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NEWSLETTER

JULY 2022



Covering Updates for the Month of June' 22
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CONTENTS

Direct Tax Updates

Company Law Updates

SEBI Updates

Accounting Updates

RBI Updates

FEMA Updates

Due dates of various compliances
falling in the month of July 2022



DIRECT TAX UPDATES

Circulars & Notifications

1. Cost Inflation Index u/s. 48 for F.Y. 2022-23

(C.B.D.T. Notification No. 62/2022 dated 14.06.2022)

Cost Inflation Index for the purpose of indexation of cost u/s. 48 is notified by C.B.D.T. as "331" for the F.Y.2022-23.

2. Clarification on issuance of Approval to Charitable Organization in Form no. 10AC

(C.B.D.T. Circular No. 11 dated 03.06.2022)

This Circular provides clarification in relation to registration / provisional registration or approval / provisional approval in Form 10AC granted to all the Charitable Trusts/Institutions on making an application in Form 10A and subject to the fulfilment of certain conditions, as per the new procedure for approval/registration of charitable entities as was notified vide "Notification No. 19/2021, dated 26.03.2021.

However, the Finance Act, 2022 has inserted sub-section (4) in section 12AB and Fifteenth Proviso to section 10(23C) of the Income-tax Act, 1961 allowing the Principal Commissioner or Commissioner of Income-tax to examine if there is any "specified violation" by the trust or institution registered or provisionally registered under the relevant clauses of sub-section (1) of section 12AB or sub-section (1) of section 12AA. Subsequent to examination by the Principal Commissioner or Commissioner of Income-tax, an order is required to be passed for either cancellation of the registration or refusal to cancel the registration.

In view of the amendments made vide Finance Act, 2022, the conditions subject to which the registration/approval or provisional registration/ provisional approval was granted to trusts and institutions need to be revised to align the same with the said amendments .

The conditions contained in Form No. 10AC, issued between 1-4-2021 till the date of issuance of this Circular, i.e. 03.06.2022 shall be read as if the said conditions had been substituted with the conditions as provided in the Circular with effect from 1st April, 2022.

3. Guidelines for deduction of tax U/sec 194R

(C.B.D.T. Circular No. 12 dated 16.06.2022)

CBDT has notified Guidelines for removal of difficulties in compliance for deduction of tax under section 194R on providing any benefit or perquisites.

4. Guidelines for deduction of tax U/sec 194S

(C.B.D.T. Circular No. 13 dated 22.06.2022 & Circular No. 14 dated 28.06.2022)

CBDT has notified Guidelines for removal of difficulties in compliance for deduction of tax under section 194S for transactions settled other than in cash and through Exchange and for transactions in Peer to peer case vide above two Circulars.



ARTICLE ON RECENT AMENDMENTS IN TDS PROVISIONS

1. BACKGROUND:

The scope for Tax Deduction at Source (TDS) and Tax Collection at Source (TCS) has been enlarged in the last three Budgets presented by our Finance Minister, Smt. Nirmala Sitharaman, in 2020, 2021 and 2022. Various sections of the Income Tax Act dealing with TDS and TCS have been amended and some new sections are added for this purpose. All these amendments have increased the compliance burden of tax payers. In this Article, the various recent important amendments made in the Income tax Act are discussed.

