

Manubhai & Shah LLP

Chartered Accountants

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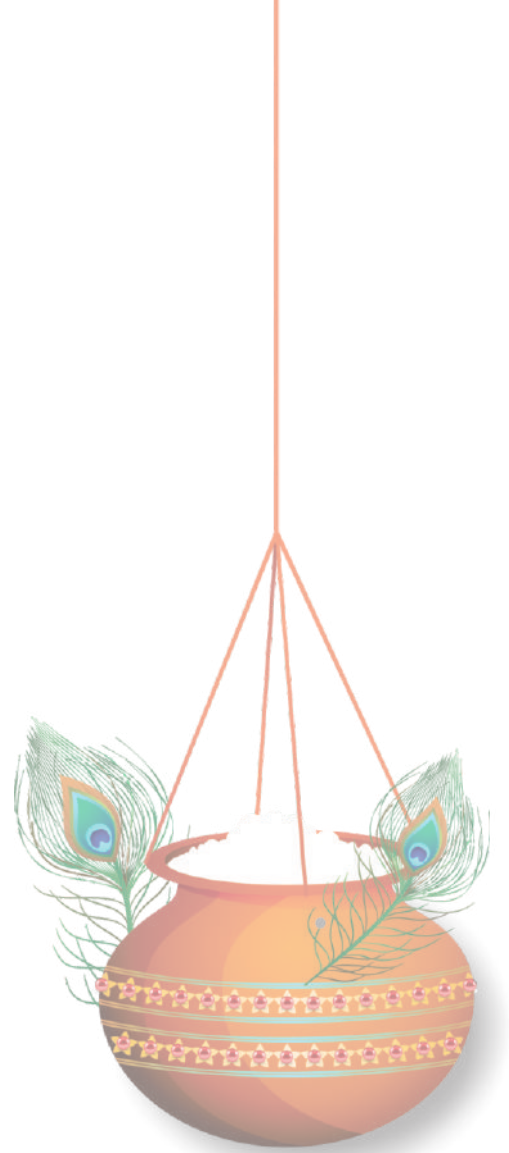


NEWSLETTER

SEPTEMBER 2023

VOL.42

Covering Updates for the Month of August' 23
For private circulation and clients only



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DIRECT TAX UPDATES



I. Circulars & Notifications

1. Guidelines under section 10(10D) on receipt of sum from Insurance Company

C.B.D.T. Cir.No.15 of 2023 dated 16.08.2023

Any sum received on maturity or surrender of a life insurance policy (other than unit linked insurance policy(ULIP) is exempt under section 10(10D) of the Income tax Act, 1961 (Act). The Finance Act, 2023 amended said section 10(10D) of the Act from assessment year 2024-25. According to the amendment:

- i. Sixth Proviso- , the sum received under a life insurance policy, other than a ULIP, issued on or after the 1st day of April, 2023, shall not be exempt under the said clause if the amount of premium payable for any of the previous years during the term of such policy exceeds Rs.5,00,000.
- ii. if the premium is payable for more than one life insurance policy, other than a ULIP, issued on or after 01.04.2023, the exemption under the said clause shall be available only with respect to such policies where the aggregate premium does not exceed Rs. 5,00,000 for any of the previous years during the term of any of those policies;

iii. However, this amendment is not applicable to any sum received on the death of a person

So the sum received under a life insurance policy and which is not exempt under section 10(10D) shall be liable to tax under section 56(2)(xiii) of the Act.

The Guidelines can be accessed hereunder:

<https://incometaxindia.gov.in/communications/circular/circular-15-2023.pdf>

2. New Rule 11UACA for Computation of Income under section 56(2)(xiii)

C.B.D.T. Notification no. 61/2023 dated 16.08.2023

C.B.D.T. inserted new Rule 11UACA for computation of income chargeable under section 56(2)(xiii) of the Act on receipt of income under a life insurance policy which are not exempt under section 10(10D) of the Act.

