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NEWSLETTER

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Covering Updates for the Month of February' 23
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DIRECT TAX UPDATES

I. CIRCULAR & NOTIFICATIONS

1. NEW ITR FORMS NOTIFIED FOR A.Y.2023-24 :

(CBDT Notification No. 4 & 5 of 2023 dated 10.02.2023 & 14.02.2023)

CBDT notifies new Income tax return Forms for the assessment year 2023-24 which is summarized as under:

ITR Form	Residential Status	Who can file	Nature of Income
ITR Form 1 (Sahaj)	Resident	Individual	having income upto Rs. 50 lakh which includes income from salary, income form one house property only , other sources and agricultural income upto Rs. 5,000.
ITR Form 4 (Sugam)	Resident	individuals, HUFs and firms (other than LLPs)	having total income upto Rs. 50 lakh and income from business and profession computed under section 44AD, 44ADA or 44AE
file ITR Form 2	Resident/NRI	Individuals and HUFs	not having income from business or profession and not eligible for filing Sahaj
ITR Form 3	Resident/NRI	Individuals and HUFs	income from business or profession can file
ITR Form 5	Resident/NRI	Partnership firms, LLPs etc	
ITR Form 6	Resident/NRI	Companies	Companies other than companies claiming exemption U/sec 11
ITR Form 7		Trusts, political parties, charitable institutions, etc. claiming exempt income under the Act	

2. Substitution of Form Nos. 10B & 10BB - Trust Audit Report

(CBDT Notification No. 7 of 2023 dated 21.02.2023)

CBDT has substituted Rule 16CC and Rule 17 for Audit Report in Form No. 10B/10BB. Same is summarized as under:

➤ **Rule 16CC**

- (a) Any Fund, institution, trust, any university, other educational institution, any hospital or other medical institution claiming exemption U/sec 10(23C), Audit Report should be **Form 10B** where –
- The total income of such institution before claim of exemption U/sec 10(23C) exceeds Rs. 5 Crores; or
 - such institution has received any foreign contribution during the previous year; or
 - such has applied any part of its income outside India during the previous year;
- (b) In all other cases in **Form 10BB**.

➤ **Rule 17B**

- (a) Trust or institution claiming exemption U/sec 12A, Audit Report should be in Form 10B where-
- the total income of such Trust or institution before claim of exemption U/sec sections 11 and 12 exceeds Rs. 5 Crores; or
 - Trust or institution has received any foreign contribution during the previous year; or
 - such has applied any part of its income outside India during the previous year;
- (b) In all other cases in **Form 10BB**.

3. Adhar-PAN linking Due date by 31.03.2023:

Income tax Department has issued instructions to link Adhar with PAN by 31.03.2023 by paying the due late fees. PAN of an individual will get deactivated if not linked with his/her Adhar on or before 31.03.2023.

II. LANDMARK DECISIONS UNDER INCOME TAX

Reassessment notices U/sec 148 issued between 01.04.2021 & 30.06.2021

Rajeev Bansal v. Union of India 147 taxmann.com 549 (All)

Facts :

The writ petitions were filed by against the orders of the Assessing Officer under Section 148A(d) and the consequential notices issued under Section 148 of the Act' 1961 of the Income Tax Act' 1961 for the assessment years 2013-14, 2014-15, 2015-16, 2016-17 and 2017-18. The ground raised was whether the reassessment proceedings initiated with the notice under Section 148 (deemed to be notice under Section 148-A), issued between 01.04.2021 and 30.06.2021, can be conducted by giving benefit of relaxation/extension under the Taxation and Other Laws (Relaxation & Amendment of Certain Provisions) Act' (TOLA)' 2020 upto 30.03.2021, and then the time limit prescribed in Section 149 (1) (b) (as substituted w.e.f. 01.04.2021) is to be counted by giving such relaxation, benefit of TOLA from 30.03.2020 onwards to the revenue. Whether in respect of the proceedings where the first proviso to Section 149(1)(b) is attracted, benefit of TOLA' 2020 will be available to the revenue, or in other words the relaxation law under TOLA' 2020 would govern the time frame prescribed under the first www.taxmann.com 3 proviso to Section 149 as inserted by the Finance Act' 2021, in such cases? following the

