investment advice, SEBI extended the timeline up to 30 September 2025 to comply with these requirements.

17. SEBI mandates listing of subsequent issuances of outstanding non-convertible debt securities:- Notification No. SEBI/LAD-NRO/GN/2023/151, Dated: 19 September 2023

SEBI has notified an amendment to the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. A new regulation 62A has been inserted after regulation 62. The new regulation states that a listed entity whose subsequent issues of the unlisted non-convertible debt securities made on or before 31.12.2023 are outstanding may list such securities on the stock exchanges.

Further, listed entity whose non-convertible debt securities are listed must list all such securities proposed to be issued on or after 01 January 2024 on the stock exchanges. Also, a listed entity that proposes to list the non-convertible debt securities on the stock exchanges on or after 01 January 2024 must list all outstanding unlisted non-convertible debt securities previously issued on or after 01.01.2024 on the stock exchanges within 3 months from the date of the listing of the non-convertible debt securities proposed to be listed.

18. SEBI strengthens the framework for handling of complaints received via SCORES platform:- Circular No. SEBI/HO/OIAE/IGRD/CIR/P/2023/156, Dated: 20 September 2023

The SEBI has issued the revised framework for handling of the complaints received through the SCORES platform for entities and monitoring the complaints by the designated bodies.

This aims to strengthen the existing investor grievance handling mechanism via SCORES. Now, the designated bodies may apply for SCORES authentication and/or for Application Programming Interface integration within the prescribed period to ensure compliance with this circular by 04.12.2023. Further, Market Infrastructure Institutions and Designated Bodies must bring the provisions of this Circular to the notice of all listed companies and registered intermediaries, and disseminate the same on their respective websites.

19. MHA widens Form FC-4 and Foreign Cos must disclose both movable & immovable assets created from foreign contributions:- Ministry of Home Affairs vide Notification No G.S.R. 683(E) dated 22nd September 2023

The Ministry of Home Affairs (MHA) has introduced amendments to the Foreign Contribution (Regulation) Rules. These amendments necessitate that Non-Governmental Organizations (NGOs) furnish comprehensive information concerning the movable and immovable assets derived from foreign contributions as of March 31st in each fiscal year.

Amendments to Form FC-4: Notable adjustments have been made to Form FC-4, the primary tool for reporting foreign contributions. These modifications encompass two vital sections:

(ba) Details of Movable Assets Originating from Foreign Contribution: Within this section, NGOs are obligated to provide an exhaustive account of movable assets. This entails

furnishing descriptions of these assets, their valuation at the commencement of the fiscal year, the value of assets acquired during the fiscal year, the value of assets divested during the fiscal year, and their valuation in accordance with the balance sheet at the close of the fiscal year.

(bb) Details of Immovable Properties Acquired through Foreign Contribution: This section mandates the disclosure of information pertaining to immovable assets, such as land and buildings. NGOs are now required to present precise particulars about these assets, including dimensions, complete address (location), and valuation as per the balance sheet.

Further, these amendments have been introduced with the primary objective of reinforcing transparency and accountability in the utilization of foreign contributions by NGOs. They underscore the unwavering commitment of the government to ensure that foreign contributions are allocated for their intended purposes, while adhering rigorously to the prevailing legal framework.

For organizations that fall within the ambit of these regulations, it is imperative to diligently observe these revised rules. The accuracy and timeliness of reporting asset details are paramount for sustained compliance. Non-compliance with these regulations may potentially entail legal repercussions. These amendments firmly reflect the government's dedication to exercising vigilant oversight over foreign contributions, thereby guaranteeing their equitable distribution among intended beneficiaries and projects.

20. MCA allows companies to conduct AGMs, EGMs through VC/OAVM till September 30, 2024:- MCA General Circular No. 09/2023, dated 25 September 2023

The Ministry has decided to allow companies whose AGMs are due in the Year 2023 or 2024, to conduct their AGMs through Video Conference (VC) or Other Audio-Visual Means (OAVM) on or before 30.09.2024. Also, companies are also allowed to conduct their EGMs through VC or OAVM till 30.09.2024. However, it is clarified that this shall not be treated as any extension of statutory time for holding of AGMs or EGMs as they may face legal consequences under the applicable provisions of the Companies Act, 2013.