2. SECTION 194-R: TDS FROM BENEFIT OR PERQUISITES:

- i. This is a new Section which has been inserted by the Finance Act 2022 and comes into force from 01.07.2022. The section provides that tax shall be deducted at source at the rate of 10% of the value of the benefit or perquisite arising from business or profession if the value of such benefit or perquisite in a financial year exceeds Rs.20,000/-.
- ii. The provisions of this Section are not applicable to an Individual or HUF whose Sales, Gross Receipts or Turnover does not exceed Rs. 1 crore in the case of business or Rs. 50 lakhs in the case of profession during the immediately preceding financial year.
- iii. The section also provides that if the benefit or perquisite is wholly in kind or partly in kind and partly in cash and the cash portion is not sufficient to meet the TDS amount, then the person providing such benefit or perquisite shall ensure that tax is paid in respect of the value of the benefit or perquisite before releasing such benefit or perquisite.
- iv. In the Memorandum explaining the provisions of the Finance Bill, 2022, it is clarified that Section 194R is added to cover cases where value of any benefit or perquisite arising from any business or profession is chargeable to tax under section 28(iv) of the Act. Therefore, this new TDS provision will apply only in such cases where the value of the benefit or perquisite is chargeable to tax in the hands of resident person engaged in the business or profession under Section 28(iv). It is also provided that the Central Government shall issue guidelines to remove any difficulty that may arise in implementation of this section.
- v. It may be noted that CBDT has issued a Circular No. 12 of 2022 on 16-06-2022. This Circular gives guidelines for removal of difficulties arising from implementation of this section. This Circular explains the transactions to which this section applies. Briefly stated, the position about the following transactions will be as under:
 - a. The section applies to any benefit or perquisite provided to a person if such benefit or perquisite is taxable in the hands of the recipient. However, the tax deductor is not required to verify whether such benefit or perquisite is taxable in the hands of the recipient under section 28(iv).
 - b. If the benefit or perquisite is in the form of a Capital Asset the tax is required to be deducted under this section.
 - c. This section will not apply to Sales Discount, Cash Discount and Rebate on sales given by the assessee. However, if free samples are given or if an incentive is given only to selected persons in the form of TV, Computer, Gold Coin, Mobile Phone, Free Tickets for Travel etc., the provisions of this section will apply.

- d. If benefit of use of assets of ABC Co. Ltd., is given free of cost to BCD Co. Ltd or its directors, employees or their relatives, ABC Co. Ltd., will have to deduct tax under this section.
- e. The value of the benefit or perquisite given in kind is to be made at the fair market value.

The above Circular deals with many other cases in which tax is either to be deducted or not to be deducted under this section. Therefore, the person liable to deduct tax at source will have to carefully study the guidelines given in the Circular before giving any benefit or perquisite to a third person.

3. SECTION 194-S: TDS FROM TRANSFER OF VIRTUAL DIGITAL ASSET:

- i. This is a new section inserted by the Finance Act 2022 which comes into force on 01.07.2022. The section provides that any person paying to a resident consideration for transfer of any Virtual Digital Asset (VDA) shall deduct tax at 1% of such sum. In a case where the consideration for transfer of VDA is (a) wholly in kind or in exchange of another VDA, where there is no payment in cash or (b) partly in cash and partly in kind but the part in cash is not sufficient to meet the liability of TDS in respect of whole of such transfer, the payer shall ensure that tax is paid in respect of such consideration before releasing the consideration. However, this TDS provision does not apply if such consideration does not exceed Rs. 10,000/- in the financial year.
- ii. Section 194-S defines the term "Specified Person" to mean any person (i) being an Individual or a HUF, whose total sales, gross receipts or turnover from business or profession does not exceed Rs. 1 crore in case of business or Rs. 50 lakhs in the case of profession, during the financial year immediately preceding year in which such VDA is transferred or (ii) being an Individual or a HUF who does not have income under the head "Profits and Gains of Business or Profession".
- iii. In the case of a Specified Person -
 - a. The provisions of Section 203A relating to Tax Deduction and Collection Account Number and 206AB relating to Special Provision for TDS for non-filers of Income-tax Return will not apply.
 - b. If the value or the aggregate value of such consideration for VDA does not exceed Rs.50,000/- during the financial year no tax is required to be deducted.
- iv. In the case of a transaction to which Sections 194-O and 194-S are applicable then tax is to be deducted under Section 194-S and not under Section 194-O.