Held:

The Honourable Allahabad High Court after review of the Supreme Court decision in the case **Union of India V/s. Ashish Agarwal 138 Taxmann.com (64) and CBDT instruction regarding implementation of judgment of Hon'ble Supreme Court, dated 4-5-2022 vide Instruction no. 1/2022 Dated 11-5-2022**, held that:

- The reassessment proceedings initiated with the notice under Section 148 (deemed to be notice under Section 148-A), issued between 1-4-2021 and 30-6-2021, cannot be conducted by giving benefit of relaxation/extension under the Taxation and Other Laws (Relaxation And Amendment of Certain Provisions) Act' (TOLA) 2020 upto 30-3-2021, and the time limit prescribed in Section 149 (1)(b) (as substituted w.e.f. 1-4-2021) cannot be counted by giving such relaxation from 30-3-2020 onwards to the revenue.
- In respect of the proceedings where the first proviso to Section 149(1)(b) is attracted, benefit of TOLA' 2020 will not be available to the revenue, or in other words, the relaxation law under TOLA' 2020 would not govern the time frame prescribed under the first proviso to Section 149 as inserted by the Finance Act' 2021, in such cases

Our Comment:

The decision of Hon'ble Allahabad High Court has clarified the doubts created by the CBDT Instruction No. 1/2022 dated 11.05.2022 giving direction to Assessing Officer to issue Fresh notice U/sec 148 of the Act even for AY 2013-14, AY 2014-15 and AY 2015-16 after taking the approval of the specified authority, if the case falls under clause (b) of sub-section (1) of section 149 as amended by the Finance Act, 2021.

The Hon'ble court has interpreted the verdict of the Supreme Court In the case of UOI V/s Ashish Agarwal 138 Taxmann.com 64 and the CBDT Instructions in the context of Taxation and Other Laws (Relaxation And Amendment of Certain Provisions) Act' (TOLA) 2020 and clarified that benefit of relaxation/extension till 30.03.2021 can not be counted to all the notices issued U/section 148 between 01.04.2021 and 30.06.2021 including cases covered under the first proviso to Section 149(1)(b).



COMPANY LAW UPDATES

A. Extension in Timeline for 45 E-forms:

Due to change in way of filing in Version-3, including fresh process of registration of users on MCA-21 and process of stabilization of 45 forms launched with effect from 23.01.2023, and after considering various representations, it has been decided to allow further additional time till 31.03.2023 for filing of these forms which are due for filing between 07.02.2023 and 28.02.2023, without additional fees, to the stakeholders. Further, Form PAS-03 which was closed for filing in Version-2 on 20.01.2023 and launched in Version-3 on 23.01.2023, and whose due dates for filing fall between 20.01.2023 and 28.02.2023, can also be filed without payment of additional fees till 31.03.2023. Further, reservation period for the names is extended by a further period of 20 days.

Circular can be accessed at:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MjU3NzkwODIy&docCategory=Circulars&type=open>

B. Physical filing of few forms with RoC:

It has been decided that the companies intending to file (i) Form GNL-2 (filing of prospectus related documents and private placement), (ii) MGT-14 (filing of Resolutions relating to prospectus related documents, private placement), (iii) PAS-3 (Allotment of Shares), (iv.) SH-8 (letter of offer for buyback of own shares or other securities), (v.) SH-9 (Declaration of Solvency) and (vi.) SH-11 Return in respect of buy-back of securities) from 22.02.2023 to 31.03.2023 on the MCA-21 Portal may file such Form in physical mode duly signed by the persons concerned as per requirements of the relevant forms, along with a copy thereof in electronic media, with the concerned Registrar without payment of fee and take acknowledgement (as per Annexure to the Circular) thereof. Such filing will be accompanied by an undertaking from the company that, the company shall also file the relevant Form in electronic form on MCA-21 Portal Along with fee payable as per Companies (Registration Offices and Fees) Rules, 2014

Circular can be accessed at:

<https://www.mca.gov.in/bin/dms/getdocument?mds=L1%252F1zzFGRvjYOFmh0PQHAw%253D%253D&type=open>



SEBI

SEBI UPDATES

A. Master Circulars:

In order to enable the stakeholders to have access to the provisions of the applicable circulars at one place, Master Circular for Takeover Regulations has been issued.