21. Digital India Bill out for discussion soon, says official:- News Report

The ministry of electronics and IT is currently working on finalising the draft rules of Digital Personal Data Protection Act, which was notified on August 11. The much-awaited Digital India (DIA) draft is also ready and is expected to be released for consultation soon which is likely to have the provisions to govern emerging technologies such as artificial intelligence (AI) and quantum computing. The government has been holding pre-draft consultations on the DIA Bill across cities such as Mumbai and Bengaluru since March. The Digital India Bill will be the third major digital law overhaul by the government after the DPDP Bill and the Telecom Bill. The DIA Bill is highly sought after by the industry, especially social media firms, since it may do away with the immunity provided to platforms under Section 79 of the IT Act, 2000. Section 79 of the IT Act 2000, states that "an intermediary shall not be liable for any third-party information, data, or communication link made available or hosted by him".

"Most platforms are anonymous, so the perpetrator is untraceable, but the government draws flak for free speech-related issues," Rajeev Chandrasekhar, minister of state for electronics and IT said. "I want to propose to you that we're actively thinking through in the DIA (Digital India Act) that we

do away with the Section 79 safe harbour completely. I'd say that it is the responsibility of the platforms that host the content to do whatever they can (to act on) misinformation, on toxic content, illegal content...This is certainly something that we are thinking of. The safe harbour, the immunity blanket, should be conditional," he added. He also said that the government will regulate AI, and that an entire chapter in the DIA will be dedicated to AI and emerging technologies. "But it will be done through the prism of user harm, and there will be no separate legislation to regulate AI," he said. The DIA will classify newer types of intermediaries based on risk, and size, he said. The minister also said that the DIA will account for sector-specific regulation apart from the Digital Personal Data Protection Bill (DPDP) accounting for it.

22. Large unlisted companies may be regulated:- News Report

MCA proposed a regulatory framework for large unlisted entities, including unicorns, to ensure better adaptation and tighter scrutiny of corporate governance standards and mandated that they submit their quarterly financial statements to MCA. This year, the proposal got traction after Edtech firm Byju's alleged corporate governance lapsed. MCA Secretary Manoj Govil takes a final call on a framework that could classify the large entities on the basis of turnover and revenue. MCA is holding inter-ministerial consultations to finalise amendments to the Companies Act. The amendments are expected to be modelled on the recommendations of the company law committee with suitable modifications.

Despite their large turnover and heightened influence over certain sectors, these large entities, especially the private limited, are not subject to the same regulatory and scrutiny as small listed firms. India is home to 108 unicorns with a total valuation of \$340.8 billion, according to the Invest India website. As many as 65 of them became unicorns in 2021 and 2022 alone. The country had about 99,000 recognised startups spread over 670 districts as of May 31, according to the Department for the Promotion of Industry and Internal Trade (DPIIT).

23. RBI directs banks to display information on borrowers whose assets are possessed under SARFAESI:- RBI Circular No. RBI/2023-24/63 dated 25 September 2023

The RBI mandates regulated entities, including banks and lenders, to display information about secured creditors under the SARFAESI Act on their websites in respect of the borrowers whose secured assets have been taken into possession by the regulated entities under the Act. The first list must be posted within six months of the circular's publication, and the list must be updated monthly. This is in line with the Act's requirement for secured creditors to be transparent and accountable.

24. FCRA Registration Certificate Validity extended:- Public notice dated 25 September 2023

The Ministry of Home Affairs in India has issued a public notice to extend the validity of FCRA registration certificates for specific categories of entities, aiming to alleviate challenges faced by organizations due to delays in the renewal process. This extension pertains to entities with pending renewal applications, enabling an extension of their validity until March 31, 2024, or until their renewal application is adjudicated, whichever occurs earlier.

Additionally, entities with FCRA certificates due to expire between October 1, 2023, and March 31, 2024, and have applied or will apply for renewal before their 5-year validity period concludes, will also benefit from this extension, with validity prolonged until March 31, 2024, or until the renewal application is resolved. It is imperative for FCRA registered associations to duly acknowledge this extension; however, they must remain mindful that any rejection of a renewal application renders the certificate's validity expired from the date of refusal. Consequently, the affected association will lose its eligibility to receive and utilize foreign contributions. It is paramount for these entities to undertake appropriate measures and sustain compliance with FCRA regulations to ensure the uninterrupted and compliant continuation of their operations during this extended validity period. Monitoring the status of their renewal applications is advised, and adherence to FCRA regulations and guidelines remains crucial throughout this period. Any refusal of renewal applications warrants immediate cessation of eligibility to receive and utilize foreign contributions, underscoring the significance of prompt and compliant action by the affected entities.

