

Manubhai & Shah LLP

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NEWSLETTER

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Covering Updates for the Month of January' 23

For private circulation and clients only



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DIRECT TAX UPDATES

I. Circulars & Notifications

1. STATEMENT OF FINANCIAL TRANSACTIONS (SFT) FOR INTEREST INCOME (CBDT Notification No. 1 of 2023 dated 05.01.2023)

C.B.D.T. had notified the Format, Procedure and Guidelines for submission of Statement of Financial Transactions (SFT) for Interest income vide Notification 2 of 2021, dated 20.04.2021. It was notified that the information is to be reported for all account/deposit holders where cumulative interest exceeds Rs. 5,000/ per person in the financial year.

Now, the limit of said Rs.5,000/- for the reporting of SFT has been removed w.e.f. 01.01.2023 vide this Notification except Jan Dhan Accounts.

II. LANDMARK DECISIONS UNDER INCOME TAX

Checkmate Services (P.) Ltd. V/s CIT 143 taxmann.com 178 (SC)

The Honourable Supreme Court, by this landmark verdict has clarified that employees contribution towards PF, ESIC etc are disallowable **U/sec 36(1)(va) when the same is deposited by the employer after its Due Date and the said provisions are also applicable to cases prior to A.Y. 2021-22 .It is clarified by the Honourable Supreme Court that amendment to provisions of section 43B w.e.f. A.Y. 2021-22 in regard to disallowance of employer's contribution beyond due date are not applicable to provisions of section 36(1)(va).**

III. BUDGET 2023: PROPOSALS IMPACTING CHARITABLE TRUSTS/INSTITUTION:

The Finance Minister, Ms.Nirmala Sitharaman, in her Budget 2023 has proposed following changes in the Income tax Act, 1961 impacting Charitable Trusts/Institutions:

1. Reduction in Time Limit to Exercise Option of accumulation of income/receipts U/sec 11(1)

As per existing provisions of section 11, to exercise option of accumulation of income/receipts, a registered Trust/Institution is required to file Form No. 10/9A on or before the due date of filing of income tax return under section 139(1).

It is now proposed that the same is required to be filed 2 months before the due date for filing of income tax return under section 139(1).

2. Application of Income out of Corpus Donations

As per the existing provisions, a registered Trust/Institutions can use Corpus Fund towards its charitable or religious objects but the same shall be allowed as application of income in the year in which the amount or part of it is invested or deposited back in the modes specified under section 11(5).

It is now **proposed that** such investment or deposit back in the specified modes must be made within a period of 5 years from the end of financials year in which it was used out of Corpus Fund. So any such fund invested or deposited back after five years shall not be eligible claim as application of income in the year of investment.

This provisions shall be applicable to application of income or specified investment made out of Corpus Fund on or after 01.04.2021.

3. Application of Income out of Loan/Borrowed Fund

As per the existing provisions a registered Trust/Institutions can apply its income or invest or deposit the same in the modes specified under section 11(5) out of Loan/ Borrowed Funds but the same shall be allowed as application of income in the year in which the amount or part of it is repaid.

It is now proposed that such repayment of loan must be made within a period of 5 years from the end of financials year in which it was borrowed. So any repayment of loan after five years shall not be eligible claim as application of income in the year of repayment.

This provisions shall be applicable to application of income out of any loan/borrowed funds taken on or after 01.04.2021.

4. Donation to Other Trust/Institutions

It is proposed that any voluntary donation to any other Registered Trust/Institution shall be **treated as an application of income to the extent of eighty five percent of such donation** amount paid/credited as against the full deduction as per the existing provisions.

5. Registration U/sec 12AB

It is proposed that any new charitable Trust/institution which has commenced its charitable activities can make an application for registration U/sec 12AB directly for regular registration instead of a provisional registration .

6. Tax on Accreted Income U/sec 115TD

It is proposed to amend section 115TD to tax on Accreted Income of a registered Trust/Institution at maximum marginal rate in the year in which it fails to apply for re-registration within the specified period .