Master Circular can be accessed at:

https://www.sebi.gov.in/legal/master-circulars/feb-2023/master-circular-for-substantial-acquisition-of-shares-and-takeovers_68091.html

Guidelines on Anti-Money Laundering (AML) Standards and Combating the Financing of Terrorism (CFT) is issued which stipulate the essential principles for combating Money Laundering (ML) and Terrorist Financing (TF) and provides detailed procedures and obligations to be followed and complied with by all the registered intermediaries.

Guideline can be accessed at:

<https://www.sebi.gov.in/legal/master-circulars/feb-2023/guidelines-on-anti-money-laundering-aml-standards-and-combating-the-financing-of-terrorism-cft-obligations-of-securities-market-intermediaries-under-the-prevention-of-money-laundering-act-2002-a-67833.html>

B. Manner of achieving minimum public shareholding

SEBI had permitted different methods that may be used by listed entities to achieve compliance with the minimum public shareholding (MPS) requirements. To facilitate listed entities, achieve MPS compliance, few of the existing methods have been reviewed and rationalized and two additional methods have been introduced. Some of the methods are issuance of shares to public through prospectus, offer for sale of shares held by promoter/promoter group to public through prospectus or stock exchange mechanism, Rights/Bonus issue to public shareholders etc. Accordingly, a listed entity shall adopt any of the methods mentioned in circular in order to achieve compliance with the MPS requirements.

Circular can be accessed at:

https://www.sebi.gov.in/legal/circulars/feb-2023/manner-of-achieving-minimum-public-shareholding_67801.html

C. Clarification in respect of the compliance by the first-time issuers of debt securities:

In view of the above and the difficulties posed to first time issuers, the Stock Exchanges are advised to take an undertaking from such first-time issuers that they will ensure that their AOA are amended within a period of six months from the date of the listing of the debt securities since it requires formalities like approval from shareholders and conducting board and general meetings.

Circular can be accessed at:

<https://www.sebi.gov.in/legal/circulars/feb-2023/clarification-in-respect-of-the-compliance-by-the-first-time-issuers-of-debt-securities-under-sebi-issue-and-listing-of-non-convertible-securities-regulations-2021-with-regulation-23-6-67936.html>



ACCOUNTING UPDATES

A. EAC Opinion:

Expert Advisory Committee (EAC) of ICAI has given an Opinion on Accounting treatment for advance payment made towards way leave charges as a part of laying city gas distribution network

The relevant text of the Opinion is reproduced below:

“The Committee now examines whether the contract of right of way leave in the extant case can be considered as a ‘lease’ within the scope of Ind AS 116, ‘Leases’.

The Committee notes that a contract is, or contains, a lease if it conveys the right to control the use of an identified asset for a period of time in exchange for consideration. Further, to assess whether a contract conveys the right to control the use of an identified asset for a period of time, an entity shall assess whether, throughout the period of use, the customer has the (i) right to obtain substantially all of the economic benefits from use of the identified asset and (ii) right to direct the use of the identified asset.

In the extant case, the permission to use underground space is explicitly specified in the contract/agreement along with the specific dimensions (path, width, etc.) and is physically distinct from the remainder of the land (eg, area on the surface of the land). Thus, an identified asset exists in the extant case.

The Committee is of the view that since in the extant case, the Railways has the right of substitution only on the occurrence of a specified event in future (viz., Northern Railway executing new works), substitution right is not substantive because it does not give the supplier the practical ability to substitute the asset throughout the period of use. Thus, as per the requirements of paragraph B15, the supplier does not have the substantive right to substitute the asset throughout the period of use in the extant case.

The Committee notes that in the extant case, the Company has exclusive right to use the specified underground space throughout the period of use (although within the defined scope of its right to use the underground space) and therefore, the Company has the right to obtain substantially all of the economic benefits from the use of identified asset.