4. GENERAL:

- i. From the above amendments, it is evident that scope for TDS and TCS instead of net for TDS and TCS now been widened and even transactions which do not result in income or expense, are now covered under these provisions. Individuals and HUF carrying on business and not covered by Tax Audit under Section 44AB will now be covered by TDS and TCS provision. In particular, persons remitting foreign exchange exceeding Rs.7 lakhs under LRS of RBI, will have to pay tax under Section 206C. This tax will be considered as payment of tax by the Remitter Under Section 206C(4) and he can claim credit for such tax Under Section 206C(4) read with Rule 37-I.
- ii. It may be noted that the Government has issued a Press Note on 13.05.2020 giving certain relief during COVID-19 pandemic. By this Press Note it is announced that TDS/TCS under sections 193 to 194-O and 206C will be reduced by 25% during the period 14.05.2020 to 31.03.2021. This reduction is given only in respect of TDS/TCS from payments or receipts from Residents. This concession is not in respect of TDS from salaries or TDS from Non-Residents and TDS/TCS under sections 260AA or 206CC.
- iii. There are about 65 sections in the Income tax Act dealing with the obligations relating to TDS and TCS. These sections include certain procedural provisions which the Tax Payer has to comply with. With the above amendments made in recent years the provisions relating to TDS/TCS have become more complex. Every person will have to be very careful while making any payment, purchase or sale in the course of his business, profession or other activities and he will have to first ascertain whether any of the provisions for TDS / TCS are applicable. In case of non-compliance with these provisions he will have to face many penal consequences.



COMPANY LAW UPDATES

A. Amendment in Punishment Provisions of NFRA Rules:

The Punishment for non-compliance of National Financial Reporting Authority Rules were amended. Amended provision says any contravention shall be punishable with fine not exceeding five thousand rupees, and where the contravention is a continuing one, with a further fine not exceeding five hundred rupees for every day after the first during which the contravention continues.

Notification can be accessed at:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTI1NDg0NzI1&docCategory=Notifications&type=open>

B. Amendment in Companies Appointment and Qualification of Directors Rules:

It has been clarified that Provided that no application number shall be generated in case of the person applying for Director Identification Number is a national of a country which shares land border with India, unless necessary security clearance from the Ministry of Home Affairs, Government of India has been attached along with application for Director Identification Number.

Notification can be accessed at:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTE1OTMyNDY3&docCategory=Notifications&type=open>

Further, in case of restoration of name in data bank of Independent Directors, it has been clarified that any individual whose name has been removed from the databank, may apply for restoration of his name on payment of fees of one thousand rupees and the institute shall allow such restoration subject to the condition that his name shall be shown in a separate restored category for a period of one year from the date of restoration within which, he shall be required to pass the online proficiency self-assessment test and thereafter his name shall be included in the databank.

Notification can be accessed at:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTE5MTY5MDUx&docCategory=Notifications&type=open>

C. Amendment in Companies (Removal of Names of Companies from the Registrar of Companies) Rules:

In Companies Removal of Names Rules, Form No. STK 1, Form No. STK – 5 and Form No. STK-5A have been replaced with new forms.

Notification can be accessed at:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTE5MTczNTM1&docCategory=Notifications&type=open>

D. Relaxation in filing of Form 11 by LLPs:

It has been clarified that timeline of filing Form 11 (Annual Return) has been extended to July 15, 2022, without paying additional fees.

Notification can be accessed at:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTM1Nzc2MDQy&docCategory=Circulars&type=open>



SEBI UPDATES

A. Disclosure of holding of specified securities:

Revised format for Disclosure of holding of specified securities and of specified securities in dematerialized form have been notified.