25. IFSCA issues updated FAQs on framework for sustainability linked lending by FIS:- *IFSCA Press Release*

The IFSCA has recently issued updated FAQs pertaining to its guidance framework on sustainable and sustainability-linked lending by financial institutions (FIs). Following are the key highlights of the FAQs issued:

➤ **Applicability of 'The SL Framework' in IFSC:**

The SL Framework applies to specific entities operating within the International Financial Services Centre (IFSC). It is applicable to IFSC Banking Units (IBUs) and finance Companies/Units registered with the IFSC that are engaged in lending activities.

➤ **Expectations from Entities under the SL Framework:**

Entities covered by the SL Framework are expected to develop a comprehensive policy on green, social, sustainable, and sustainability-linked lending, which must be approved by their Board of Directors. This policy should align with one of the specified principles in the guidelines.

Entities are required to allocate a minimum of five percent of their gross loans and advances to sectors or facilities that fall under green, social, sustainable, or sustainability-linked categories.

➤ **Timeline for Implementation:**

All IFSC Banking Units (IBUs) and Finance Companies/Units (FC/FUs) registered and operating within IFSC must have a Board-approved policy in place by March 31, 2023.

Entities registered or licensed after April 26, 2022, must adopt the Board-approved policy within 12 months from the commencement of their operations.

➤ **Definition of Gross Loans and Advances:**

Gross loans and advances used for target computation include all outstanding loans and advances categorized for reporting to the regulatory authority. The definition provided by the home country regulator can be adopted for computation. Exclusions: Non-fund based exposures, entity investments, derivatives, and other off-balance sheet items are not included in this definition.

➤ **Eligibility of Trade Finance Products:**

Trade finance products offered by an entity that align with the Board-approved policy on sustainable lending and are reported as 'gross loans and advances' are considered eligible lending transactions under the SL Framework.

26. RoDTEP Scheme Extended until June 2024:- DGFT Notification No. 33/22023 dated 26 September 2023

In a significant move, the Ministry of Commerce & Industry has extended its support under the Scheme for Remission of Duties and Taxes on Exported Products (RoDTEP) until 30th June 2024. This extension, which was initially set to expire on 30th September 2023, comes with the promise of continuity at existing rates for export items.

The RoDTEP Scheme, introduced by the Government as a duty remission scheme on exports, has been in operation since 1 January 2021. It plays a pivotal role in reimbursing taxes, duties, and levies incurred by export entities during the manufacturing and distribution of exported products. These are expenses not covered by any other mechanism, spanning central, state, and local levels. One key aspect of this extension is its alignment with the World Trade Organization (WTO) standards, enhancing India's international trade compliance. It ensures that exporters can engage in international contracts under favorable conditions, fostering global competitiveness.

The extension of the RoDTEP Scheme until June 2024 is a positive and strategic move by the Ministry of Commerce & Industry. It ensures the continuity of export support at existing rates, further aligning India with international trade norms. The involvement of the RoDTEP Committee and Export Promotion Councils underscores the government's commitment to addressing the needs and concerns of the export community. With a substantial budget allocation for the upcoming fiscal year, the RoDTEP Scheme continues to be a crucial instrument in promoting India's exports and enhancing its global competitiveness. Exporters can now operate with confidence in a supportive and conducive environment, ultimately contributing to the nation's economic growth.

27. Old overseas investment deals could come under ED fire:- News Report 25 September 2023

Section 37A of the FEMA grants power to the ED to seize value equivalent, situated within India of foreign exchange, foreign security or immovable property acquired outside India in contravention of Section 4 of FEMA involving value more than INR 1 crore.

Unlike the general impression that this provision can get triggered only in hawala transactions involving black money, in two recent cases, the ED has seized the office space and immovable properties of companies which had used regular banking channels to transfer funds abroad under ODI route. While the companies under question remitted tax paid money and did not use hawala operators, they nonetheless faced harsh actions for using the ODI window to buy properties for personal use and hold funds abroad in an outfit that apparently had no bona fide business activity.

