

Manubhai & Shah LLP

Chartered Accountants

Ahmedabad • Mumbai • NCR • Rajkot • Jamnagar • Baroda • Gandhinagar • Udaipur • Indore

NEWSLETTER

JANUARY 2024

VOL 46

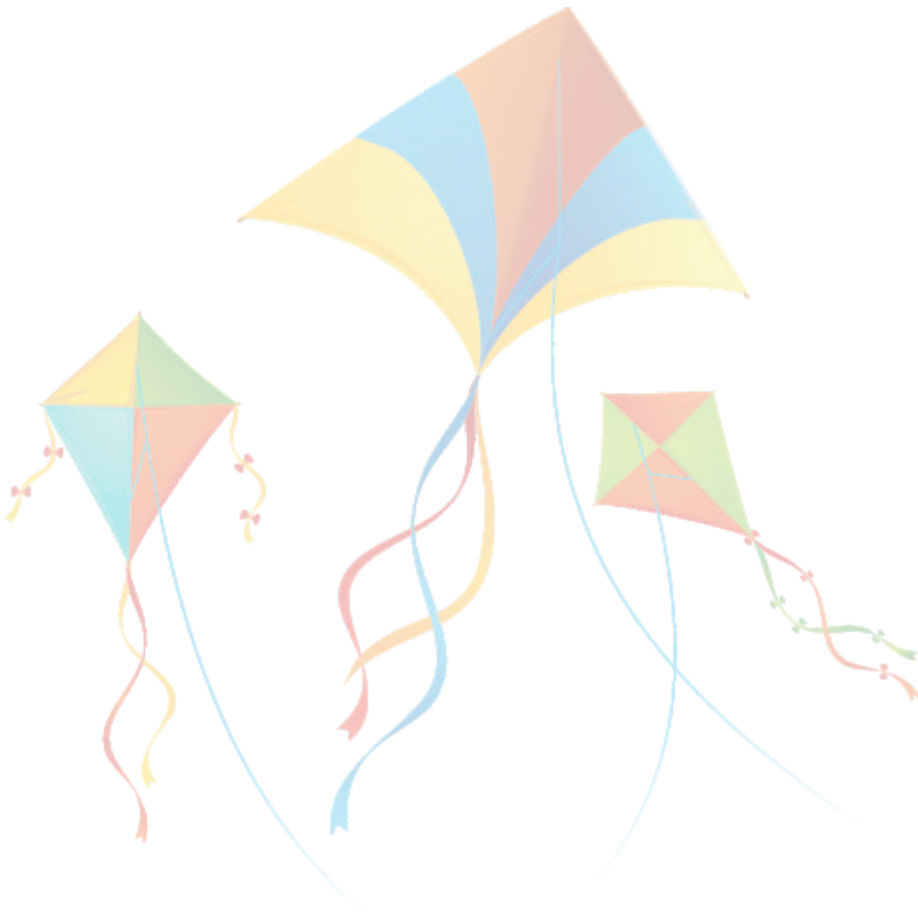


Achieving Excellence in Client Service Through

Expertise & Experience

Covering Updates for the Month of December' 23

For private circulation and clients only



CONTENTS

Direct Tax Updates

Accounting Updates

SEBI Updates

Article on Mitigating Business Vulnerabilities

Due dates of various compliances
falling in the month of January 2024



DIRECT TAX UPDATES

I. Circulars & Notifications

1. Guidelines under section 194O for E-Commerce Operator

C.B.D.T. Cir.No.20 of 2023 dated 28.12.2023

The Finance Act, 2020 had inserted new section 194O mandating that an E-commerce Operator (ECO) shall deduct TDS @1 % on the gross amount of sale of goods or provision of services or both facilitated through its digital or electronic platform. CBDT has clarified on procedure under and issued faced on implementation of section 194O from time to time vide Circular No.17 of 2020 dated 29.09.2020 and Circular No.20 of 2021 dated 25.11.2021.