Circular can be accessed at:

https://www.sebi.gov.in/legal/circulars/jun-2022/disclosure-of-holding-of-specified-securities-and-holding-of-specified-securities-in-dematerialized-form_60459.html



ACCOUNTING UPDATES

A. EAC Opinion:

Expert Advisory Committee (EAC) of ICAI has provided an Opinion on Non-reversal of impairment in respect of investment in subsidiary in separate financial statements on account of non-reversal of impairment in underlying goodwill

The relevant text of the Opinion is reproduced below:

“The Committee further notes that the querist has justified the non-recognition of reversal of previous impairment loss in the investment in the subsidiary in the separate financial statements, based on submission that the investment partly consists of goodwill. The Committee notes that goodwill results from a business combination involving the acquisition of a controlling interest in the equity instruments of the acquiree. Goodwill relating to the business combination is recognised only in the acquirer’s consolidated financial statements, and not in its separate financial statements.

The Committee notes that paragraph 4 of Ind AS 36 (as reproduced above) specifically covers investments in subsidiary in the SFS within its scope. If the Standard had intended to prohibit, partly or fully, the recognition of reversal of impairment on investment in subsidiary, similar to the prohibition in case of goodwill, the Standard would have specifically mentioned the same.

On the basis of the above, the Committee is of the following opinion on the issues raised:

- a. The current accounting treatment in the separate financial statements of the Company with regard to non-recognition of the reversal of impairment loss recognised in past, is not in line with the requirements of Ind AS 27 and Ind AS 36.
- b. The Company should correct the accounting treatment as a prior period error retrospectively in the first set of financial statements approved for issue after the discovery of the error”

EAC Opinion can be accessed at:

<https://resource.cdn.icai.org/70834cajournal-july2022-28.pdf>



RBI UPDATES

1. Provisioning for Standard Assets by NBFC – Upper Layer:

The following table shows the required provision for standard assets by NBFC – UL which is required to be complied by all such NBFC's from 1st October, 2022.

Category of Assets	Rate of Provision
Individual home loans and loans to SME	0.25%
Housing loans at teaser rates	2.00% which will reduce to 0.4% after one year from the date on which rate is reset at higher rate.
Advances to commercial real estate-residential	0.75%
Advances to commercial real estate- other than residential	1.00%
Restructured Advances	As per restructuring norms
All other not included above	0.4%

Since NBFCs with net worth of Rs. 250 crore or above are required to comply with Indian Accounting Standards (Ind AS) for the preparation of their financial statements, they shall continue to hold impairment allowances as required under Ind AS, subject to the prudential floor as prescribed under Paragraph 2 of the Annex to the circular DOR (NBFC).CC.PD.No.109/22.10.106/2019-20 dated March 13, 2020. The above-mentioned provisions shall, however, be included in the computation of the prudential floor, but shall not be reckoned for calculating net NPAs.

Notification dated 6th June, 2022

<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=12329&Mode=0>

2. Discontinuation of Return under Foreign Exchange Management Act, 1999:

RBI had a practice of getting the details of guarantee availed and invoked from non-resident entities through their authorised persons. RBI has now decided to discontinue such practice and such return is now not required to be filed w.e.f. quarter ending June, 2022.

Notification dated 9th June, 2022

<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=12337&Mode=0>

3. Provisioning Requirement for Investment in Security Receipts (Srs):

In order to provide a glide path to the entities which were kept out of the ambit of circular "Guidelines on Sale of Stressed Assets by Banks" dated September 1, 2016 and ensure smooth implementation of clause 77 of the Master Direction - Transfer of Loan Exposure ("MD-TLE"), it is advised as under in respect of valuation of investments in SRs outstanding on the date of issuance of MD-TLE (September 24, 2021):

- The difference between the carrying value of such SRs and the valuation arrived at as on the next financial reporting date after the date of issuance of MD-TLE, in terms of clause 77 of the MD-TLE, may be provided over a five-year period starting with the financial year ending March 31, 2022 - i.e. from FY2021-22 till FY2025-26.
- Subsequent valuations of investments in such SRs on an ongoing basis shall, however, be strictly in terms of the provisions of MD-TLE.

