

Manubhai & Shah LLP
Chartered Accountants

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

I Circulars & Notifications

1. Exemption to Specified Investment Funds from filing of income tax return

C.B.D.T. Notification No. 49/2023, dated 14.07.2023

The Government of India, Ministry of Finance, (Department of Revenue), vide earlier C.B.D.T. Notification No. 55/2019, dated 26.07.2019 had exempted certain Investment Funds from filing of Income tax Return under section 139 of the Act. Now the C.B.D.T. has amended said definition of investment funds.

Accordingly, "investment fund" means any 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 (AIF) and is regulated under the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012, made under the Securities and Exchange Board of India Act, 1992 (15 of 1992) or regulated under the International Financial Services Centres Authority (Fund Management) Regulations, 2022 made under the International Financial Services Centres Authority Act, 2019 (50 of 2019).

So, all SEBI Registered AIF Category I or a Category II are not required to file income tax return from assessment year 2019-20 onwards.

2. Clarification regarding taxability of income u/sec 115UB earned by a Non-resident investor from off-shore investments in investment fund routed through AIF

C.B.D.T. Circular no. 12/2023 dated 12.07.2023

As per section 5(2) of the Income tax Act, 1961 the income of a non-resident, is liable to be taxed in India if it is **received or is deemed to be received in India or accrues or arises or is deemed to accrue or arise to him in India.**

CBDT vide **Circular No. 14/2019 dated 03.07.2019** clarified that the investments made by Category I or Category II AIFs are deemed to have been made by the investor directly. Accordingly, income earned by an investor of AIF is to be taxed under section 115UB(1) of the Act under respective head of income. It was clarified that any income in the hands of the non-resident investor from off-shore investments routed through the Category I or Category II AIF, being a deemed direct investment outside India by the non-resident investor, is not taxable in India under section 5(2) of the Act.

In view of the amendment by the Finance Act, 2023 in the definition of term "investment fund" under the Act to include International Financial Services Centres Authority (Fund Management) Regulations, 2022 under International Financial Services Centres Authority (IFSCA) Act, 2019.

Therefore, provisions of section 115UB apply to Category I or Category II AIFs regulated by (SEBI) or International Financial Services Centres Authority (IFSCA) as well. Accordingly, income earned by a non-resident in off-shore fund routed through the Category I or Category II AIF registered under International Financial Services Centres, shall not be taxable in India.

II. Tribunal Decision

Liability to deduct TDS U/sec 194C r.w. Section 204 in case of aggregator of services.

DCIT V. Uber India Systems (P.) Ltd. [2023] 150 taxmann.com 39 (Mum - Trib.)

Facts of the Case:

The assessee was incorporated in India and was running the business of Uber BV, which was incorporated in the Netherlands and was the legal owner of the software application called Uber App. The primary services provided through this mobile app was the transportation services wherein the passenger looking for a ride on the app and the driver/vehicle owner willing to offer accepts the offer. During the year, the main services provided by Uber BV through the assessee were taxi services and food delivery services.

During the course of TDS verification carried out and on the basis of subsequent examination conducted in respect of the assessee, substantial defaults in the deduction of tax at source within the meaning of section 201(1)/201(1A) were noted. The Assessing Officer noted that Uber EATS was a food delivery App similar to Uber App and was a restaurant aggregator platform akin to Uber App being the ride-sharing platform. The Assessing Officer opined that even though agreement was signed between the driver, who was a contractor, and the foreign enterprise Uber BV, but the liability to deduct TDS, would lie on the assessee who was making the payment. Accordingly, the Assessing Officer held that the assessee was making substantial payments to driver partners, the restaurant partners, and the courier partners without deducting tax at source, thereby violating the provisions of Chapter XVIIIB and more specifically section 194C read with section 204.

The Tribunal deleted the addition following earlier years decisions holding that :

"The provisions of section 194C of the Act requires the person responsible for paying to a contractor, for "carrying out any work in pursuance of a contract", to deduct tax at source at 1% from the sum payable to individual contractor. We find that the UISPL is not "the person responsible for paying" for the transactions that are facilitated between a User and a Driver-Partner through the Uber App. Since the amount paid in cash is directly paid by user to the Driver-Partner and UISPL is not involved in the transaction at all, UISPL cannot be treated as a person responsible for paying when the amount is directly paid by the user to a Driver-Partner. When UISPL cannot be held as a person responsible for payment when cash is directly paid by the User to the Driver-Partner, then how the very same UISPL could be treated as a person responsible for payment when the User decides to make payments through digital means. We find that the role of UISPL is limited to act as a payment and collection service provider of Uber B.V. whereby the ride fare is collected by UISPL in its bank account on behalf of Uber B.V. and thereafter payments are made, on the instruction of Uber B.V., to Driver-Partners.

