

Manubhai & Shah LLP

Chartered Accountants

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NEWSLETTER

OCTOBER 2022

VOL.31

*Happy
Diwali*

Covering Updates for the Month of September' 22

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DIRECT TAX UPDATES

Circulars & Notifications

1. Additional Guidelines for T.D.S. ON Benefits/Perquisites U/Sec 194R

(C.B.D.T. Circular No. 18/2022 Dated 13.09.2022)

CBDT had issued Guidelines vide its Circular no. 12 of 2022, dated 16.06.2022 clarifying few issues under the provisions of Section 194R. In order to remove difficulties being faced by the assesses, C.B.D.T. has issued Additional Guidelines vide this Circular to provide clarification on issues under section 194R which are discussed under:

- **Question 1:** In context to Question No. 3 of the Circular No. 12 of 2022, whether loan settlement/waiver by a bank is to be treated as benefit/perquisite and hence provisions of section 194R of the Act apply to such a situation?

Clarification: It is clarified that one-time loan settlement with borrowers or waiver of loan granted on reaching settlement with the borrowers would be subjected to tax deduction at source under section 194R of the Act except the same is waived by under mentioned banks/Financial Institutions :

- Public Financial Institution as defined under section 2(72) of the Companies Act 2013;
- Scheduled Bank as defined in clause (ii) of section 36(1)(viiia) of the Income tax Act;
- Cooperative bank (other than a primary agricultural credit society) as defined in the Explanation to section 80P(4) of the Act;
- Primary co-operative Agricultural and Rural Development Bank as defined in the Explanation to section 80P(4) of the Act;;
- State Financial Corporation being a financial corporation established under section 3 or section 3A or an institution notified under section 46 of the State Financial Corporation Act, 1951;
- State Industrial Investment Corporation being a Government company within the meaning of section 2(45) of the Companies Act, 2013, engaged in the business of providing long-term finance for industrial projects;
- Deposit taking Non-Banking Financial Company as defined in clause (e) of the Explanation 4 to section 43B of the Act;
- Systemically Important Non-deposit Taking Non-Banking Financial Company as defined in clause (g) of the Explanation 4 to section 43B of the Act;
- Public company engaged in providing long term finance for construction or purchase of houses in India for residential purpose and which is registered in accordance with the guidelines/direction issued by the National Housing Bank formed under National Housing Bank Act, 1987;
- Asset Reconstruction Companies registered under section 3 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SRFAESI) Act, 2002.

It is also clarified that the treatment of such settlement/waiver in the hands of the person who is benefited by such waiver would not be impacted by this clarification, i.e., taxability of such settlement/waiver in the hands of the beneficiary will be governed by the relevant provisions of the Act.

- **Question 2:** In context to Question No. 7 of the Circular No. 12 of 2022, whether an expense incurred by the service provider under the terms of the agreement, which is reimbursed by the service recipient to service provider, is benefit/perquisite if the bill is not in the name of service recipient?



Answer: In answer to question No 7 of the Circular No 12 of 2022, it was clarified that any expenditure which is the liability of a service recipient, if met by the service provider is in effect benefit/perquisite provided by the service recipient to the service provider in the course of business/profession which is liable for deduction of tax at source under section 194R. CBDT took this view on the ground that under GST Act, input tax credit is available to service provider only.

It is clarified now that in such situation, under GST Act, if service provider incurs an expense as a "pure agent", then GST input credit is allowed to service recipient and not to service provider, i.e., the relationship between them in respect of the main service is on a principal to principal basis.

Accordingly, it is clarified that amount incurred by such service provider as a "pure agent" for which he is reimbursed by the service recipient would not be treated as benefit/perquisite for the purpose of section 194R of the Act.

- **Question 3:** In context to question No. 7 of the Circular No. 12 of 2022-. Is there a non-compliance with the provision of section 194R of the Act in the case a Company deducts tax under other provisions of the Act on both service fee component as well as on out of pocket expense?

Answer: If out of pocket expenses (reimbursement) are already part of the consideration in the bill on which tax is deducted under the relevant provisions of the Act, other than section 194R, it is clarified that there will not be further liability for tax deduction under section 194R of the Act.

- **Question 4:** In context to Question No. 8 of the Circular No. 12 of 2022- If there is a dealer conference to educate the dealers about the products of the company - (i) is there a requirement that all dealers must be invited in the conference, (ii) what if dealers arrive one day before and leave one day after and (iii) how to identify benefit against individual dealers in a group activity?