CBDT has vide this Circular again has issued Guidelines clarifying few issues faced by the digital platform operator particularly in a multiple e-commerce operator model such as the Open Network for Digital Commerce (ONDC). The circular comprehensively outlines various scenarios with illustrative examples. Clarification by this Guidelines are discussed in brief hereunder:

1. Liability to deduct TDS U/sec 194O when multiple ECO involved
 - 1.1. On a digital platform when multiple ECOs are participating in a transaction such as buyer side ECO as well as seller side ECO and the seller side ECO is not the ultimate seller, then seller side ECO is liable to deduct TDS on the gross amount credited or payment made to the account of seller whichever is earlier.
 - 1.2. When seller side ECO is the ultimate seller, then the ECO who makes final payment to the seller is liable to deduct TDS U/sec 194O on the gross amount of goods sold or services provided being credited or payment made to the account of seller whichever is earlier.
2. TDS when Sale Invoice includes other charges

When seller issue Invoice which includes fees for other services such as home delivery, packing, shipping, convenience, etc., the TDS shall be deducted by seller side ECO on gross value of Invoice, i. e. sale value plus fees for such other services while making payment to the ultimate seller.

It is clarified that when TDS is deducted U/sec 194O then no TDS is required to be deducted under other sections of the Act such as U/sec 194C or 194H on commission paid to buyer/seller side ECO other than provision of section 194S(4) if applicable.

3. TDS U/sec 194O on GST & other taxes

It is again clarified that no TDS U/sec 194O is required to be deducted on GST, excise and other state levies if mentioned separately in the Invoice.

4. Adjustment of TDS on Sales Return

On return of purchase return by the buyer on which TDS has already been deducted U/sec 194O, the seller shall get credit for such TDS and same can be adjusted on TDS applicable on next transaction to the same buyer in the same financial year only.

However, no such adjustment is required in case of replacement of good.

5. TDS on Discount

5.1. Seller Discount

In a situation when discount is given by the seller then TDS U/sec 194O will not be applicable on discount amount since the seller will issue Invoice net of discount.

5.2. Discount by Buyer/Seller ECO

In a situation when discount is given by either the buyer or seller ECO then TDS U/sec 194O will be applicable on gross amount which includes the discount amount.

The Guidelines can be accessed hereunder:

<https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1172/Press-Release-CBDT-issues-guidelines-194-O-of-the-Income-tax-Act-1961.pdf>

II. High Court Decision

1. No income can accrue or arise when adjudication pending

T.V. Patel (P.) Ltd V. DCIT [2023] 157 taxmann.com 108 (Bom)

Facts of the Case:

The assessee had entered into a sub-lease agreement with the IDBI on annual lease rent of Rs.3.42 lakhs. In the previous year 1980-81, dispute arose between the assessee and the IDBI for various breaches alleged to have been committed by the IDBI. This led to the assessee terminating the sub-lease agreement on 14-9-1981, and, thereafter, the assessee refused to accept the rent from IDBI post-termination.

In the year 1981, IDBI filed a Declaratory Suit in the Small Cause Court and on 13-10-1981 obtained injunction against the assessee from terminating the sub-lease agreement. On 19-3-1984, the Revenue issued a garnishee notice to IDBI under section 226(3) with respect to outstanding tax arrears of the assessee directing IDBI to pay the rent to the Income-tax department.

The assessee informed the Revenue by letter dated 16-6-1984, that since the sub-lease agreement had been terminated, there was no rent due and payable by IDBI to the assessee and, consequently, the garnishee proceedings are illegal. In the year 1984, the assessee had filed a suit for eviction against the IDBI and claimed various reliefs, including compensation for wrongful use and occupation of the flats wherein the Small Causes Court on an application made by the IDBI allowed the IDBI to deposit the lease rent in Court. However, the assessee has not withdrawn any amount.

The Assessing Officer, on 20-3-1989, passed an assessment order under section 143 read with section 148 wherein the rent on account of sub-lease agreement of the assessee with IDBI was added as income of the assessee.

The Bombay High Court held that:

"The words 'accrue' or 'arise' have different meanings attributed to them while the former connotes the idea of a growth or accumulation, the latter connotes the idea of crystallization of the former into a definite sum that can be demanded as a matter of right. For determining the point of time of accrual, two factors are relevant. The first is a qualitative factor and second is a quantitative factor.