The Notification can be accessed hereunder:

<https://incometaxindia.gov.in/communications/notification/notification-61-2023.pdf>

3. Revised Rule 3 for Perquisite Valuation of accommodation to employees

C.B.D.T. Notification no. 65/2023 dated 18.08.2023

The Finance Act, 2023 has amended section 17(2) for calculation of "perquisite" value of rent-free or concessional accommodation provided by an employer to his employee. Accordingly, CBDT has amended Rule 3 of the Income-tax Rules, 1962, providing rate for valuation vide this notification. Rule 3 has been substituted with following amendments which is effective from 01.09.2023 :

Valuation of accommodation provided by non-government employer

Valuation of rent-free or concessional residential accommodation provided by an employer, for the purpose of section 17(2)(i) and (ii), during the previous year shall be determined at the revised rate provided as under :

Rate of Perquisite value till 31.08.2023		Rate of Perquisite value w.e.f. 01.09.2023	
Population	Perquisite Rate	Population	Perquisite Rate
< 10 lakhs	7.5%	< 15 lakhs	5%
Between 10 lakhs to 25 lakhs	10%	Between 15 lakhs to 40 lakhs	7.5%
> 25 lakhs	15%	> 40 lakhs	10%

The categorization and the limits of cities and population shall be based on the 2011 census as against the 2001 census earlier.

Inflation linked perquisite valuation of same accommodation for more than a year

Where the accommodation is owned or taken on lease by the employer and the same is continued to be provided to the same employee for more than one year, the value of perquisite for subsequent years shall be the amount calculated for the first previous year, as multiplied by the ratio of Cost Inflation Index for the previous year and the Cost Inflation Index for the initial first year.

Cost Inflation Index means the index notified by the Central Government in Official Gazette under clause (v) of Explanation to section 48.

4. Application Form to claim TDS deposited by deductor in subsequent year

C.B.D.T. Notification no. 73/2023 dated 30.08.2023

The Finance Act, 2023 has inserted a new section 155(20) which provides, to get credit of TDS on income offered by an assessee in his income tax return filed under section 139 and corresponding TDS on such income has been deposited in a subsequent year by the deductor.

Accordingly, CBDT has inserted new Rule 134 notifying Form 71 to be filed by such assessee within a period of two years from the end of financial year in which such TDS was deducted at source and the Assessing Officer shall amend his order of assessment or intimation allowing credit of such TDS in the relevant assessment year.

5. Form to claim deduction of Preliminary expense under section 35D(2)(a)

C.B.D.T. Notification no. 54/2023 dated 01.08.2023

The Finance Act, 2023 has substituted Proviso to section 35D(2)(a) w.e.f. A.Y. 2024-25 (F.Y.2023-24) which provides that to claim deduction in regard to preliminary expenses, the assessee shall furnish a statement giving details of such expenditure claimed in specified Form 3AF which is required to be furnished one month prior to the due date for furnishing the return of income as specified under section 139(1).

CBDT has inserted Rule 6ABBB in this regard and notified Form 3AF.

II Supreme Court Decision

Mutuality does not exempt from tax interest income earned by clubs from FDs in banks

Secundrabad Club v. CIT [2023] 153 taxmann.com 441

Facts :

Assessee Club parked its surplus fund in fixed deposit with a bank which was also its member. The assessee club claimed exemption of the interest income on the ground of mutuality.

The Supreme Court held that :

If the principle of mutuality is to apply, then, where a number of people contribute to a fund are ultimately paid the surplus from the fund, it is a mere repayment of the contributors' own money. However, if the very same surplus fund is not applied for the common purpose of the club or towards the benefit of the members of the club directly but is invested with a third party who has the right to utilize the said funds, subject to payment of interest on it and repayment of the principal when desired by the club, then, in such an event, the club loses its control over the said funds.