Answer: It is clarified that :

- i. It is not necessary that all dealers are required to be invited in a dealer/business conference for the expenses to be not considered as benefit/perquisite for the purposes of tax deduction under section 194R of the Act.
 - ii. Expenditure on participants of dealer/business conference for days which are on account of over stay prior to the dates of conference or beyond the dates of such conference would be considered as benefit/perquisite for the purposes of section 194R of the Act. However, a day immediately prior to actual start date of conference and a day immediately following the actual end date of conference would not be considered as over stay.
 - iii. It is clarified that if benefit/perquisite is provided in a group activity in a manner that it is difficult to match such benefit/perquisite to each participant using a reasonable allocation key, the benefit/perquisite provider may at his option not claim the expense, representing such benefit/perquisite, as deductible expenditure for calculating his total income. If he decides to opt so, he will not be required to deduct tax under section 194R on such benefit/perquisite and therefore he will not be treated as assessee in default under section 201 of the Act. Thus, in such a case he must add back the expenditure, representing such benefit/perquisite, to calculate his total income if such expenditure is debited in the account.
- **Question 5:** In context to Question No. 9 of the Circular No. 12 of 2022- Can a recipient of benefit/perquisite in the form of capital asset on which tax is deducted under section 194R of the Act, get deduction of Depreciation under the Act against his income from business or profession?

Answer: The recipient of benefit/perquisite in the form of capital asset on which tax is deducted under section 194R of the Act has included this benefit as income in his income tax return, it would be deemed that the "actual cost" of the capital asset for the purposes of section 32 of the Act shall be the amount of benefit included by such recipient as income in his income-tax return. Hence, recipient of benefit/perquisite can get depreciation on fulfillment of other conditions for claiming depreciation.

- **Question 6:** Whether Embassy/High Commissions are required to deduct tax under section 194R of the Act?

Answer: It is clarified that the provision of section 194R is not applicable on benefit/perquisite provided by, an organization in scope of The United Nations (Privileges and Immunity Act) 1947, an international organization whose income is exempt under specific Act of Parliament (such as the Asian Development Bank Act 1966), an embassy, a Legation, Commission, Consulate and the Trade Representation of a foreign state.

- **Question 7:** Whether issuance of bonus share/right share is a benefit or perquisite if issued by a company in which the public are substantially interested as defined under section 2 (18) of the Act and whether tax is required to be deducted under section 194R of the Act?



Answer: It is clarified that the tax under section 194R of the Act is not required to be deducted on issuance of bonus or right shares by a company in which the public are substantially interested as defined in clause (18) of section 2 of the Act, where bonus shares are issued to all shareholders by such a company or right shares are offered to all shareholders by such a company, as the case may be.

2. Guidelines for Compounding of offences under the Income-tax Act,

(Notification F.No. 285/08/2014-IT(Inv.V)/196, dated 16.09.2022)

In order to simplify and facilitate compounding of offences, C.B.D.T. has in supersession of all earlier Guidelines on Compounding of Offences under the Income-tax Act, 1961, has notified the new simplified Guidelines.

Some of the major changes made for the benefit of taxpayers include making offence punishable under Section 276 of the Act as compoundable. Further, the scope of eligibility for compounding of cases has been relaxed whereby case of an applicant who has been convicted with imprisonment for less than 2 years being previously non-compoundable, has now been made compoundable. The discretion available with the competent authority has also been suitably restricted.

The time limit for acceptance of compounding applications has been relaxed from the earlier limit of 24 months to 36 months now, from the date of filing of complaint. Procedural complexities have also been reduced/simplified.

Specific upper limits have been introduced for the compounding fee covering defaults across several provisions of the Act. Additional compounding charges in the nature of penal interest @ 2% per month up to 3 months and 3% per month beyond 3 months have been reduced to 1% and 2% respectively.

3. Extension of Due date for filing of various reports of Audit for the assessment year 2022-23

(C.B.D.T.Circular No 19/2022 Dated 30.09.2022)

C.B.D.T. has extended the due date of furnishing of report of audit under any provision of the Income tax Act for the Previous Year 2021-22, which was 30th September 2022 in the case of assessee referred in clause (a) of Explanation 2 to section 139(1) of the Act, to 07th October, 2022. Accordingly, due date for filing of Tax Audit Report, Form No.29B, etc has been extended till 07.10.2022 from 30.09.2022.

4. Insertion of Rule 12AD and Form ITR-A under section 170A

(C.B.D.T. Notification 110/2022/, dated 19.09.2022 & Corrigendum Notification F.No. 370142/41/2022 dated 27.09.2022)

The Finance Act, 2022 has inserted section 170A in the Income tax Act, 1961 with effect from 1st April, 2022 relating to effect of order of Tribunal or Court in respect of business reorganisation (i.e., amalgamation, merger, etc) which provides that the entities going through such business reorganization, may furnish modified return of income for any assessment year to which such order of business reorganisation is applicable. The section further provides that such modified returns shall be furnished within a period of six months from the end of the month in which such order of business reorganisation was issued by the competent authority.