7. Exemption U/sec 11/12

It is proposed to amend Clause (ba) of Section 12A(1) that registered Trust/Institution can claim exemption only if return of income is furnished within time limit prescribed under section 139(1) (Original Return) or 139(4) (belated tax return).So Trust /Institution can not claim exemption of income in case of filing updated return of income.

8. Exemption to Specified body or authority or board or trust or commission

It is proposed to insert new clause (46A) in section 10 to exempt any income arising to a body or authority or board or trust or commission, not being a company, which has been established or constituted by or under a Central or State Act with one or more of the following purposes, namely:

- i. Dealing with and satisfying the need for housing accommodation,
- ii. Planning, development or improvement of cities, towns and villages,
- iii. Regulating, or and developing, any activity for the benefit of the general public, or
- iv. Regulating any matter, for the benefit of the general public, arising out of the object for which it has been created.

The said body or authority or board or trust or commission are required to be notified by the Central Government for this purpose.



COMPANY LAW UPDATES

A. Updation in E-Forms:

Form URC-1 for application by a company for registration under section 366 has been amended by substituting the earlier Form.

Updated form can be accessed at:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MjM4ODA2Nzgz&docCategory=Notifications&type=open>

Form MR 1 - Return of appointment of managerial personnel and Form MR 2 - Application to the Central Government for approval of appointment of managing director or whole-time director or manager have been substituted with new forms.

Updated forms can be accessed at:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MjQxMDE4ODI3&docCategory=Notifications&type=open>

Form MGT 3 – Notice of situation or change of situation or discontinuation of situation, of place where foreign register shall be kept has been substituted with new form.

Updated form can be accessed at:

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

Form AOC 5 - Notice of address at which books of account are to be maintained is substituted with new Form.

Updated form can be accessed at:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MjM4ODA2Njgx&docCategory=Notifications&type=open>

Form GNL 2 - Form for submission of documents with the Registrar, Form GNL 3 – Particulars of person(s) charged for the purpose of sub clause (iii) or (iv) of clause 60 of section 2 and Form GNL 4 - Form for filing Addendum for rectification of defects or incompleteness have been substituted with new forms.

Updated forms can be accessed at:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MjQxMDM3MzI4&docCategory=Notifications&type=open>

Form PAS 2 – Information Memorandum has been substituted with new form.

Updated form can be accessed at:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MjQxMTMwNDA2&docCategory=Notifications&type=open>

Form FC 1, FC 2, FC 3, and FC 4 to be filed by foreign companies are substituted with new forms.

Updated form can be accessed at:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MjQxMTM0NjYw&docCategory=Notifications&type=open>

B. Physical Submission of Forms:

It has been decided that the Companies intending to file Form GNL -2 and MGT -14 during 7th January, 2023 to 22nd January, 2023 on MCA-21 Portal may file such forms in physical mode duly signed by concerned authorities along with a copy thereof in electronic media, without payment of fees to concerned ROC and get it acknowledged. It should be filed along with an undertaking that once portal resumes, company will file forms online with requisite fees. No additional fees will be levied at that time.

Circular can be accessed at:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MjM4MzYzNTY5&docCategory=Circulars&type=open>

C. Release plan of 45 E-forms:

MCA is in process of introducing Version 3.0 due to which 45E - forms were not available on Version 2.0 portal from January 7, 2023 to January 22, 2023. It has been clarified that such forms can be filed on new portal V3 without levying additional fees for 15 days in case its due date was falling between January 7, 2023 to January 22, 2023.

Notification can be accessed at:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MjM4MzYzNTcx&docCategory=Circulars&type=open>



SEBI UPDATES

A. Limited relaxation - dispatch of physical copies of financial statements etc.:

MCA vide Circular dated December 28, 2022 has, inter-alia, extended the relaxations from dispatching of physical copies of financial statements due in the year 2023 (i.e. till September 30, 2023). Considering the same, it has been decided to relax up to September 30, 2023, the requirements of the Listing Regulations which prescribes that an entity with listed non-convertible securities shall a hard copy of statement containing the salient features of all the documents, as specified in Section 136 of Companies Act, 2013 and rules made thereunder to those holders of non-convertible securities who have not registered their email address(es) either with the listed entity or with any depository.

