

# Manubhai & Shah LLP

Chartered Accountants

Ahmedabad • Mumbai • NCR • Rajkot • Jamnagar • Baroda • Surat • Gift City- Gandhinagar • Udaipur • Indore

# NEWSLETTER NOVEMBER2024





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# I. Circulars & Notifications

1. New Form No. 12BAA giving Credit for TDS/TCS U/sec 192(2B)

# (C.B.D.T. Notification No. 112/2024 dated 15.10.2024)

The Finance Act (No.2),2024 has amended Section 192(2B) providing that an employer shall also consider details of TCS collected from employee by bank, etc. while making foreign remittance under LRS such as for foreign tour, education fees, etc. while deducting TDS on salary on or after October 01, 2024.

In this regard, the C.B.D.T. has amended Rule 26B of the Income-tax Rules, 1962, wherein a new form - Form 12BAA has been introduced vide this Notification. So, employees can furnish this form to their employer providing details of TDS/TCS with evidence of TDS/TCS Certificate or Form 26AS which the employer can consider while determining liability to deduct TDS from the salary payable to the employee.

Similar amendments have also been made to various forms, i.e. Forms 10E, Form 16, and Form 24Q wherein details of such TDS/TCS is to be mentioned.

# 2. Condonation of delay in ITR filing for A.Y.2023-24 to Co-operative Societies

# (C.B.D.T. Circular No. 14/2024 dated 30.10.2024)

Many of the Co-operative Societies who were denied deduction claimed U/sec 80P of the Income tax Act, 1961 (the Act) for A.Y.2023-24 on account of belated filing of income tax return due to delay in getting their accounts audited under the respective State Laws. In order to mitigate genuine hardship to such societies, C.B.D.T. has condoned the delay in filing of their ITR for A.Y.2023-24 U/sec 119(2)(b) of the Act, subject to fulfilment of following conditions as was provided in C.B.D.T. Circular No.13/2023 dated 26.07.2023:

Accordingly, the C.B.D.T. has given direction to all the CCsIT/DGsIT to admit all pending as well as new applications for condonation of delay in furnishing returns of income claiming deduction u/s 80P of the Act, for the A.Y.2023-24 and decide such applications on merits where such society is required to get his accounts audited under respective State Law.

Further, C.B.D.T. has given direction to the CCsIT/DGsIT that while deciding such applications, they shall satisfy that the applicant's case is a fit case for condonation after examining the following while deciding such applications –

- i. The delay in furnishing the return of income within the due date under section 139(1) of the Act was caused due to circumstances beyond the control of the assessee with appropriate documentary evidences;
- ii. where the delay in furnishing return of income was caused due to delay in getting the accounts audited by statutory auditors appointed under the respective State Law under which such person is required to get his accounts audited, and
- iii. any other issue indicating towards tax avoidance or tax evasion specific to the case, which comes into the light in the course of verification and having bearing either in the relevant assessment year.

#### 3. Vivad Se Vishwas Scheme, 2024-- FAQ

# (C.B.D.T. Circular No. 12/2024 dated 15.10.202)

C.B.D.T. has notified FAQ in regard to Vivad Se Vishwas Scheme, 2024, same can be accessed here under:

https://incometaxindia.gov.in/communications/circular/circular-12-2024.pdf



#### II. Tribunal Decision

CSR Donation eligible for deduction U/sec 80GL & T Finance Ltd.

# L & T Finance Ltd. v. DCIT [2024] 167 taxmann.com 503 (Kolkata Trib.)

#### Facts:

The assessee incurred Corporate Social Responsibility (CSR) expenses as required under section 135 of the Companies Act, 2013. Out of total CSR expenditure, certain expenditure was made by way of donations to eligible institutions registered under section 80G. The assessee, claimed deduction under section 80G in respect to said CSR donations in the return of income. The Assessing Officer disallowed the deduction claimed by the assessee under section 80G in respect of amount paid to the charitable institution out of the amount meant for CSR activity on the ground that the CSR expenditure was not an allowable deduction under Explanation to section 37(1).