A person does not have a legal right to receive the income by merely earning of income. Although, earning of income is a necessary pre-requisite for accrual of income, mere earning of income without right to receive the same does not suffice. A person may be said to have 'earned' his income in the sense that he has contributed to its production by rendering service and the parenthood of the income can be traced to him but in order that the income that may be said to have 'accrued' to him an additional element is necessary that he must have created a debt in his favour. The phrase 'accrue or arise' has been the subject matter of judicial debate from inception which we now propose to deal with some of them.

The Calcutta High Court, in the case of CIT v. Bharat Petroleum Corporation Ltd. 1993 202 ITR 492 (Cal), observed that the amount can accrue or arise to the assessee if the assessee acquires a legal right to receive the amount or, conversely, the said amount has become legally due to the assessee from the assessee's debtor. The mere raising of claim or bill does not create any legally enforceable right to receive the same.

If the matter is pending before the judicial forum and pending adjudication and certain amount is deposited in the said judicial forum or the amount is allowed to be withdrawn by the party, it cannot be said that the assessee has acquired a right to receive the income for the purpose of section 5 till the case is decided finally by the judicial forum. The time of accrual for taxing income gets postponed till the dispute is adjudicated by the Civil Court.

III. Tribunal Decision

Communication/Order from Tax Department without DIN is Invalid

Harjeet Singh V. ACIT,(Cent Cir) [2023] 157 taxmann.com 270(Del Tribunal)

Facts of the Case:

The Assessment order was passed by the Assessing Officer in case of assessee

The assessee submitted that there was no DIN mentioned in the Assessing Officer's order which was contrary to the CBDT Circular No.19/2019 dated 14-8-2019. Hence, he submitted that the said order was void ab initio. He further submitted that in such a situation, jurisdiction assumed was invalid and whole proceedings were vitiated.

The Delhi Tribunal held that:

"The compliance is not in accordance with the CBDT Circular No. 19/2019 dated 14-8-2019. The Circular mandates that in the body of the order / communication, it has to be stated that the communication is issued manually without a DIN and the date of obtaining of the written approval of Chief Commissioner / Director General of Income-Tax for issue of manual communication.

In Paragraph 2 of the circular, it has been very clearly mentioned that no communication shall be issued by any income-tax authority relating to assessment, appeals, orders, statutory or otherwise, exemptions, enquiry, investigation, verification of information, penalty, prosecution, rectification, approval etc. to the assessee or any other person, on or after the 1-10-2019, unless a computer generated DIN has been allotted and is duly quoted in the body of such communication. Paragraph 3 of the circular carves out certain exceptions to paragraph 2 by providing that under certain exceptional circumstances, enumerated in clause (i) to (v) of paragraph 3, the communication may be issued manually but only after recording reasons in writing not only in the file and with prior written approval of the Chief Commissioner/Director General of Income-tax, but, the communication issued manually in such circumstances must also state the reasons why communication is issued manually without a DIN and must also mention the date and number of written approval of the Chief Commissioner/Director General of Income-tax for issuing manual communication. In fact, in paragraph 3 of the aforesaid circular, the format for recording such reasons has been specified. Paragraph 4 of the circular makes it clear that any communication issued which, is not in conformity with paragraph 2 and paragraph 3 of the circular, shall be treated as invalid and shall be deemed to have never been issued. It is fairly well settled, a circular issued under section 119 has statutory force and binding on subordinate authorities working under the Central Board of Direct Taxes.

A perusal of the Assessing Officer's order shows that it is clear in the body of Assessing Officer's order, no DIN number is mentioned nor there is any reason of not mentioning the DIN number in order of the Assessing Officer. In such a situation, the Assessing Officer's order will lose its validity. Subsequent separate communication of DIN is a superfluous exercise.

Thus, the impugned Assessing Officer's order is invalid and shall be deemed to have never been passed. Accordingly, the impugned order is quashed."



ACCOUNTING UPDATES

A. EAC Opinion:

Accounting treatment of other income (Bank Interest on Funds invested out of advance received from Ministry of Railways (MoR) termed as External Aided Project (EAP)) under Ind AS framework.