The Committee notes from the Memorandum Agreement that the Company has the right to operate the specified underground space by having the right to lay down the pipelines, to inspect, repair and maintain them. The Company can make all the decisions about the use of the specified underground space although within the defined scope of the contract/agreement. Therefore, the Committee is of the view that in the extant case, the Company has the right to direct the use of identified asset throughout the period of use.

The Committee also notes that there are various clauses in the ‘Memorandum Agreement’ which provides some rights to the Railways in relation to the underground space in the extant case, for instance, right of access and inspection, etc. The Committee, considering paragraph B30 of Ind AS 116 is of the view that these are in the nature of protective rights to protect the Railways’ interest in the asset, to protect its personnel or to ensure compliance with laws or regulations. These clauses define the scope of the customer’s right of use but do not, in isolation, prevent the customer, viz. (the Company) from having the right to direct the use of an asset.

Therefore, the Committee is of the view that the arrangement in the extant case contains lease and the prepayments made towards way leave charge should be accounted for as 'right-of-use' asset per the requirements of IndAS 116."

EAC Opinion can be accessed at:

<https://resource.cdn.icaai.org/73105cajournal-march2023-11.pdf>



RBI UPDATES

The Monetary Policy Committee (MPC) announced on 8 February 2023 that

- The repo rate is increased by 25 basis points. This makes the current repo rate 6.50% (from the 6.25% that it was earlier).
- The Bank Rate and the Marginal Standing Facility (MSF) rate has changed to 6.75%.

<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=12449&Mode=0>

<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=12450&Mode=0>

<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=12451&Mode=0>



DUE DATES

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

S.No	Due Date	Act/Authority	Compliance Description
1	02-03-2023	Income tax	Furnishing of challan-cum statement of tax deducted under 194-IA,194-IB and 194M in the month of January -2023
2	07-03-2023	Income tax	Deposit of Tax Deducted at Source (TDS) / Tax Collected at source (TCS) during the month of February-2023
3	10-03-2023	GST	GSTR-7 for the month of February-2023 for persons required to deduct TDS under GST Regime
4	10-03-2023	GST	GSTR-8 for the month of February-2023 for e-commerce operators required to Collect TCS
5	11-03-2023	GST	GSTR-1 for the month of February-2023 for taxpayers having turnover more then Rs. 5 crores or opted to file Monthly Return
6	13-03-2023	GST	GSTR-6 for the month of February-2023 for Input Service Distributor (ISD)
7	15-03-2023	Income tax	Fourth instalment of advance tax for the assessment year 2023-2024
8	15-03-2023	PF/ESIC	Payment of PF / ESIC for the month of February - 2023
9	15-03-2023	Income tax	Payment of entire amount of advance tax for the assessment year 2023-2024 for assesses covered by the presumptive taxation scheme under section 44AD / 44ADA
10	20-03-2023	GST	GSTR-5 & 5A by Non-resident taxable person & OIDAR for the month of February - 2023
11	20-03-2023	GST	Payment of GST & Filling of GSTR-3B for the month of February-2023, for taxpayers having turnover of more than Rs.5 Crore in preceding financial Year or who have opted to file Monthly Return
12	25-03-2023	GST	Payment of GST in form GST PMT-06 for the month of February-2023 for taxpayers who opted for Quarterly Return Monthly payment(QRMP) Option
13	28-03-2023	GST	Filing of GSTR-11- Statement of Inward Supplies for the month of February-2023 by persons having Unique Identification Number
14	30-03-2023	Income tax	Furnishing of challan-cum statement of tax deducted under 194-IA,194-IB and 194M in the month of February-2023
15	31-03-2023	GST	Availing option for composition scheme for upcoming FY 2023-2024 in Form CMP-02
16	31-03-2023	GST	Filing of RFD-11 (LUT) for FY 2022-2023
17	31-03-2023	Income tax	Filing of updated Income Tax Return for the Financial year 2019-2020
18	31-03-2023	Income tax	Linking Aadhar number with PAN with a penalty of Rs 1000/-

“TALENT WINS GAMES, BUT TEAMWORK AND INTELLIGENCE WINS THE CHAMPIONSHIP”

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