## Held by the Tribunal that:

"11. It is to be noted that there is no mention under any of the provisions of section 80G of the Act for barring deduction in respect of the amount donated towards discharge of CSR activity, except under clause (iiihk) and (iiihl) to section 80G(2)(a) of the Act, wherein, the claim of deduction has been specifically barred in respect of amount donated towards Swachh Bharat Kosh and Clean Ganga Fund in pursuance of CSR mandated under sub-section (5) of section 135 of the Companies Act. No such embargo has been mentioned in respect of other institutions, for example, Prime Minister Relief Fund and Prime Minister Care fund under clause (iiia) of section 80G(2) and these funds also have been mentioned under clause (viii) of Schedule VII of the Companies Act. The list of institutions mentioned under clause (ix) has also been included either u/s 35 of the Act or u/s 80G of the Act, however, there is no amendment brought in the relevant statutory provisions that the contribution made to the registered charitable institutions towards discharge of obligation under CSR, will not be eligible for deduction u/s 80G of the Act. It is pertinent to mention here that even there is no explanation provided under the Income Tax Act as to why the contributions towards Swachh Bharat Kosh and Clean Ganga Fund set up by the Central Government are not eligible for claiming deduction u/s 80G of the Act, whereas, there is no such restriction in relation to other type of contributions and to the institutions whose names find mention in Schedule VII of the Companies Act read with CSR Rules of 2014 and CSR Rules of 2021, as well as u/s 80G of the Act the even u/s 35 of the Act. Rather, as noted above, in the explanatory notes explaining the amendment to section 37(1), it has been clarified by the CBDT that if the funds meant for CSR are spent and are in the nature of expenditure described u/s 30 to 36 of the Act, that shall be allowed as deduction under those sections, despite the fact that such funds are made towards discharge of CSR obligation. Hence, this clarifies the position that the purpose of introduction of Explanation-2 to section 37(1) is not to disallow the CSR expenditure, if so admissible, under any other provision of the Act, but under section 37 only.

12.4. ..... So far as the deduction, under section 80G of the Income Tax Act in respect of donations made towards compliance of CSR is concerned, as discussed above, such donations are akin to corpus donations, which are donated for specific object and purpose and the donor/assessee has to ensure also that such donations are actually spent on such specific object/CSR activity for claiming discharge of CSR under Companies Act. However, such donations for specific purpose/CSR activity do qualify for deduction under section 80G of the Act, unless specifically barred in respect of certain fund such as Swachh Bharat Kosh and Clean Ganga Fund. If the intention of the legislature was to prohibit the allowance of deduction under section 80G of the Act of the amount spent or contributed in discharge of CSR, it would have specifically mentioned so at the beginning of section 80G that such restriction would be applicable to all such donations as mentioned therein, as is clearly mentioned in the clauses (iiihk) and (iiihl) to section 80G(2)(a). Even, as noted above, though, vide explanation 2 to section 37(1) of the Act, deduction of expenditure incurred towards CSR has been made inadmissible, however, in the explanatory notes explaining the amendment to section 37(1), it has been clarified that if the funds meant for CSRs are spent and are in the nature of expenditure described u/s 30 to 36 of the Act, that shall be allowed as deduction under those sections. Therefore, the contention canvassed by the ld. DR, in our view, cannot be applied to hold that the amount contributed by the assessee to the charitable organisation would not fall within the definition and scope of the term donation under section 80G of the Act.

**13.** In view of the above discussion, the assessee, in our view, is not barred from claiming deduction u/s 80G of the Income Tax Act in respect of donations made to the approved institutions even though the same is made in discharge of CSR obligation u/s 135 of the Companies Act."