Circular can be accessed at:

https://www.sebi.gov.in/legal/circulars/jan-2023/limited-relaxation-dispatch-of-physical-copies-of-financial-statements-etc-regulation-58-of-sebi-listing-obligations-and-disclosure-requirements-regulations-2015_67033.html

B. Amendment in SEBI (LODR) Regulations, 2015:

SEBI vide Circular dated 17th January, 2023 has amended certain regulations of Chapter IV related to Obligations of an Entity which has listed its specified securities and non-convertible debt securities whereby the amendments in Regulation 15 shall come into force with effect from April 1, 2023 and further Schedule V, Paragraph C, sub-para (10), relating to additional disclosures in Corporate Governance Report shall be applicable for Annual Reports filed for the financial year 2022-2023 and thereafter.

Circular can be accessed at:

https://www.sebi.gov.in/legal/regulations/jan-2023/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-amendment-regulations-2023_67410.html



ACCOUNTING UPDATES

1. EAC Opinion:

Expert Advisory Committee (EAC) of ICAI has provided an Opinion on Disclosure of changes in inventory of scrap in the Statement of Profit and Loss

The relevant text of the Opinion is reproduced below:

“the Committee is of the opinion that internally generated items/ products (classified as ‘scrap’), used in the production process and transferred from one department to another within the Company should not be presented as ‘cost of materials consumed’; rather should be considered as work-in-progress and presented under ‘Changes in inventories of finished goods, work-in-progress and stock-in-trade’ under ‘Expenses’ in the Statement of Profit and Loss as per the requirements of Schedule III to the Companies Act, 2013 with appropriate disclosures to explain the nature of inventory.”

EAC Opinion can be accessed at:

<https://resource.cdn.icai.org/72811cajournal-feb2023-8.pdf>



RBI UPDATES

1. Basel III Capital Regulations – Eligible Credit Rating Agencies:

RBI had issued a circular on 12th October, 2022 for cancellation of Certificate of Registration granted to Brickwork Ratings India Private Limited as a Credit Rating Agency from the said date. Regulated entities / market participants were also advised to not obtain any fresh credit ratings from them W.e.f 12th October, 2022. Through this circular, RBI has updated para 6.1.2 of the master circular (Master Circular DOR.CAP.REC.3/21.06.201/2022-23 dated April 01, 2022) which mentioned the list of credit rating agencies approved by RBI. The updated list contains 6 credit agencies now and does not contain the name of Brickwork Ratings India Private Limited.

Notification dated 9th January, 2023

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12435&Mode=0>

2. RBI (Acquisition and Holding of Shares or Voting Rights in Banking Companies) Directions, 2023:

RBI had several directions with regards to prior approval for acquisition of shares or voting rights in private sector banks, issue and pricing of shares by private sector banks, Ownership in private sector banks etc. The aforesaid directions are now repealed through issue of Master Direction (along with Guidelines on the subject issued on 16th January, 2023) which would be applicable to **ALL BANKING COMPANIES as defined under section 5© of The Banking Regulation Act, 1949 including local area banks, small finance banks and payment banks** operating in India w.e.f. 16th January, 2023.

The objective of this direction is to ensure that the ultimate ownership and control of banking companies are well diversified and the major shareholders of banking companies are 'fit and proper' on a continuing basis.