The relevant text of the Opinion is reproduced below:

“The Committee is of the opinion that:

- (i) The interest income to the extent of the borrowing costs, calculated using the effective interest method, should be adjusted against the said borrowing costs to be capitalised in the cost of the asset as per the requirements of Ind AS 23. The excess/surplus interest income (if any) should be recognised in the Statement of Profit and Loss, as per the requirements of Ind AS 1 read with Ind AS 107.
- (ii) Since the Company did not follow the above mentioned accounting treatment, the same should be rectified in the current reporting period, considering it as an error, as per the requirements of Ind AS 8, ‘Accounting Policies, Changes in Accounting Estimates and Errors’.

EAC Opinion can be accessed at:

<https://resource.cdn.icai.org/78053cajournal-jan2024-29.pdf>

- A. Extension of timeline for implementation of provisions of circular SEBI/HO/OIAE/IGRD/CIR/P/2023/156 dated September 20, 2023 on Redressal of investor grievances through the SEBI Complaint Redressal(SCORES) Platform and linking it to Online Dispute Resolution platform:

The provisions of circular dated September 20, 2023 related to work flow of processing of investor grievances by Entities and framework for monitoring and handling of investor complaints by the Designated Bodies were required to come into force with effect from December 04, 2023. It has been decided to extend the effective date of implementation of above said provisions to April 01, 2024.

The circular can be accessed at:

<https://www.sebi.gov.in/legal/circulars/dec-2023/extension-of-timeline-for-implementation-of-provisions-of-circular-sebi-ho-oiae-igrd-cir-p-2023-156-dated-september-20-2023-on-redressal-of-investor-grievances-through-the-sebi-complaint-redressal-s-79499.html>

- B. Amendment to Circular dated July 31, 2023 on Online Resolution of Disputes in the Indian Securities Market:

SEBI issued circular no. SEBI/HO/OIAE/OIAE IAD-1/P/CIR/2023/131 dated July 31, 2023 providing the guidelines for online resolution of disputes in the Indian securities market. Amendments cum Corrigendum to the same was issued vide circular no. SEBI/HO/OIAE/OIAE IAD-1/P/CIR/2023/135 dated August 04, 2023. These regulatory norms were consolidated vide Master Circular No. SEBI/HO/OIAE/OIAE IAD-1/P/CIR/2023/145 dated August 11, 2023. Pursuant to feedback received for providing clarity on certain aspects, SEBI has modified the circular dated July 31, 2023 (as amended).

The circular can be accessed at:

https://www.sebi.gov.in/legal/circulars/dec-2023/amendment-to-circular-dated-july-31-2023-on-online-resolution-of-disputes-in-the-indian-securities-market_80110.html

- C. Extension of timelines for providing 'choice of nomination' in eligible demat accounts and mutual fund folios:

SEBI, vide circular nos. SEBI/HO/MIRSD/POD-1/CIR/2023/158 dated September 26, 2023 and SEBI/HO/IMD/IMD-IPOD1/P/CIR/2023/160 dated September 27, 2023, extended the last date for submission of 'choice of nomination' for demat accounts and mutual fund folios respectively to December 31, 2023. Based on representations received from the market participants, for ease of compliance and investor convenience, it has been decided to extend the last date for submission of 'choice of nomination' for demat accounts and mutual fund folios to June 30, 2024.

The circular can be accessed at:

https://www.sebi.gov.in/legal/circulars/dec-2023/extension-of-timelines-for-providing-choice-of-nomination-in-eligible-demat-accounts-and-mutual-fund-folios_80221.html

Article on Mitigating Business Vulnerabilities



Mitigating Business Vulnerabilities : An insight into common business insurance coverages

In this article, we've talked about the everyday challenges businesses face and how insurance can help. Business environments are always changing, and it's crucial to understand these common risks. Insurance acts like a protective shield, providing specific solutions to deal with uncertainties and strengthen your organization. Given below are common insurance options, helping you to make informed choices to better safeguard your business against potential challenges.