In this regard, C.B.D.T. has inserted new Rule 12AD and inserted new Form ITR-A to file modified return of income by a successor entity to a business reorganisation, as referred to in section 170A, for an assessment year,

However, it is further clarified by the C. B. D. T. vide a Corrigendum Notification F.No. 370142/41/2022, dated 27/9/2022, allowing a successor companies to furnish modified returns under section 170A of the Act till 31st March, 2023 in cases where the order of business reorganisation of the competent authority was issued between the period 1st April, 2022 and 30th September, 2022.

5. Insertion of new Rule 132, Form no. 69 and 70 for Application for recomputation of income under Section 155(18)

C.B.D.T. has inserted new Rule 132 for making an Application requesting for recomputation of total income of the previous year without allowing the claim for deduction of surcharge or cess, which was claimed and allowed as deduction under section 40 in the said previous year and also notified Form No. 69 to make such an Application on or before the 31st day of March, 2023.

The assessee shall, after making the payment of the tax determined by the Assessing Officer under Rule 132(4), furnish the details of payment of tax in Form No. 70 to the Assessing Officer within 30 days from date of making the payment.





COMPANY LAW UPDATES

A. Change in Definition of Small Companies:

Definition of Small Companies has been updated by increasing the limit of paid up capital and turnover of the Company to 4 crores and 40 crores respectively.

Notification can be accessed at:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTgwNDY3Mzc5&docCategory=Notifications&type=open>

B. Amendment in CSR Rules:

It has been mandated for company having any amount in its Unspent Corporate Social Responsibility Account to constitute a CSR Committee. Further, limit to book the expenditure towards Corporate Social Responsibility for the financial year is changed for the Company undertaking impact assessment upto two per cent of the total CSR expenditure for that financial year or fifty lakh rupees, whichever is higher. Moreover, format for the annual report on CSR activities to be included in the board's report for financial year is also amended.

Notification and updated form can be accessed at:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTgwNTU0MTk3&docCategory=Notifications&type=open>

C. Extension of time for filing e-form DIR-3-KYC and web-form DIR-3-KYC-WEB:

It has been decided to extend the time limit for E-form DIR-3-KYC and web-form DIR-3-KYC-WEB without filing of fees upto October 15, 2022.

Circular can be accessed at:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTg0Njg3NDk5&docCategory=Circulars&type=open>





ACCOUNTING UPDATES

A. EAC Opinion:

Expert Advisory Committee (EAC) of ICAI has provided an Opinion on Applicability of Ind AS 108, 'Operating Segments' on section 25 company of the Companies Act, 1956 / section 8 of the Companies Act, 2013

The relevant text of the Opinion is reproduced below:

"The Committee notes that Ind AS 108, 'Operating Segments' shall apply to companies to which IND AS notified under the Companies Act apply. Since the financial statements of the Corporation are prepared as per Indian Accounting Standards, the Committee is of the view that Ind AS 108, 'Operating Segments' shall apply to the Corporation. The Committee also notes that no specific exemption is available to any entity from this Standard, on the basis that it is a not-for-profit organisation or section 8 company."

EAC Opinion can be accessed at:

<https://resource.cdn.icai.org/71622cajournal-oct2022-9.pdf>





RBI UPDATES

1. Guidelines on Digital Lending:

India's digital lending market is expected to be valued at 350 billion USD by 2023 and with rising complaints from customers on such transactions, RBI has taken step in right direction. RBI had formed a working group on Digital Lending Implementation which consisted of academicians, fintech advocacy groups, law enforcement agencies etc. to receive inputs on wide range of topics for formation of relevant guidelines. The Guidelines are applicable to first category of Regulated Entities ("RE") w.e.f. 2nd September, 2022 who have entered into outsourcing arrangements with Lending Service Provider ("LSP") and Digital Lending App ("DLA"). RBI has given transitioning time for existing loan accounts through such platforms wherein they are required to ensure adequate compliance with the said guidelines by 30th November, 2022.

Notification dated 2nd September, 2022

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12382&Mode=0>

2. Late submission fee for reporting delays under FEMA 1999:

With a view to bring uniformity in imposition of late submission fees ("LSF") on delays in reporting of Foreign Investment, External Commercial Borrowings and Overseas Investments related transactions, RBI has introduced a matrix of LSF which would be applicable across all functions. The matrix given below would be applicable from 30th September, 2022.

Sr.No.	Type of Reporting Delay's	LSF Amount (Rs.)
1	Form ODI Part-II/APR, FCGPR (B), FLA Returns, Form OPI, evidence of investment or any other return which does not capture flows or any other periodical reporting	7500
2	FC-GPR, FCTRS, Form ESOP, Form LLP(I), Form LLP(II), Form CN, Form DI, Form InVi, Form ODI-Part I, Form ODI-Part III, Form FC, Form ECB, Form ECB-2, Revised Form ECB or any other return which captures flows or returns which capture reporting of non-fund transactions or any other transactional reporting	$[7500 + (0.025\% * A * n)]$

"n" is the number of years of delay in submission rounded-upwards to the nearest month and expressed up to 2 decimal points

"A" is the amount involved in the delayed reporting.