Notification dated 16th January, 2023

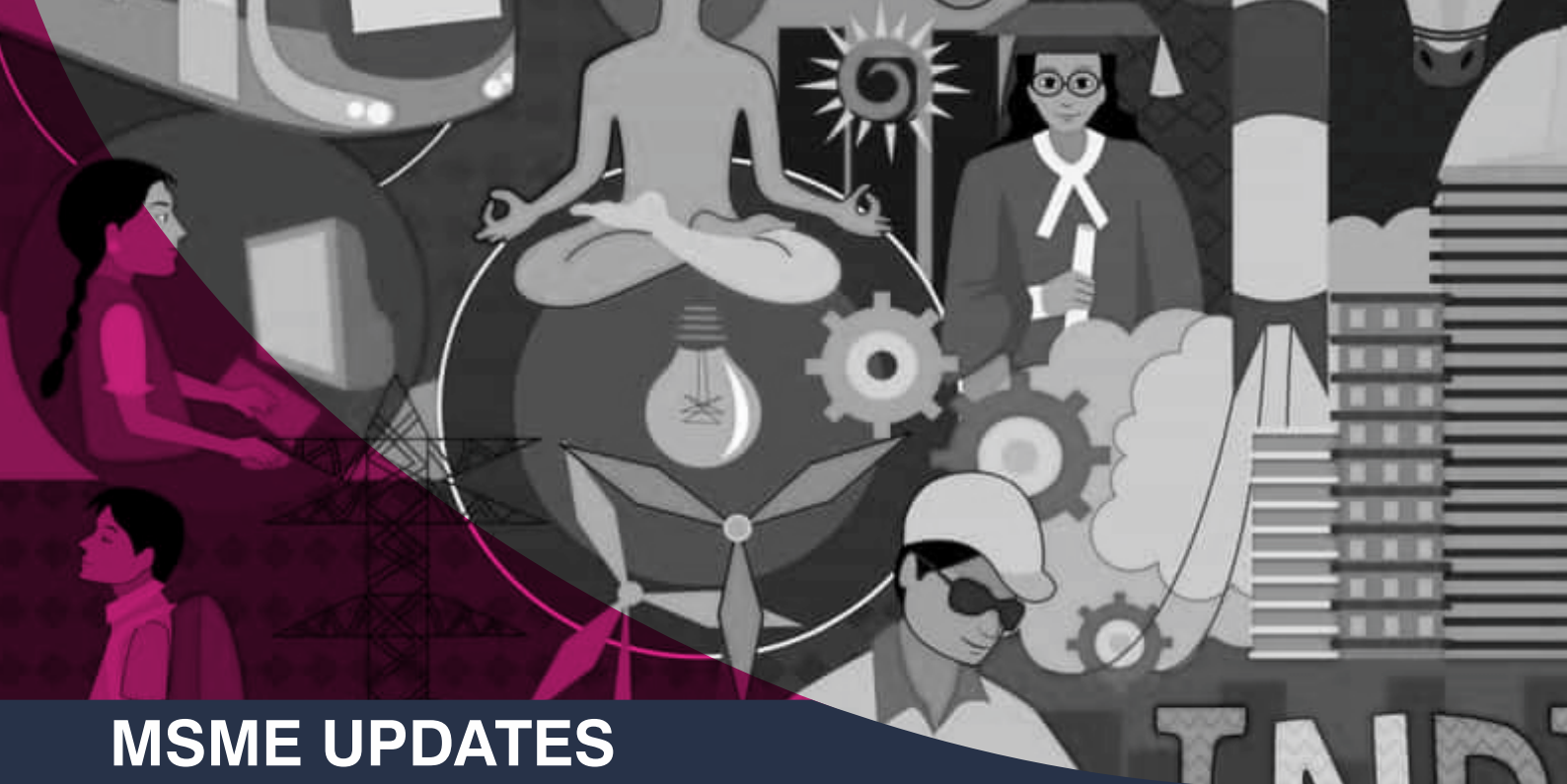
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12439&Mode=0>