Sr. No.	Types of Policy	Meaning	Ideal basic coverage	Ensure	Caution
1	CAR Policy (Contractors All Risk)	A Contractors All Risk (CAR) policy is a type of insurance that provides comprehensive coverage for construction projects.	"Policy should cover the tender cost and all third party risk."	<ul style="list-style-type: none">- To update the policy when there are significant changes in the work exposure resulting in excess cost.- That policy covers the escalation clause.- The coverage details mentioned in policy includes all third party risks.	Even with the term "All Risk," there are specific exclusions. Be aware of what isn't covered.
2	Fire Policy	It is a type of property insurance that provides coverage specifically for damages caused by fire.	All high value buildings, Plant & Machinery and stock should be covered.	<ul style="list-style-type: none">- That all tangible assets are covered including inventory & cash.- Update the policy when needed, especially after making significant changes to the insured property.	Don't underestimate replacement cost of properties covered under policy.
3	Workmen Compensation Policy	It is a type of insurance that provides coverage for employees who suffer work-related injuries or illnesses.	All workers working at site should be covered. Coverage includes medical expense, disability benefits & death benefits.	<ul style="list-style-type: none">- Adhere to legal requirements for providing Workers' Compensation coverage based on your location and the number of employees.- Report any workplace injuries or illnesses promptly to the insurance company to initiate the claims process.- That the insurance premium is calculated on the basis of minimum wages given to each employee. The coverage should be at least equal to minimum wage or more than that.	<ul style="list-style-type: none">- Don't ignore safety measures at workplace to minimize the risk of injuries or accidents.- Not to fail to keep the insurance company updated on number of employees.

Sr. No.	Types of Policy	Meaning	Ideal basic coverage	Ensure	Caution
4	Cyber Attack Policy	It is a specialized insurance coverage designed to protect businesses and individuals from the risks and financial losses associated with cyber threats, data breaches, and other malicious cyber incidents.	Data Breach Response Cyber Extortion Business Interruption Legal & Regulatory Cost Cyber Liability	<ul style="list-style-type: none"> - To evaluate your business's specific cyber risks and ensure the policy covers those areas adequately. - Implement robust cybersecurity measures and protocols to reduce the risk of cyber incidents. 	<ul style="list-style-type: none"> - Don't ignore risk assessment - Don't delay reporting incidents
5	Marine Policy	This policy is to protect against losses or damages that may occur during transit via road, air, water and rail conveyances.	Perils of the sea Fire & Explosion Accident Theft or piracy	<ul style="list-style-type: none"> - Accurately declare the value of the cargo to ensure adequate coverage. - Ensure compliance with maritime laws and regulations when obtaining marine insurance. 	Don't misrepresent information about the cargo, to avoid claim disputes.
6	Business Income Insurance	It is a type of insurance coverage designed to protect businesses from financial losses resulting from interruptions to their normal operations due to covered perils such as fires, natural disasters, or other unforeseen events.	Lost Income Replacement Ongoing expenses that continue even if operations are temporarily halted. Temporary relocation costs	<ul style="list-style-type: none"> - Understand the coverage limits, exclusions, waiting periods, and conditions specified in the policy. - Keep detailed financial records and documentation to support claims in case of an interruption. 	Underestimate coverage needs
7	Key Managerial Personnel Insurance	Designed to protect companies or organizations against financial losses incurred due to the death, disability, or critical illness of key individuals within the organization.	Death Benefits Disability coverage Critical illness coverage	<ul style="list-style-type: none"> - Determine who within the organization is critical to its success and consider insuring them. - Reassess coverage needs periodically, especially with changes in the company's leadership or key personnel. 	Don't oversight any KMP