Maximum LSF amount will be limited to 100 per cent of 'A' and will be rounded upwards to the nearest hundred.

Notification dated 30th September, 2022

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12393&Mode=0>





DUE DATES

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

S.No	Due Date	Act/Authority	Compliance Description
1	07-10-2022	Guj RERA	In case of projects whose dynamic quarter completes in September - 2022
2	07-10-2022	Income tax	Deposit of Tax Deducted at Source (TDS) / Tax Collected at source (TCS) during the month of September-2022
3	07-10-2022	Income Tax	Extended Due date for filing of audit report under section 44AB for the assessment year 2022-23 in the case of a corporate-assessee or non-corporate assessee (who is required to submit return of income on October 31, 2022)
4	10-10-2022	GST	GSTR-7 for the month of September-2022 for persons required to deduct TDS
5	10-10-2022	GST	GSTR-8 for the month of September-2022 for e-commerce operator required to Collect TCS
6	11-10-2022	GST	GSTR-1 for the month of September-2022 for taxpayers having turnover more then Rs. 5 crores or opted to file Monthly Return
7	11-10-2022	GST	Filing of GSTR-1 for the quarter ended September 30, 2022 for taxpayers who opted for Quarterly Return Monthly payment(QRMP) Option
8	13-10-2022	GST	GSTR-6 for the month of September-2022 for Input Service Distributor
9	13-10-2022	GST	Filling of Invoice Furnishing Facility (IFF) for the month of September- 2022 for taxpayers who opted for Quarterly Return Monthly Payment (QRMP) option
10	14-10-2022	MCA	Filing of Form ADT-1 For Appointment of an Auditor If the AGM is held on 30/09/2022
11	15-10-2022	PF/ESIC	Payment of PF / ESIC for the month of September - 2022
12	15-10-2022	Income Tax	Filing of TCS Return in form 27EQ for the quarter ended on September 30, 2022
13	15-10-2022	MCA	Filing of DIR-3 KYC, for all person holding Director Identification Number (DIN) as on March 31, 2022
14	18-10-2022	GST	CMP-08 for the quarter ended on September 30, 2022 by Composite Dealer
15	20-10-2022	GST	GSTR-5 & 5A by Non-resident taxable person & OIDAR for the month of September - 2022
16	20-10-2022	GST	Payment of GST & Filling of GSTR-3B for the month of September-2022, for taxpayers having turnover of more than Rs.5 Crore in preceding financial Year
17	22-10-2022 24-10-2022	GST	Payment of GST & Filling of GSTR-3B for taxpayers having turnover upto Rs.5 Crore in preceding Financial year for the quarter ended on September 30, 2022 who opted for Quarterly Return Monthly payment(QRMP) Option depending on place of business(State)



S.No	Due Date	Act/Authority	Compliance Description
18	25-10-2022	GST	Payment of GST in form GST PMT-06 for the month of September-2022 for taxpayers who opted for Quarterly Return Monthly payment(QRMP) Option
19	25-10-2022	GST	ITC-04 for period of April-22 to September-22 for goods dispatched to or received from a Job worker
20	29-10-2022	MCA	Filing of AOC 4 in case AGM is held on 30/09/2022. In other cases, within 30 days date of the conclusion of AGM
21	30-10-2022	Income tax	Furnishing of challan-cum statement of tax deducted under 194-IA,194-IB and 194M in the month of September-2022
22	30-10-2022	MCA	Filing of Statement of Account and Solvency by LLP for the year ended on March 31, 2022
23	31-10-2022	Income tax	Filing of TDS returns for the quarter ended on September 30,2022
24	31-10-2022	Income tax	Filing of Report in Form 3CEB in respect of International transaction and specified domestic transaction
25	31-10-2022	Income tax	Audit report under section 44AB for the assessment year 2022-23 in the case of an assessee who is also required to submit a report pertaining to International or specified domestic transactions under section 92E
26	31-10-2022	Income tax	Filing of Income Tax Return (ITR) for A.Y. 2022-23 for the following (not having any international or specified domestic transaction): (a) corporate-assessee or (b) non-corporate assessee (whose books of account are required to be audited) or partner of a firm whose accounts are required to be audited.
27	31-10-2022	Guj RERA	Annual Compliances for the year ended March 31, 2022
28	31-10-2022	MCA	MSME-1 in respect of outstanding payment by company to Micro and Small Enterprise as at September 30, 2022

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BRANCHES

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