Considering the ODI window permits a larger remittance limit of 400% of the Indian entities net worth as compared to LRS window available to Individuals of USD 250,000, Individuals do plan investment by leveraging on the larger limit available under ODI route. If the bona fide of such overseas investment is not proven, then such entities need to be prepared for ED action.

Many overseas vehicles and structures set up over the years by Indian corporate houses and business families to sidestep regulations or move money out of companies may have to be dismantled, corrected, or surrendered following a subtle, yet dramatic, change in the use of the Foreign Exchange Management Act by the enforcement authorities.

Since 2015 the law allows the Enforcement Directorate (ED) to seize equivalent assets in India for illegally holding assets abroad. However, this particular provision in the law, though broadly worded, was till now used for foreign exchange violations involving black money and irregular transactions like hawala. But not anymore.

The consequences of ED's actions are beginning to sink in among several business houses which have in the past used the ODI route to overcome restrictions in individual overseas investments or to take funds out of companies. They now fear that some of their assets in India could remain frozen with ED for these earlier transgressions which rarely drew the glare of the authorities before.

The Directorate is scrutinizing almost every overseas high-value direct investment under ODI regulations as well as under the LRS. Indian parties and individuals are being told to justify that the investments are within the provisions of FEMA.

Any escape routes? Will compounding provisions come to rescue? Unfortunately, not! Section 37A cases cannot be compounded, additionally, monetary Penalty may be levied up to thrice the sum involved in the contravention and Imprisonment which may extend up to 5 years. Although, in cases involving violations relating to ODI, one can go for compounding but if the transaction under consideration is in gross violation of primary provisions, then even if one takes Suo moto action, it may not always help avoiding implications." This is the very reason why when it comes to FEMA provisions, the advice is always to follow the law in full spirit and not to go by mere textual interpretations. Ensure to take good professional advise before undertaking such transactions.

28. SEBI allows more time for adding nomination details in demat accounts:- Circular No. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/158 dated 26 September 2023

SEBI has issued significant guidelines regarding trading and demat accounts:

➤ **Choice of Nomination in Trading and Demat Accounts:**

SEBI, through circular no. SEBI/HO/MIRSD/RTAMB/CIR/P/2021/601 dated July 23, 2021, mandates that trading and demat accounts lacking a 'choice of nomination' by September 30, 2023, will be frozen.

- Submission of 'choice of nomination' for trading accounts is now voluntary, promoting ease of doing business.
- For demat accounts, the deadline for submitting the 'choice of nomination' has been extended to 31 December 2023.

➤ **Submission of Details for Physical Security Holders:**

SEBI, in circular no. SEBI/HO/MIRSD/MIRSD-PoD-1/P/CIR/2023/37 dated March 16, 2023, specified that folios would be frozen if PAN, Nomination, contact details, Bank A/c details, and Specimen signature are not submitted by holders by 30 September 2023.

The deadline for submission of PAN, Nomination, contact details, Bank A/c details, and Specimen signature for corresponding folio numbers has been extended to 31 December 2023.

- **Action Items for Stock Exchanges, Depositories, RTAs, and Listed Companies:**
 - Entities are urged to make necessary amendments to relevant byelaws, business rules, regulations, or operational instructions to comply with the circular.
 - Disseminate the provisions of this circular to their respective constituents and on their official websites.
 - Communicate the status of implementation to SEBI and diligently monitor compliance with the circular.

- **Effect and Authority:**
 - This circular supersedes relevant provisions in various circulars and is effective immediately.
 - Issued in exercise of powers conferred by Section 11(1) of the Securities and Exchange Board of India Act, 1992, and Section 19 of the Depositories Act, 1996 to protect investors' interests and regulate the securities market.

29. SEBI issues Master Circular for 'Merchant Bankers':- Master Circular No. SEBI/HO/CFD/PoD-1/P/CIR/2023/157 dated 26 September 2023

The SEBI had issued multiple circulars, directions, and operating instructions to Merchant Bankers on a regular basis to ensure compliance. In order to enable the stakeholders to have access to all circulars at one place, a Master Circular regarding Merchant Bankers has been issued. This Circular is a compilation of all the existing circulars, and directions issued by SEBI to Merchant Bankers.