#### **Our Comments**

The Tribunal has allowed deduction of CSR donations U/sec 80G interpreting the provisions of Section 37 and Companies Act,2013. However, the Tribunal has given direction to the Registry to send the copy of this order to the Chairman, CBDT for their appraisal and removal of the following lacunae/anomalies so that a clear picture may emerge to avoid future disputes/controversies on this issue:

- i. The assessee who himself carries out the charitable activity, will not be eligible in claiming any deduction either under section 35 or under section 80G, on the other hand, an assessee who just pays amount meant for CSR activity to a registered charitable institution, will be discharged from its obligation under CSRs and will also get deduction under section 80G.
  - Further, the donated amount becomes the income of charitable institution, which is subject to the exemptions/deductions under the Income-tax Act available to such an institution who has a right to accumulate 15 per cent of its income for future application. This may result into non-application of 100 per cent of the amount meant for CSRs in the stipulated period mentioned under the Companies Act.
- ii. There may be a case where such an institution does not spend the amount on charitable activity. The result would be that the said amount donated by the donor company under CSR policy will become the income of the charitable institution, which may be subjected to the taxation. However, the very purpose of spending such amount towards specific welfare projects would get defeated.
- iii. There is no rationale given as to why the contribution made in discharge of CSR towards donation to Swachh Bharat Kosh and Clean Ganga Fund is not specifically allowed as deduction whereas, there is no such embargo in respect of donations given for other purposes/fund as enlisted under section 80G.
- iv. As noted above, though, vide Explanation 2 to section 37(1), deduction of expenditure incurred towards CSR has been made inadmissible, however, in the explanatory notes explaining the amendment to section 37(1), it has been clarified that if the funds meant for CSRs are spent and are in the nature of expenditure described under sections 30 to 36, that shall be allowed as deduction under those sections. The rationale behind such an explanation is missing.



# **EAC Opinion:**

Accounting treatment of unamortised portion of grant from government/government agencies under Ind AS framework. The relevant text of the Opinion is reproduced below:

The Committee is of the opinion that since the grants received from Gol/ GNCTD are grants related to assets, the same should be presented in the balance sheet by setting up the grant as 'deferred income' under the head 'liability' (if an entity selects that option under paragraph 26 of Ind AS 20) and not as 'other equity' in the Balance Sheet and the same should be recognised as income on a systematic basis over the useful life of the asset. Therefore, the accounting treatment of deferred income being presented as 'Other Equity' by the Company is not correct.

EAC Opinion can be accessed at:

https://resource.cdn.icai.org/82680cajournal-nov2024-32.pdf





# 1. Directions - Compounding of Contraventions under FEMA, 1999

On October 01, 2024, the Reserve Bank of India (RBI) issued new directions regarding the compounding of contraventions under the Foreign Exchange Management Act (FEMA), 1999. These new directions, part of the updated Foreign Exchange (Compounding Proceedings) Rules, 2024, mark a significant evolution in the regulatory framework governing foreign exchange violations in India.

The updated directions focus on enhancing the efficiency of the compounding process by providing clear procedures, increasing monetary thresholds, and allowing for faster resolutions of minor and procedural breaches of FEMA.

# Conditions and Compliance for Compounding

The updated guidelines specify that certain conditions must be met before a contravention can be compounded:

- Prerequisite Approvals: The applicant must ensure that all required approvals and rectifications are in place before applying for compounding.
- Sensitive Cases Excluded: Cases involving sensitive issues such as suspected money laundering, terror financing, or affecting the sovereignty of India are not eligible for compounding.
- Voluntary Admission: The contravention must be voluntarily admitted by the applicant, and the applicant must agree to the penalty amount as specified in the order.

# Step-by-Step Process for Compounding

The process for compounding under the updated RBI guidelines involves several key steps:

- Submission of Application: The applicant must submit the compounding application in the prescribed format either physically or through the PRAVAAH portal, along with the required documents.
- Payment of Fees: The application fee of INR 10,000 plus GST should be paid via NEFT, RTGS, or demand draft.
   If the payment is made through electronic means, an email confirmation must be sent to the respective RBI office.
- Review by Compounding Authority: The compounding authority will review the application and may ask for additional information if needed. The review process considers factors like the nature of the contravention, the extent of economic gains, and past conduct of the applicant.
- Personal Hearing (Optional): Applicants may opt for a personal hearing (either in person or virtual). If the applicant decides not to attend, the application will be decided based on the submitted documents.
- Issuance of Compounding Order: The order will specify the amount to be paid and the provisions of FEMA that were contravened.
- Payment of Compounding Amount: The applicant must pay the compounded amount within 15 days of receiving the order.
- Conclusion and Compliance Certificate: Once the payment is realized, a compliance certificate is issued by the RBI, and the matter is closed.