DUE DATES



Due dates of various compliances falling in the month of January 2024

Sr.No	Due Date	Act/Authority	Compliance Description
1.	07-01-2024	GujRera	Quarterly Progress Report (QPR) Compliances for the financial quarter ended December 31, 2023 at Guj RERA Web Portal 2.0
2.	07-01-2024	Income Tax	Deposit of Tax Deducted at Source (TDS) / Tax Collected at source (TCS) during the month of December - 2023
3.	10-01-2024	GST	GSTR-7 for the month of December - 2023 for persons required to deduct TDS
4.	10-01-2024	GST	GSTR-8 for the month of December - 2023 for e-commerce operator required to Collect TCS
5.	11-01-2024	GST	GSTR-1 for the month of December - 2023 for taxpayers having turnover more than Rs. 5 crores or opted to file Monthly Return
6.	13-01-2024	GST	GSTR-1 for the quarter ended December 31, 2023 for taxpayers who opted for Quarterly Return Monthly payment(QRMP) Option
7.	13-01-2024	GST	GSTR-5 by Non-resident taxable person carrying out business in India for the month of December - 2023
8.	13-01-2024	GST	GSTR-6 for the month of December - 2023 for Input Service Distributor
9.	15-01-2024	PF/ESIC	Payment of PF / ESIC for the month of December-2023
10.	15-01-2024	Income Tax	Filing of TCS Return in form 27EQ for the quarter ended on December 31, 2023
11.	18-01-2024	GST	CMP-08 for the quarter ended on December 31, 2023 by Composite Dealer
12.	20-01-2024	GST	Payment of GST & Filing of GSTR-3B for the month of December - 2023, for taxpayers having turnover of more than Rs.5 Crore in preceding financial Year
13.	20-01-2024	GST	GSTR-5A by Non-resident taxable OIDAR Service Provider for the month of December - 2023
14.	22-01-2024	GST	Payment of GST & Filing of GSTR-3B for taxpayers having turnover upto Rs.5 Crore in preceding Financial year for the quarter ended on December 31, 2023 who opted for Quarterly Return Monthly payment(QRMP) Option depending on place of business(State)
15.	24-01-2024	GST	Payment of GST in form GST PMT-06 for the month of December-2023 for taxpayers who opted for Quarterly Return Monthly payment(QRMP) Option
16.	30-01-2024	Income Tax	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB, 194M and 194S in the month of December, 2023
17.	30-01-2024	Income Tax	TDS Payment for the month of December 2023 in Forms 26QB (Property), 26QC (Rent), and 26QD (Contractor Payments).
18.	31-01-2024	Income tax	Filing of TDS returns for the quarter ended on December 31, 2023
19.	31-01-2024	GujRera	Regularization of pending Compliances by making payment of additional fees under Voluntary Compliance Scheme (VCS-2023)
20.	31-01-2024	GST	Filing of Appeal against GST Demand under GST Amnesty Scheme

“ **In the middle of
every difficulty lies
opportunity** ”

Manubhai & Shah LLP
Chartered Accountants

CORPORATE OFFICE

G-4, Capstone, Opp. Chirag Motors,
Gujarat College Road, Ellisbridge,
Ahmedabad - 380 006, Gujarat, India.
Phone : +91 79 2647 0000
Email : info@msglobal.co.in

MUMBAI OFFICE

3C Maker Bhavan No II,
18, New Marine Lines,
Mumbai - 400 020, Maharashtra, India.
Phone : +91 22 6633 3668/59/60
Fax : +91 22 6633 3561
Email : infomumbai@msglobal.co.in

Unit No.- 502,
5th Floor, Modi House,
Bajaj Cross Road, Kandivali (West),
Mumbai - 400 067,
Maharashtra, India,
Phone : +91 224 960 6695/ 96

NEW DELHI OFFICE

G-63, SFS, Gaurav Apartments,
New Delhi – 110 017
Phone : +91 98187 84187

KNOWLEDGE PROCESSING CENTRE

2nd Floor, "D" Wing,
Shivalik Corporate Park,
Behind IOC Petrol Pump,
132ft. Ring Road, Satellite,
Ahmedabad - 380 015, Gujarat, India.

13th Floor, A Block,
Ratnakar Nine Square,
Opp. Keshav Baug party Plot,
Mansi Road, Vastrapur,
Ahmedabad - 380 015, Gujarat, India.

BRANCHES

RAJKOT | JAMNAGAR | BARODA | UDAIPUR |
GANDHINAGAR | INDORE



Manubhai & Shah LLP, a Limited Liability
Partnership with LLP identity No. AAG-0878.

Disclaimer: This newsletter is meant purely for general education purpose. While the information is believed to be accurate to the best of our knowledge, we do not make any representations or warranties, express or implied, as to the accuracy or completeness of this information. Reader should conduct and rely upon their own examination and analysis. We accept no responsibility for any errors it may contain, whether caused by negligence or otherwise or for any loss, howsoever caused or sustained, by the person who relies upon it.