Notification dated 28th June, 2022

<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=12346&Mode=0>



FEMA UPDATES

Annual return on Foreign Liabilities and Assets (FLA) is required to be submitted by all the companies which have received FDI and/or made overseas investment in any of the previous year(s), including the current year.

As more companies involve themselves with foreign investments, the importance of the Foreign Exchange Management Act (FEMA) regulations and their compliance becomes a major part of the companies' operations. FLA annual return are one of the compliances that have to be met by the companies that are involved with FDI (Foreign Direct Investments) or companies who invest in foreign companies either via joint venture or wholly owned subsidiaries, also termed as Overseas Direct Investment (ODI).

The due date for filing the return is July 15 of every year.

This Return is filed Online on RBI Portal. The portal on which you can file the return is <https://flair.rbi.org.in/fla/faces/pages/login.xhtml>

DUE DATES

Due dates of various compliances falling in the month of July 2022

S.No	Due Date	Act/Authority	Compliance Description
1	07/07/2022	GujRera	In case of projects whose quarter completes in April- 2022, May-2022 and June-2022
2	07/07/2022	Income Tax	Deposit of Tax Deducted at Source (TDS) / Tax Collected at source (TCS) during the month of June-2022
3	10/07/2022	GST	GSTR-7 for the month of June-2022 for persons required to deduct TDS
4	10/07/2022	GST	GSTR-8 for the month of June-2022 for e-commerce operator required to Collect TCS
5	11/07/2022	GST	GSTR-1 for the month of June-2022 for taxpayers having turnover more then Rs. 5 crores or opted to file Monthly Return
6	13/07/2022	GST	Filing of GSTR-1 for the quarter ended June 30, 2022 for taxpayers who opted for Quarterly Return Monthly payment(QRMP) Option
7	13/07/2022	GST	GSTR-6 for the month of June-2022 for Input Service Distributor
8	15/07/2022	PF/ESIC	Payment of PF / ESIC for the month of June 2022
9	15/07/2022	Income Tax	Filing of TCS returns for the quarter ended on June 30,2022
10	15/07/2022	FEMA	Filing of Annual Return by Indian companies which have received FDI (foreign direct investment) and/or made FDI abroad (i.e. overseas investment) in the previous year(s) including the current year i.e. who holds foreign Assets or Liabilities in their Balance Sheet
11	15/07/2022	MCA	Filing of Annual return in Form 11 by Limited Liability Partnership (LLP) for the financial year 2021-2022 without payment of additional fees
12	18/07/2022	GST	CMP-08 for the quarter ended on June 30, 2022 by Composite Dealer
13	20/07/2022	GST	Payment of GST & Filing of GSTR-3B for the month of June-2022, for taxpayers having turnover of more than Rs.5 Crore in preceding financial Year
14	20/07/2022	GST	GSTR-5 & 5A by Non-resident taxable person & OIDAR for the month of June - 2022
15	22/07/2022 24/07/2022	GST	Payment of GST & Filing of GSTR-3B for taxpayers having turnover upto Rs.5 Crore in preceding Financial year for the quarter ended on June 30, 2022 who opted for Quarterly Return Monthly payment(QRMP) Option depending on place of business(State)
16	30/07/2022	Income Tax	Furnishing of challan-cum statement of tax deducted under 194-IA,194-IB and 194M in the month of June-2022
17	31/07/2022	Income Tax	Filing of TDS returns for the quarter ended on June 30,2022
18	31/07/2022	Income Tax	Filing of Income Tax Return for the financial year 2021-22 for all assessee other than (a) corporate-assessee or (b) non-corporate assessee (whose books of account are required to be audited) or (c) partner of a firm whose accounts are required to be audited or (d) an assessee who is required to furnish a report under section 92E
19	31/07/2022	Income Tax	Filing of form 67 by resident tax payer for claiming foreign tax credit of tax deducted or paid in respect of foreign income offered for tax for the financial year 2021-22

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