# Non-Compoundable Cases

The updated guidelines now explicitly list out cases that cannot be compounded:

- Money Laundering and Terror Financing: Offenses that have implications for national security and financial integrity.
- Cases falling under Rule 9 of Foreign Exchange (Compounding Proceedings) Rules, 2024, are not eligible for compounding by the Reserve Bank.
- Section 3(a) Violations: Contraventions under this section relate to unauthorized dealings in foreign exchange or foreign securities, which are strictly non-compoundable.
- Adjudicated Cases: Cases where an order imposing a penalty has already been passed by an adjudicating authority are excluded from compounding.

# Consequences of non-compliance with compounding orders

The consequences of non-compliance with compounding orders under FEMA and RBI guidelines can be significant:

- Rejection of Compounding Application: If the compounding application is not complete or does not meet the requirements specified by the RBI, it may be rejected.
- Referral to Enforcement Directorate (ED): If the compounding amount specified in the compounding order is not
  paid within the stipulated time (usually 15 days), the case will be referred to the ED or other enforcement
  agencies.
- Financial Penalties and Fines: If rejection or non-compliance occurs, any fees paid during the compounding application process are non-refundable. When the matter is adjudicated by the ED, the fines or penalties imposed can be significantly higher than those under the compounding process, which would have been lower and more standardized.
- Criminal Proceedings: Non-compliance with the compounding order could trigger criminal proceedings if the contravention also constitutes a violation under criminal statutes, such as money laundering or unauthorized foreign exchange transactions.
- Impact on Future Compliance and Eligibility: If an entity or individual has a history of non-compliance with FEMA regulations, it may impact their eligibility for future compounding applications. The RBI may impose stricter scrutiny or outright reject any future requests for compounding.
- Administrative and Regulatory Consequences: The RBI and other regulatory bodies may increase monitoring
  and surveillance on entities that fail to comply, subjecting them to regular audits and scrutiny. The entity's ability
  to undertake capital account transactions, foreign direct investments, or external commercial borrowings could
  be restricted.

Thus, the new directions issued by the RBI on compounding of contraventions under FEMA mark a progressive shift in India's regulatory landscape for foreign exchange management. By enhancing monetary limits, streamlining digital payments, and providing clear guidelines on non-compoundable offenses, the RBI has taken significant steps to simplify compliance for businesses and individuals. These changes encourage voluntary adherence to regulations and align with global best practices, making India a more attractive destination for foreign investments.

Notification Link:

https://rbidocs.rbi.org.in/rdocs/notification/PDFs/78APDIR01102024FEF1F4D3296446078986E87F12B397A3.PDF





Article: Seamless HR Integration: Why Manual Intervention is a Risky Business

**CA** Pravruti Shah

In today's fast-paced environment, integrating all HR software into a unified system is crucial. When attendance, payroll, and payment systems operate separately, manual data entry becomes inevitable, leading to inefficiencies and potential errors. Here's why a fully integrated HR system is essential and the risks of relying on manual processes.

# **Key Risks of Manual Intervention**

### 1. Data Inconsistencies

- Different systems may record data in varying formats or standards, increasing the likelihood of errors during manual entry.
- Mismatched or outdated data across systems can result in incorrect calculations, affecting employee compensation and compliance.

# 2. Time-Consuming and Inefficient

- Manually transferring data from one system to another is time-intensive, pulling HR staff away from strategic tasks.
- Delays in data processing can lead to payroll backlogs and delayed payments, negatively impacting employee satisfaction.

# 3. Human Error

- With each manual entry, there's a risk of human error from typing mistakes to missing records which can lead to payroll discrepancies.
- Errors in sensitive data, such as tax or insurance information, can have financial and legal implications for the organization.

#### 4. Compliance and Regulatory Risks

- Manual processes make it challenging to maintain audit trails, which are crucial for compliance with labor and tax laws.
- Incomplete or inaccurate data may result in non-compliance penalties and damage the company's reputation.