It was further held that the provisions of section 204(iii) of the Act which defines "person responsible for paying" is also not applicable in the instant case in view of the fact that - to fall within the scope of section 204(iii) of the Act, it is necessary that a person is the payer of any sum chargeable to tax. In the instant case, UISPL is not a payer of money or liable to pay money but only a remitter of money which is collected from the Users on behalf of Uber B.V. and thereafter remitted/dispensed at the instructions of Uber B.V. to the Driver- Partner. Hence, in the aforesaid transaction, it is User who is the person responsible for paying, as he enters into a contract with the Driver-Partner pursuant to which the transportation service is rendered by the Driver-Partner to the User. Therefore, it is submitted that the User is the person responsible for paying for the purpose of section 194C read with section 204 of the Act. Hence it could be safely concluded that UISPL cannot be treated as a person responsible for paying within the meaning of section 194C read with section 204 of the Act as it has not entered into any agreement with the Driver- Partners as stated supra."



ACCOUNTING UPDATES

A. EAC Opinion:

Expert Advisory Committee (EAC) of ICAI has provided an Opinion on Accounting treatment of export incentives

The relevant text of the Opinion is reproduced below:

"The Committee is of the view that the objective of these schemes is essentially to compensate the exporter for cost of duty/taxes paid on the inputs or materials used in exported goods and to promote export, which are essentially part of the operating activities of the Company. The Committee also notes that the value of incentive of duty credit scrips and duty drawback is based on a specific percentage of FOB value depending upon the specific item being exported (HSN Code) which indicates that the incentives in the extant case are directly linked with and arise on account of the main operations of the Company. Further, since the Standard allows the deduction of the grant related to income from the associated costs, this itself shows that in some cases, grants may be considered as part of the operating activities depending upon the nature of such costs. Therefore, considering the nature and purpose of grant in the extant case, and also considering the nature of activities of the Company, which include export business and sales of rolling stock and locomotives to various countries, the Committee is of the view that the incentives/ benefits that the Company earns, can be considered to arise from its main business operations. Therefore, based on the guidance in ICAI's Guidance Note on Division II – Ind AS Schedule III to the Companies Act, 2013, the Committee is of the view that the presentation of the income from government grant in the extant case as 'other operating revenue' is not inappropriate. Also, the disclosure requirements as per Ind AS 20 should be complied with by the Company with regard to incentives in the extant case."

EAC Opinion can be accessed at:

<https://resource.cdn.icai.org/75359cajournal-august2023-10.pdf>

SEBI UPDATES



A. Master circular on for compliance with the provisions of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 by listed entities:

In order to enable the users to have access to the provisions of the applicable circulars, issued till June 30, 2023, at one place, this Master Circular has been prepared. The Master Circular provides a chapter-wise framework for compliance with various obligations under the LODR Regulations. For ease of reference, each chapter of this circular contains footnotes corresponding to the respective circulars.

Circular can be accessed at:

https://www.sebi.gov.in/legal/master-circulars/jul-2023/master-circular-for-compliance-with-the-provisions-of-the-securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-regulations-2015-by-listed-entities_73795.html

B. Circular on BRSR Core –Framework for assurance and ESG disclosures for value chain:

Based on the recommendations of the ESG Advisory Committee and pursuant to public consultation, SEBI has decided to introduce the BRSR Core for assurance by listed entities. The SEBI further decided to introduce disclosures and assurance for the value chain of listed entities, as per the BRSR Core.

From FY 2023 –2024, the top 1000 listed entities (by market capitalization) shall make disclosures as per the updated BRSR format, as part of their Annual Reports and Listed entities shall mandatorily undertake reasonable assurance of the BRSR Core, as per the glide path specified in the following table:

Financial Year	Applicability of BRSR Core to top listed entities (by market capitalization)
2023-24	Top 150 listed entities
2024-25	Top 250 listed entities
2025-26	Top 500 listed entities
2026-27	Top 1000 listed entities

Furthermore, ESG disclosures for the value chain shall be applicable to the top 250 listed entities (by market capitalization), on a comply-or-explain basis from FY 2024-25. The limited assurance of the above shall be applicable on a comply-or-explain basis from FY 2025-26.

Circular can be accessed at:

https://www.sebi.gov.in/legal/circulars/jul-2023/brsr-core-framework-for-assurance-and-esg-disclosures-for-value-chain_73854.html

C. Circular on Disclosure of material events / information by listed entities under Regulations 30 and 30A of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015:

In order to bring more transparency and to ensure timely disclosure of material events /information by listed entities, amendments to the LODR Regulations were notified. Accordingly, this circular consists of four annexures with respect to disclosure requirements under regulations 30 and 30A (inserted by the aforesaid amendment) of the LODR Regulations which are given below:

- i. ANNEXURE I specifies the details that need to be provided while disclosing events given in Part A of Schedule III (Annexure 18 to the Master Circular dated July 11, 2023).
- ii. ANNEXURE II specifies the timeline for disclosing events given in Part A of Schedule III.
- iii. ANNEXURE III provides guidance on when an event / information can be said to have occurred (Annexure 19 to the Master Circular dated July 11, 2023).
- iv. ANNEXURE IV provides guidance on the criteria for determination of materiality of events / information.