30. RBI releases Master Direction on prudential norms for All India Financial Institutions:- RBI/DoR/2023-24/105 DoR.FIN.REC.40/01.02.000/2023-24 S dated 21 September 2023

RBI vide circular dated 21 September 2023 has issued Master Direction – Reserve Bank of India (Prudential Regulations on Basel III Capital Framework, Exposure Norms, Significant Investments, Classification, Valuation and Operation of Investment Portfolio Norms and Resource Raising Norms for All India Financial Institutions) Directions, 2023.

These Directions shall be applicable latest w.e.f. April 1, 2024. These Directions shall be applicable to the All-India Financial Institutions (AIFIs) regulated by the Reserve Bank, viz. the Export-Import Bank of India (EXIM Bank), the National Bank for Agriculture and Rural Development (NABARD), the National Bank for Financing Infrastructure and Development (NaBFID), the National Housing Bank (NHB) and the Small Industries Development Bank of India (SIDBI).

It highlights that under Basel III, the minority interest is recognised only in cases where there is considerable explicit or implicit assurance that the minority interest which is supporting the risks of the subsidiary would be available to absorb the losses at the consolidated level. It specifies that capital instruments already issued by the AIFIs which no longer qualify under Basel III will be allowed to be counted as Tier 1 or Tier 2, as the case may be, as per the existing rules until their maturity or the first call date, whichever is earlier.

The AIFIs will also have the right to base the market risk capital charge for options portfolios and associated hedging positions on scenario matrix analysis, RBI states that this will be accomplished

by specifying a fixed range of changes in the option portfolio's risk factors and calculating changes in the value of the option portfolio at various points.

31. Supreme Court constitutes special 3-Judge bench to hear pleas against judgment upholding PMLA-provisions' constitutional validity:- News Report

The Supreme Court will on 18th October, 2023 take up petitions challenging its judgment upholding contentious provisions of the Prevention of Money Laundering Act (PMLA), a Justice Sanjay Kishan Kaul-led bench told on 26th September. The bench was hearing pleas about the validity of the Enforcement Directorate (ED)'s power to summon witnesses and extract confession under the law's Section 50 and the punishment for false information under Section 63. It will examine whether the judgment examined the validity of the PMLA law in its entirety. "In that matter, ultimately we will finalize the nitty-gritty on whether the earlier bench of three judges covered all provisions or something has to be addressed."

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CROSS BORDER

1. OECD Secretary-General updates G20 Leaders on Two Pillars & other tax development:- *OECD Report dated September 2023*

The OECD Secretary-General's Tax Report to the G20 Leaders provides an overview of global tax policy developments, including the Two-Pillar International Tax Package, Work on Indirect Tax, Tax and Development and Capacity Building, Tax Transparency, Tax and Crime, Tax Administration, Tax Policy and Climate Change, and BEPS Project Implementation. The report also outlines the major elements of the two-pillar framework, including the latest outcome statement and STTR, and states that by 2025, almost 90% of global in-scope MNEs will be subject to an effective minimum tax of 15% in every jurisdiction.

Over 90 countries have implemented internationally agreed-upon OECD standards and guidance for addressing the challenges of collecting value-added taxes on digital trade. The report also discusses the Tax Inspectors Without Borders (TIWB) programmes, highlighting the USD 2.07 billion in additional tax collected and USD 4.94 billion assessed. Further, it is highlighted that the completion of technical work on the international exchange architecture for both the Crypto-Asset Reporting Framework (CARF) and the amended Common Reporting Standard (CRS)

The report highlights that governments have identified approximately EUR 126 billion in additional revenues through voluntary disclosure programmes and offshore tax investigations. OECD Academy for Tax and Financial Crime Investigation has trained over 2700 officials from over 170 jurisdictions in fighting financial crime. The report also discusses the implementation of the BEPS project, including harmful tax practices, tax treaty abuse, CbC reporting, and mutual agreement procedures.