# 5. Security Vulnerabilities

- Handling data manually across systems increases the risk of data breaches, especially if information is transferred via unsecured methods (e.g., email).
- Personal and payroll data is highly sensitive, and poor data management can compromise employee trust and lead to costly regulatory breaches.

#### 6. Difficulties in Reporting and Analytics

- Manually managing data across systems limits the ability to generate real-time, accurate reports.
- Insights into trends like employee attendance, overtime, or payroll expenses become harder to obtain, impacting data-driven decision-making.

# **Benefits of Integrated HR Software**

- 1. Accuracy and Consistency: Automated data flow between systems ensures consistent, accurate information across the board.
- 2. Increased Efficiency: Eliminating manual steps streamlines processes, saving HR teams valuable time and reducing payroll cycle time.
- 3. Enhanced Compliance: With data stored and managed in a single system, audit trails are easier to maintain, supporting compliance efforts.
- 4. Improved Security: Integrated systems with secure access controls reduce the risk of data breaches and unauthorized access.
- 5. Data-Driven Insights: Access to consolidated data supports analytics and reporting, enabling better strategic decisions.

In short, integrating all HR software systems — from attendance tracking to payroll and payment processing — is essential for accuracy, security, and efficiency. Investing in a unified HR solution not only minimizes the risks associated with manual intervention but also empowers HR to focus on what matters most: building a better workplace.



Article: - Introduction of Section 128A in the GST Act: A New Era for Tax Compliance and Relief
CA Jitendra Soni

The recent introduction of Section 128A into the Central Goods and Services Tax (CGST) Act, 2017, represents a strategic move by the Indian government to ease compliance and provide financial relief. Effective from November 01, 2024, Section 128A targets outstanding tax demands from specific past financial years, offering taxpayers an opportunity to clear dues without the burden of interest and penalties.

# **Key Features of Section 128A**

Section 128A, introduced following recommendations from the 53rd and 54th GST Council meetings, aims to waive interest and penalties for tax dues arising under Section 73 for financial years 2017-18, 2018-19, and 2019-20, provided taxpayers meet certain conditions. Below are its key aspects:

# 1. Scope of Waiver:

Section 128A provides relief from interest, penalties, or both, focusing on tax dues where noncompliance was unintentional. The waiver applies specifically to demands under Section 73 (other than demand pertaining to erroneous refund), which generally covers cases not involving fraud or willful misrepresentation.

#### 2. Applicable Timeframe:

The waiver is available for tax dues from financial years 2017-18, 2018-19, and 2019-20, the initial years of GST implementation. By targeting these years, Section 128A recognizes the compliance challenges businesses faced during GST's early phase and offers a path to resolve outstanding dues without financial strain.

# 3. Conditions for Availment:

Taxpayers must make full payment of the tax demand by March 31, 2025, to benefit from the waiver. For cases where the tax demand has been redetermined under Section 73, payment is required to be made within six months from the issuance date of the redetermination order by the tax authority.

# 4. Procedural Guidelines under Rule 164:

Rule 164, effective from November 01, 2024, outlines the procedural steps for taxpayers to apply for waivers under Section 128A, including specific documentation and submission requirements.

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Rule 164, effective from November 01, 2024, outlines the procedural steps for taxpayers to apply for waivers under Section 128A, including specific documentation and submission requirements.

#### Implications of Section 128A for Taxpayers

Section 128A provides various benefits, promoting voluntary compliance and easing the financial burden on taxpayers. Key implications include:

### 1. Financial Relief:

By waiving accumulated interest and penalties on past dues, Section 128A offers substantial relief, particularly for small businesses that may have struggled with GST compliance during its early stages.

#### 2. Encouraging Voluntary Compliance:

The provision incentivizes taxpayers to settle outstanding dues by offering relief on additional charges, helping reduce disputes and administrative workload for GST authorities.

#### 3. Efficient Dispute Resolution:

Section 128A facilitates quicker resolution of past tax disputes, potentially reducing cases pending in GST tribunals and courts, while allowing taxpayers to focus on current compliance obligations.