Further, the interest generated on the fixed deposits or investment made is a commercial activity, thereby permitting the bank to utilize the fixed deposit amount for its banking business and derive profits from the said banking business by way of lending the amount for a higher rate of interest while paying a lower rate of interest on the fixed deposit made by the club. Thus, identity between the contributors to the common fund and the participators in it which is a sine qua non for the application of the principle of mutuality would get ruptured.

III. High Court Decision

Income Chargeable to tax is the basis of issue of notice U/sec 148 r.w. Section 149(1)(b)

Sanath Kumar Murali. v. ITO [2023] 152 taxmann.com 231 (Kar)

Facts of the Case:

Reopening notice under section 148A(b) was issued upon the assessee on the ground that the assessee had purchased a property and sold the same after holding it for three years. Therefore, long-term capital gain of Rs.55.77 Lakhs arose on the same which had escaped assessment.

The assessee objected to the notice on the ground that the capital gain was Rs.33.85 lakhs and as the income escaping assessment did not exceed Rs.50 lakhs, in terms of section 149(1)(b), notice under section 148 could not be issued. The Notice issued on 21.03.2023 in respect of the assessment year 2016-17 would not fall within the extended time provided under section 149(1)(b).

The AO did not consider such reply filed by the assessee and passed an order under section 148 A(d) and further issued notice under section 148.

The High Court set aside the order U/sec 148A(d) holding that: :

The words used in section 149(1)(b) are that the 'income chargeable to tax' which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year. The income chargeable under the head of 'capital gains' which would arise in case of sale transaction is as provided under section 48, which provides that income chargeable under the head of 'capital gains' shall be computed by deducting from the full value of the consideration, the cost of acquisition and in the event, the property purchased has been held for a period beyond three years in terms of second proviso to section 48, the words, 'cost of acquisition' is to be substituted by the words, 'indexed cost of acquisition'. This material is pointed out in the reply furnished to the show cause notice, which ought to be taken note of prior to the issuance of notice under section 148A.

Clearly, when the procedure is followed culminating in an order passed under section 148(A)(d), the authority is required to apply its mind and consider the reply of the assessee and pass a considered order. In the instant case, the respondent authority has not applied its mind to the reply filed, nor noticed the legal position while deciding as to the application of the extended period under section 149(1)(b).

Accordingly, in the instant case, the words found in section 149 which is 'income chargeable to tax' must be read in terms of 'income' as arising out of the 'capital gains' as provided under section 48 and this is the only manner of understanding the words, 'income chargeable to tax' under section 149(1)(b).

Accordingly, the order passed under section 148A(d) is set aside and the notice issued under section 148 by the respondent no. 1 for the assessment year 2016-2017 is set aside.

ACCOUNTING UPDATES



A. EAC Opinion:

Expert Advisory Committee (EAC) of ICAI has provided an Opinion on Recognition of interest on mobilisation advance against project contracts under Ind AS Framework

The relevant text of the Opinion is reproduced below:

“In this context, the Committee notes that in the extant case, mobilisation advance is an optional financing arrangement between the Company and the contractors, which is incidental in connection with the execution of the project, giving rise to income in the form of ‘interest’, but it cannot be considered as an activity necessary to bring the project/asset to the location and condition necessary for it to be capable of operating in the manner intended by management, because an item of PPE could be developed even in the absence of such an arrangement. Accordingly, the Committee is of the view that interest income earned on mobilisation advance funded from internal cash reserve in the extant case should not be capitalised/included in the cost of the asset/ project and therefore, should be recognised in the Statement of Profit and Loss.”

EAC Opinion can be accessed at:

<https://resource.cdn.icai.org/75729cajournal-sep2023-8.pdf>

SEBI UPDATES



A. SEBI (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2023:

A new chapter VIA in respect of framework for voluntary delisting of non-convertible debt securities or non-convertible redeemable preference shares and obligations of the listed entity on such delisting has been inserted.