2. United Nations (UN) Secretary-General Asks for Redesign of Global Tax Architecture:- *UN Policy Brief 6 – Reform to the International Financial Architecture (Tax Reforms), May 2023*

In the event of the Summit of the Future, to be held in 2024, the UN Secretary-General recently released a policy brief listing the reforms action-oriented recommendations for reforming the international financial and tax architecture mainly in six areas including redesign of Global tax architecture for equitable and inclusive sustainable development. The document highlights three general tax-related actions that are needed:

- i. the strengthening of global tax rules to address digitalization and globalization through an inclusive process;
- ii. the improvement of the OECD/G20 Inclusive Framework Pillar Two proposal; and
- iii. the creation of an inclusive global tax transparency and information-sharing framework.

In respect of the first point, the policy aims to have more simplified international tax rules because of the digitalization and globalization of the economy. It notes that developing countries favour simple solutions like digital taxes or withholding taxes as opposed to more complex strategies. With regard to Pillar 2 arose out of the Organisation for Economic Co-operation and Development (OECD) Base Erosion and Profit Shifting (BEPS) project and aims to end the 'race to the bottom' on tax rates by ensuring that multinationals pay a minimum effective corporate tax rate (of 15%

regardless of the local tax rate or tax base). Finally, it suggests the creation of non-reciprocal tax information exchange mechanisms to benefit developing countries.

Further, in pursuant to resolution 77/244 the UN general assembly will present options for consideration of the UN member states in its report to be submitted on the promotion of inclusive and effective international tax cooperation at the United Nation. The document also argues for countries to strengthen beneficial ownership transparency systems with broad coverage, automated verification, and publication of information. The above perspectives have as a background the reality of the UN aiming for a stronger voice in terms of international tax policy setting, rivalling in this sense the OECD.

3. Germany Government Approves Draft Bill to Implement Minimum Global Taxation:- German Ministry of Finance Press release

The German government on 16 August 2023, approved the draft legislation on the domestic implementation of Council directive (EU) 2022/2523 on ensuring a global minimum level of taxation for multinational enterprise (MNE) groups and large-scale domestic groups (the “Pillar Two directive”). The first discussion draft on the domestic implementation of the Pillar Two directive was published on 20 March 2023. After comments were provided by several business groups and the OECD administrative guidance was published in February, a second discussion draft on the domestic implementation of the Pillar Two directive was published by the MOF on 10 July 2023. The approved version of the Pillar Two draft implementation law includes the following noteworthy changes as compared to the discussion draft published on 10 July 2023:

- The changes and clarifications are technical and include, e.g., certain push-down accounting rules, transfer pricing adjustments, and corresponding treatment of financial instruments.
- The Pillar Two draft implementation law also includes changes to the German GAAP rules, specifically on the calculation of deferred taxes and tax reporting obligations. This should provide for a synchronized treatment between German GAAP and IFRS rules.
- The royalty barrier rule would not be abolished as described in the 10 July 2023 discussion draft, however, the applicable low tax threshold for the application of the royalty barrier rule would be reduced from 25% to 15%. The royalty barrier rule provides for the (partial) non-deductibility of royalty expenses paid to a related party benefitting from a low tax, non-nexus compliant preferential tax regime. The royalty barrier rule can be of particular interest for US MNE group’s that benefit from the US foreign derived intangible income regime.
- The application of trade tax on controlled foreign company (CFC) income from subsidiaries would not be abolished, even though the low tax threshold for the application of the CFC rules would be reduced to 15%.

The draft law will now be submitted for approval by the German Bundestag (lower house of parliament) and the German Federal Council (upper house of parliament - Bundesrat). Once approved and published in the Official Gazette, the measures of the law will generally apply for fiscal years beginning after 31 December 2023.

4. US Chamber Urges Supreme Court to Reverse Foreign Tax Ruling:- Bloomberg Article dated 07 September 2023

The case involves a challenge to the constitutionality of a tax provision that was enacted as part of the 2017 Tax Cuts and Jobs Act. The provision, known as Section 965, requires US shareholders of certain foreign corporations to pay a one-time tax on their share of the accumulated earnings and profits of those corporations, regardless of whether they have received any distributions from them. The plaintiffs, Charles and Kathleen Moore, argue that this tax violates the realization principle, which states that income is only taxable when it is actually received or otherwise made available to the taxpayer.