#### Eligibility and Conditions for Availing Relief

To utilize the waiver under Section 128A, taxpayers must comply with specific conditions:

#### 1. Full Payment of Tax Demand:

The taxpayer must clear the full amount of tax due for the eligible financial years by March 31, 2025. If the tax amount is redetermined, the payment deadline is six months from the order date.

### 2. Compliance with Rule 164:

Taxpayers must submit an application, along with required documentation, in accordance with Rule 164. This includes details of the tax demand, the financial year, and proof of payment to ensure eligibility.

#### 3. Exclusions:

Only demands under Section 73 are eligible for the waiver; taxpayers with liabilities under Section 74, which involves fraudulent misrepresentation, are not covered by Section 128A.

#### Procedural Guidelines under Rule 164

Rule 164, introduced alongside Section 128A, provides a clear process for applying for waivers. It covers:

# 1. Application Process:

Taxpayers are required to submit an application that includes details of the tax demand, applicable financial year, and payment details. This transparency promotes a fair and efficient waiver process.

#### 2. Documentation Requirements:

Rule 164 mandates submission of specific supporting documents, such as copies of demand notices, payment proofs, and related correspondences. GST officials will review these materials to confirm eligibility for the waiver.

#### 3. Approval Process:

The GST authorities will verify applications to ensure compliance with Section 128A and Rule 164. Once approved, taxpayers will be granted a waiver on interest and penalties, closing the proceedings on their outstanding dues.

#### Conclusion

Section 128A represents a constructive shift in GST policy, promoting tax compliance and addressing past challenges faced by taxpayers. By waiving interest and penalties for specified financial years, the government provides a practical solution for clearing outstanding dues. With Rule 164 outlining a clear process for application, the provision not only eases compliance burdens but also encourages a culture of voluntary tax settlement. This addition to the GST framework demonstrates the government's commitment to a fair and supportive tax regime, benefiting both taxpayers and tax authorities by fostering compliance, reducing litigation, and enhancing the overall GST landscape in India.



# Due dates of various compliances falling in the month of November 2024

Sr.No	Due Date	Act/Authority	Compliance Description
1	07-11-24	Income Tax	Deposit of Tax Deducted at Source (TDS) / Tax Collected at source (TCS) during the month of October - 2024
2	10-11-24	GST	GSTR-7 for the month of October - 2024 for persons required to deduct TDS
3	10-11-24	GST	GSTR-8 for the month of October - 2024 for e-commerce operator required to Collect TCS
4	11-11-24	GST	GSTR-1 for the month of October - 2024 for taxpayers having turnover more than Rs. 5 crores or opted to file Monthly Return
5	13-11-24	GST	GSTR-5 by Non-resident taxable person carrying out business in India for the month of October - 2024
6	13-11-24	GST	GSTR-6 for the month of October - 2024 for Input Service Distributor
7	15-11-24	Income Tax	Extended Due Date for Tax Filing - FY 2023-24 for Non-Corporates who needs Audit and Corporates for FY 2023-24 (extended from 31/10/2024)
8	15-11-24	PF/ESIC	Payment of PF / ESIC for the month of October - 2024
9	20-11-24	GST	Payment of GST & Filling of GSTR-3B for the month of October - 2024, for taxpayers having turnover of more than Rs.5 Crore in preceding financial Year
10	20-11-24	GST	GSTR-5A by Non-resident taxable OIDAR Service Provider for the month of October - 2024
11	25-11-24	GST	PMT-06 Monthly tax payment for the month of October - 2024 under QRMP Scheme
12	28-11-24	MCA	Reconciliation of Share Capital Audit Report in form PAS-6 by Companies other than Small Companies as per Companies Act, 2013
13	28-11-24	GST	GSTR-11 for the month of October - 2024 (Statement of inward supplies by persons having Unique Identification Number)
14	29-11-24	MCA	MGT-7/7A Filing for Companies and One Person Companies (OPC) for Financial Year 2023-2024
15	30-11-24	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 October, 2024
16	30-11-24	Income Tax	Return of income for the Assessment Year 2024 -2025 in the case of an assessee that is required to submit a report under section 92E pertaining to international or specified domestic transaction(s)
17	30-11-24	GujRera	Extended Due date for online submission of Form – 05 for the Financial Year 2023 – 2024



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