SEBI vide circular no. CIR/CFD/CMD/4/2015 dated September 9, 2015 specified the details that need to be provided while disclosing events given in Part A of Schedule III of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations") and guidance on when an event / information can be said to have occurred. The aforesaid circular has now become part of Section V-A of Chapter V of Master Circular issued vide circular no. SEBI/HO/CFD/PoD2/CIR/P/2023/120 dated July 11, 2023. However, the Master Circular stands partially modified by this circular as specified in sub-paragraph (i) and (iii) of paragraph above and shall come into force from July 15, 2023.

Circular can be accessed at:

<https://www.sebi.gov.in/legal/circulars/jul-2023/disclosure-of-material-events-information-by-listed-entities-under-regulations-30-and-30a-of-securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-regulations-2015-73910.html>

D. Trading Window closure period under Clause 4 of Schedule B read with Regulation 9 of SEBI (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulations") –Extending framework for restricting trading by Designated Persons ("DPs") by freezing PAN at security level to all listed companies in a phased manner:

In order to rationalize the compliance requirement under Clause 4 of Schedule B read with Regulation 9 of PIT Regulations, to improve ease of doing business and to prevent inadvertent non-compliances of provisions of PIT Regulations by Designated Persons, SEBI issued Circular dated August 05, 2022, laying down a framework for developing a system to restrict the trading by Designated Persons (DPs) by way of freezing the PAN at security level during Trading Window closure period which was initially made applicable for those listed companies that were part of benchmark indices i.e. NIFTY 50 and SENSEX.

Now, the above framework is being extended to all the listed companies. To ensure smooth implementation of the framework, glide path is being prescribed as under:

Sr. No.	Companies to be covered	PAN freeze start date
1	Listed companies that are part of benchmark indices i.e. NIFTY 50 and SENSEX	Already applicable as on date
2	Top 1,000 companies in terms of BSE Market Capitalization as of June 30, 2023 (excluding companies part of benchmark indices)	October 1, 2023
3	Next 1,000 companies in terms of BSE Market Capitalization as of June 30, 2023	January 1, 2024
4	Remaining companies listed on BSE, NSE & MSEI	April 1, 2024
5	Companies getting listed on Stock Exchanges post issuance of this circular	1st day of the second quarter from the quarter in which the company gets listed#

Illustration: For a company getting listed during January 01 to March 31, 2023, PAN of DPs should be frozen at security level as per prescribed framework latest from July 01, 2023.

Circular can be accessed at:

<https://www.sebi.gov.in/legal/circulars/jul-2023/trading-window-closure-period-under-clause-4-of-schedule-b-read-with-regulation-9-of-sebi-prohibition-of-insider-trading-regulations-2015-pit-regulations-extending-framework-for-restricting-t-74120.html>

August

M	T	W	T	F	S	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

Credit card

A credit card is a payment card issued to users to enable the cardholder to pay a merchant for goods and services, based on the cardholder's promise to the card issuer to pay them for the amounts so paid plus other agreed charges.



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DUE DATES

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

S.No	Due Date	Act/Authority	Compliance Description
1.	01-08-2023	GST	E-invoice is applicable to Registered person whose aggregate annual turnover in any preceding financial year from 2017-18 onwards exceeds Rs. 5 Crores.
2.	07-08-2023	Income Tax	Deposit of Tax Deducted at Source (TDS) / Tax Collected at source (TCS) during the month of July - 2023
3.	10-08-2023	GST	GSTR-7 for the month of July - 2023 for persons required to deduct TDS
4.	10-08-2023	GST	GSTR-8 for the month of July - 2023 for e-commerce operator required to Collect TCS
5.	11-08-2023	GST	GSTR-1 for the month of July - 2023 for taxpayers having turnover more than Rs. 5 crores or opted to file Monthly Return
6.	13-08-2023	GST	GSTR-5 by Non-resident taxable person carrying out business in India for the month of July - 2023
7.	13-08-2023	GST	GSTR-6 for the month of July - 2023 for Input Service Distributor
8.	15-08-2023	PF/ESIC	Payment of PF / ESIC for the month of July-2023
9.	20-08-2023	GST	Payment of GST & Filing of GSTR-3B for the month of July - 2023, for taxpayers having turnover of more than Rs.5 Crore in preceding financial Year
10.	20-08-2023	GST	GSTR-5A by Non-resident taxable OIDAR Service Provider for the month of July - 2023
11.	25-08-2023	GST	GST Challan Payment if no sufficient Input Tax Credit for the month of July - 2023 for taxpayers opted for quarterly return monthly payment (QRMP)
12.	30-08-2023	Income Tax	Furnishing of challan-cum statement of tax deducted under 194-IA, 194-IB, 194M and 194S in the month of July - 2023

**“DON'T BE DISAPPOINTED.
IT'S OFTEN THE LAST
KEY IN THE BUNCH THAT
OPEN THE LOCK.”**

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