The US Chamber of Commerce, along with several other business groups and Republican states, filed an amicus brief in support of the plaintiffs, urging the Supreme Court to reverse the ruling of the Ninth Circuit Court of Appeals, which upheld the tax as a valid exercise of Congress's power to tax income from whatever source derived. The Chamber argues that the Ninth Circuit's decision "destroys" certainty and predictability for taxpayers, and that it opens the door for Congress to impose retroactive and arbitrary taxes on unrealized income in the future. The Chamber also contends that Section 965 is inconsistent with the international tax system and the US treaty obligations, and that it creates double taxation and administrative burdens for US businesses with foreign operations. The case is expected to be heard by the Supreme Court in its next term, which begins in October 2023.

5. G20 Leaders express commitment for modernising 'international taxation', acknowledge BEPS progress:- *G20 New Delhi Leaders' Declaration, New Delhi, India, 9-10 September 2023*

The G20 Leaders, in their New Delhi Declaration, reaffirm their commitment of continued cooperation for a globally fair, sustainable and modern international tax system appropriate to the needs of the 21st century. They also express commitment to the swift implementation of the two-pillar international tax package and acknowledge the significant progress made on Pillar One including the delivery of text of Multilateral Convention (MLC), and work on Amount B as well as the completion of the work on the development of the Subject to Tax Rule (STTR) under Pillar Two. They ask the BEPS Inclusive Framework to resolve pending issues relating to the MLC swiftly with a view to prepare the MLC for signature in the second half of 2023 and completing the work on Amount B by the end of 2023. While recognising the need for coordinated efforts towards capacity building to implement the two-pillar international tax package effectively, the G20 Leaders also welcome the steps taken by various countries to implement the Global Anti-Base Erosion (GloBE) Rules as a common approach.

They note the aspiration of a significant number of jurisdictions to start Crypto-Asset Reporting Framework (CARF) exchanges by 2027, thus, call for swift implementation of the CARF. Furthermore, they also call for amendments to the CRS and ask the Global Forum on Transparency and Exchange of Information for Tax Purposes to identify an appropriate and coordinated timeline to commence exchanges by relevant jurisdictions and to report about the progress in the future meetings of G20. They also note the OECD Report on Enhancing International Tax Transparency on Real Estate and the Global Forum Report on Facilitating the Use of Tax-Treaty-Exchanged Information for Non-Tax Purposes. In summary, the New Delhi Declaration reflects the commitment of the G20 Leaders to international tax reforms, financial transparency, and addressing contemporary tax challenges in a coordinated and timely manner.

6. EU Parliament Passes DAC8 Crypto Tax Reporting Rule:- News Report

The European Parliament has resoundingly supported in favor of the eighth iteration of the Directive on Administrative Cooperation (DAC8), a legislative measure mandating extensive tax reporting for cryptocurrency transactions across the EU. The proposal received 535 votes in favor, with 57 against and 60 abstentions, indicating its imminent enactment. DAC8, designed to amend the EU Directive on Administrative Co-operation (DAC), compels crypto-asset service providers to report transactions involving EU clients to member state tax authorities. This move seeks to enhance the automatic exchange of crypto asset data among EU tax authorities. The European Commission predicts that implementing this EU-wide crypto-asset reporting framework could generate an annual tax revenue increase ranging from €1 billion to €2.4 billion, according to the European Parliamentary Research Service (EPRS).

Further, DAC8 aligns closely with the OECD's common reporting standard (CRS) and identifies two categories of entities, crypto-asset providers and operators, as reportable crypto-asset service providers (RCASPs). RCASPs, regardless of size or location, must comply with DAC's reporting requirements if they have EU users. This directive covers all crypto assets used for investment and payment purposes, including e-money, e-money tokens, and central bank digital currencies (CBDCs). RCASPs are obligated to report various transactions, encompassing exchanges, fiat currency transfers, and crypto asset transactions. DAC8 takes effect on January 1, 2026, affording time for regulatory preparation and the implementation of Markets in Crypto-Assets (MiCA) regulations, marking the EU's commitment to regulating and taxing crypto transactions and positioning the region as a proactive participant in the evolving crypto landscape.