The circular can be accessed at:

https://www.sebi.gov.in/legal/regulations/aug-2023/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-third-amendment-regulations-2023_75861.html

COMPANY LAW UPDATES



A. Companies (Incorporation) Second Amendment Rules, 2023: Substitution of e-form RD-1:

The e-form for application to Central Government (Regional Director) RD-1 for the purposes like Change in Financial Year, Conversion of Public Company into Private Company etc has been substituted.

Circular can be accessed at:

<https://www.mca.gov.in/bin/dms/getdocument?mds=jYQ0wTBvMQwmTluXHncG0A%253D%253D&type=open>

B. Condonation of delay in filing of Form 3, Form 4 and Form 11 under section 67 of Limited Liability Partnership Act, 2008 read with section 460 of Companies Act, 2013:

To address the difficulties faced by the LLPs and as part of Government's constant efforts to promote ease of doing business, it has been decided to give one time relaxation in additional fees to those LLPs who could not file the Form 3, Form 4 and Form 11 within due date and provide an opportunity to update their filings and details in Master-data for future compliances.

Circular can be accessed at:

<https://www.mca.gov.in/bin/dms/getdocument?mds=Zt6foWsl%252BABAbU7Pid9NGg%253D%253D&type=open>

FAQs on Condonation of delay in filing of Form 3, Form 4 and Form 11 can be accessed at:

<https://www.mca.gov.in/content/dam/mca/documents/FAQs-on-condonation-of-delay-in-LLP-20230823.pdf>

DUE DATES



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

S.No	Due Date	Act/Authority	Compliance Description
1	07-09-2023	Income Tax	Deposit of Tax Deducted at Source (TDS) / Tax Collected at source (TCS) during the month of August - 2023
2	10-09-2023	GST	GSTR-7 for the month of August - 2023 for persons required to deduct TDS
3	10-09-2023	GST	GSTR-8 for the month of August - 2023 for e-commerce operator required to Collect TCS
4	11-09-2023	GST	GSTR-1 for the month of August - 2023 for taxpayers having turnover more than Rs. 5 crores or opted to file Monthly Return
5	13-09-2023	GST	GSTR-5 by Non-resident taxable person carrying out business in India for the month of August - 2023
6	13-09-2023	GST	GSTR-6 for the month of August - 2023 for Input Service Distributor
7	15-09-2023	Income Tax	Second instalment of advance tax Assessment year 2024-25 (FY 2023-24)
8	15-09-2023	PF/ESIC	Payment of PF / ESIC for the month of August-2023
9	20-09-2023	GST	Payment of GST & Filing of GSTR-3B for the month of August - 2023, for taxpayers having turnover of more than Rs.5 Crore in preceding financial Year or opted to file Monthly Return
10	20-09-2023	GST	GSTR-5A by Non-resident taxable OIDAR Service Provider for the month of August - 2023
11	30-09-2023	Income Tax	Furnishing of challan-cum statement of tax deducted under 194-IA, 194-IB, 194M and 194S in the month of August - 2023
12	30-09-2023	Income Tax	Due date for filing of audit report under section 44AB for the assessment year 2023-24 in the case of a corporate-assessee or non-corporate assessee (who are required to submit their return of income on October 31, 2023)
13	30-09-2023	Income Tax	Quarterly statement of TCS/TDS deposited for the quarter ending June 30, 2023. Note: The due date of furnishing TCS/TDS statement other than TDS for salary has been extended from June 30, 2023 to September 30, 2023 vide Circular no. 9/2023, dated 28-06-2023
14	30-09-2023	MCA	DIR 3 KYC Mandatory for Every individual having Director Identification Number(DIN)
15	30-09-2023	GujRera	Annual Compliances for the year ended March 31, 2023

**“ DON'T JUDGE EACH DAY
BY THE HARVEST THAT YOU
REAP BUT BY THE SEEDS
THAT YOU PLANT ”**

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