3. Inclusion of Sovereign Green Bonds under FAR for investment by Non Residents:

RBI had introduced concept of Fully Accessible Rout (FAR) for welcoming investment by non-residents in specified government securities through circular A.P. (DIR Series) Circular No. 25 dated March 30, 2020, wherein certain specified categories of Central Government securities were opened fully for non-resident investors without any restrictions, apart from being available to domestic investors as well. The Government Securities that were eligible for investment under the FAR ('specified securities') were notified by the Bank, vide circular no. FMRD.FMSD. No. 25 / 14.01.006 / 2019-20 dated March 30, 2020 and circular no. FMRD.FMID.No.04/14.01.006 / 2022-23 dated July 07, 2022. Through this notification, it has now been decided to also designate all Sovereign Green Bonds issued by the Government in the fiscal year 2022-23 as 'specified securities' under the FAR.

Notification dated 23rd January, 2023

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12444&Mode=0>



MSME UPDATES

Relief for MSME.

1. Government of India, Ministry of Finance, Department of Expenditure, Procurement Policy Division has issued Office Memorandum vide No.F.1/1/2023-PPD dated February 6, 2023 providing Relief to the Micro, Small and Medium Enterprises ("MSMEs").
2. In order to further support MSMEs, it has been decided to provide relief in all contracts for procurement of Goods and Services, entered into by any Ministry/ Department/ attached or subordinate office/ autonomous body/ Central Public Sector Enterprise (CPSE)/ Public Sector Financial Institution etc with MSMEs, which meet the following criteria:
3. The contractor/ supplier should be registered as a MSME Enterprise with the Ministry of MSME, as on March 31, 2022. The original delivery period/ completion period was between February 19, 2020 and March 31, 2022.
4. For the MSMEs which meet the specified criteria, the following reliefs shall be provided:
 - 95% of the performance security forfeited from such firms shall be refunded.
 - 95% of the Bid security (Earnest Money Deposit), if any, forfeited from MSME firms in tenders opened between February 19, 2020 and March 31, 2022 shall be refunded.
 - 95% of the Liquidated Damages (LD) deducted from such firms shall also be refunded. LD so refunded shall not exceed 95% of the performance security stipulated in the contract.
 - In case a firm has been debarred only due to default in execution of such contracts, such debarment shall also be revoked, by issuing an appropriate order by the procuring entity.
 - No interest shall be paid on such refunded amount.
5. Government e-Marketplace (GeM) shall provide an online portal for the purpose implementation of this order. The date of commencement of the scheme shall be notified separately.



DUE DATES

Due dates of various compliances falling in the month of February 2023

S.No	Due Date	Act/Authority	Compliance Description
1.	07-02-2023	Income tax	Deposit of Tax Deducted at Source (TDS) / Tax Collected at source (TCS) during the month of January-2023
2.	10-02-2023	GST	GSTR-7 for the month of January-2023 for persons required to deduct TDS under GST Regime
3.	10-02-2023	GST	GSTR-8 for the month of January-2023 for E-Commerce operators required to Collect TCS
4.	11-02-2023	GST	GSTR-1 for the month of January-2023 for taxpayers having turnover more than Rs. 5 crores or opted to file Monthly Return
5.	13-02-2023	GST	GSTR-6 for the month of January-2023 for Input Service Distributor (ISD)
6.	15-02-2023	PF/ESIC	Payment of PF / ESIC for the month of January - 2023
7.	20-02-2023	GST	GSTR-5 & 5A by Non-resident taxable person & OIDAR for the month of January - 2023
8.	20-02-2023	GST	Payment of GST & Filing of GSTR-3B for the month of January-2023, for taxpayers having turnover of more than Rs.5 Crore in preceding financial Year or Who have opted to file Monthly Return
9.	25-02-2023	GST	Payment of GST in form GST PMT-06 for the month of January-2023 for taxpayers who opted for Quarterly Return Monthly payment (QRMP) Option
10.	28-02-2023	GST	Filing of GSTR-11- Statement of Inward Supplies for the month of January-2023 by persons having Unique Identification Number

**Time goes on.
so, whatever you're
going to do, do it.
Do it now**

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