7. Ireland announces plans to simplify corporate tax code:- News Report

Ireland unveiled plans to streamline its corporate tax regulations regarding foreign-sourced dividends, a move welcomed by international corporations. Finance Minister Michael McGrath stated that this adjustment would enhance the country's competitiveness. Ireland has traditionally enticed major companies to establish significant operations within its borders by offering a low corporate tax rate of 12.5%. However, it will face a reduction in this advantage next year when a global tax overhaul introduces a minimum rate of 15%. Lobby groups, including the American Chamber of Commerce Ireland, emphasized the need for Ireland to align its tax system with other European Union states by transitioning to a territorial taxation system, given that the new rules may prompt some companies to reassess their operations in the country.

Further, McGrath intends to achieve this by introducing a participation exemption for foreign-sourced dividends, effective in 2025, which will not impact the annual corporate tax revenue. He explained that this approach is simpler and more administratively efficient, aligning with the requests of the foreign direct investment community. While the implementation of the minimum tax rate is proceeding, the fate of the global tax overhaul's other pillar, which pertains to sharing taxing rights on the largest, most profitable multinationals, remains uncertain. McGrath noted that the outcome of this pillar remains unclear, with discussions surrounding potential challenges in the U.S. passing tax legislation and the impact of the electoral cycle there. Despite a recent unexpected dip in receipts, Ireland is on track for a projected 7% year-on-year increase in its corporate tax revenue.

8. The European Commission unveils long-awaited BEFIT proposal:- News Report

The European Commission has introduced its Business in Europe (BEFIT) Framework for Income Taxation proposal, which aims to reduce tax compliance costs for businesses operating in the EU by up to 65% and simplify tax determination. BEFIT combines the Commission's common consolidated corporate tax base plan and the OECD's two-pillar solution. It requires companies within the same group to calculate their tax bases in accordance with a common set of rules, and aggregates the tax bases of all members into a single tax base.

The rules would be mandatory for groups with an annual combined revenue of at least €750 million (\$804.5 million) and where the ultimate parent entity holds at least 75% of the ownership rights or rights giving entitlement to profit. For smaller groups, the rules would be discretionary, but they could opt in as long as they prepared consolidated financial statements. The Commission also announced a proposal to harmonize transfer pricing rules within the EU, building on work done by the OECD/ G20 to establish a common set of rules to determine the tax base of companies and address problems related to transfer pricing, such as profit shifting, tax avoidance, and double taxation. The TP reforms will come into effect on 01 January 2026, and BEFIT will enter into force on 01 July 2028.

9. IRS plans to crack down on 1,600 millionaires to collect millions of dollars in back taxes:- News Report

The IRS is launching a new compliance effort to target 1,600 millionaires and 75 large business partnerships with hundreds of millions of dollars in past-due taxes. The agency is using a boost in federal funding and artificial intelligence tools to target wealthy individuals who have cut corners on their taxes. The IRS is aiming to showcase positive results from its burst of new funding under President Joe Biden's Democratic administration as Republicans in Congress look to claw back some of that money.

The newly announced tax collection effort will begin as early as October. The federal tax collector gained an enhanced ability to identify tax delinquents with the resources provided by the Inflation Reduction Act, which Biden signed into law in August 2022. The agency was in line for an \$80 billion infusion under the law, but that money is vulnerable to potential cutbacks by Congress. House Republicans built a \$1.4 billion reduction to the IRS into the debt ceiling and budget cuts package passed by Congress this summer. The White House also announced a separate agreement to take \$20 billion from the IRS over the next two years and divert that money to other non-defense programs. With the threat of a government shutdown looming in a dispute over spending levels, there is the potential for additional cuts to the agency.

10. French Lawmakers Propose Law To Tax AI-Generated Works Based On Copyrighted Material:- News Report

France's National Assembly has proposed a law to establish a taxation regime for works generated by artificial intelligence (AI) using works, whose origin remains uncertain. The proposed law aims to tackle copyright concerns associated with AI and encourage AI systems to respect "Copyright and creation". The French government aims to credit the human labor the AI system is built upon by establishing a taxation system. The proposed law would enable fair distribution of remuneration among the original creators by restricting exploitation of AI-generated works.

The lawmakers stated that strictly controlling the exploitation of works generated by AI would make it easier to collect the remuneration received from these works and to guarantee fair and equitable

remuneration for their exploitation, thus contributing to the encouragement of innovation and promoting artistic diversity. The non-licensed use of data available on the internet for building AI systems by companies is a critical point of contention between AI developers and artists, publishers, who have raised concerns about infringement of their copyrighted works by AI.

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