

A Monthly E-Newsletter

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November 2023

The Bottom Line

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KEY METRICS

Indices

BSE SENSEX	63,875	-2.97%	▼
NSE NIFTY50	19,080	--2.84%	▼
NASDAQ Composite	12,851	--2.78%	▼
NIKKEI 225	30,859	-3.14%	▼

Currency

USD/INR	83.26	-0.27%	▼
EURO/INR	88.05	-0.33%	▼
GBP/INR	101.17	0.10%	▲
JPY/INR	0.55	1.17%	▲

Note: The month-on-month movement as on October 31, 2023 is represented in percentages
Source: Yahoo Finance, Investing.com



DIRECT TAX

Notifications/Circulars

Delay in filing of Form 10-IC for AY 2021-22 condoned

Based on the representations received, CBDT has extended the deadline for filing of Form 10-IC for availing the benefit of concessional rate of 22% by domestic companies for AY 2021-22 by condoning the delay in filing. However, this is subject to fulfilment of certain conditions including ITR submission within due date and submission of the Form electronically on or before 31 January 2024.

Circular No. 19 dated October 23, 2023

Facility to e-file Form No. 10F without PAN activated

Non-resident entities in India can now register on the e-filing portal without the requirement of PAN using OTP verification. This will allow them to electronically file Form 10F, provided they are otherwise not required to obtain PAN and all the other requirements to avail treaty benefit viz. tax residency and no-permanent establishment certificates, are maintained. No circular / notification has yet been issued in this regard.

Income Tax e-filing portal

New Form for certifying deductions u/s 10A & 10AA notified

Form No. 56F has been notified for reporting and certifying deductions by a Chartered Accountant availed by an entity under sections 10A and 10AA of the Act. Considering the delay in notifying the aforesaid

Form, the deadline to furnish the same has also been extended till 31 December 2023.

Notification No. 91 dated October 19, 2023 & Circular No. 18 dated October 20, 2023

Judicial Rulings

Notification necessary to take benefit of MFN

The Apex Court, in a landmark ruling, held that a separate notification is necessary to give effect to a DTAA or protocol changing its terms which has the effect of amending the existing provisions of law. It was accordingly held that the benefit of MFN clause cannot be automatically applied without such notification. Additionally, it was held the word 'is' appearing in Clause IV(2) of the India-Netherlands DTAA signifies that for Netherlands to avail the benefit of MFN based on the DTAA of India with a third country, the third country should be a member of OECD at the time of entering of such DTAA.

M/s Nestle SA (Supreme Court)

Final Order invalid due to substantive error in issuing draft order

Where the assessing officer failed to provide a draft assessment order, the High Court set aside the final assessment order and held that it was a substantive error, rendering subsequent orders void. It was highlighted that the procedure outlined in section 144C is mandatory, not discretionary and the exercise of revisionary powers can also not dilute the same.

Sinogas Management Pte Ltd (Delhi High Court)

Notification necessary to take benefit of MFN

Delay in filing of Form 10-IC for AY 2021-22 condoned

TDS credit cannot be denied in the absence of Form 16A

TDS credit cannot be denied in the absence of Form 16A

Where tax is deductible at source, the assessee cannot be called upon to pay the tax himself to the extent to which tax has been deducted from his income. Form 16A is not a conclusive piece of evidence, so where the assessee shows reliable material other than Form 16A and establishes the deduction of tax at source, then he cannot be denied tax credit and suffer due to non-compliance on part of the deductor.

Incredible Unique Buildcon Pvt Ltd (Delhi High Court)



INDIRECT TAX

Circulars / Notifications / Press Releases

Supplies through e-commerce operator

On the supply of service of transportation of passenger by an omnibus, by a company, through e-commerce operator, the tax shall be payable by the supplier of such service and not by the e-commerce operator.

Notification No. 16/2023 - Central Tax (Rate) dated October 19, 2023

Realization of export proceeds

When an exporter of services is paid the export proceeds in INR from the Special Rupee Vostro Accounts of the Indian authorized dealer bank with correspondent bank of the other country, the same shall be considered as fulfilment of condition of realization of export proceeds in convertible foreign exchange.

Circular No. 202/14/2023-GST dated October 27, 2023

Taxability of personal guarantee and corporate guarantee

The value of supply of services for providing corporate guarantee to any banking company or financial institution shall be deemed to be 1% of the amount of such guarantee offered or the actual amount, whichever is higher.

Notification No. 52/2023-Central Tax dated October 26, 2023

Further, since RBI does not permit any consideration to be paid for personal guarantee provided by director/promoter, it would not be taxable. Guarantee provided by any group company to bank for providing credit facility to another group company with or without consideration shall be treated as

supply of service and will be taxed as per the amended Rule 28 in terms of notification given in 1(b) above.

Circular No. 204/16/2023-GST dated October 27, 2023

Export of goods and services on payment of tax

All goods or services, other than those specifically mentioned in the notification, can be exported on payment of tax and the supplier may claim refund of tax so paid. This shall also be applicable to any supply made to a Developer or a unit of SEZ undertaking authorized operations. Refund of tax so paid may be obtained by taxpayer.

Notification No. 05/2023-Integrated Tax dated October 26, 2023

Determination of place of supply

Clarifications have been provided for determination of place of supply in case of supply of various services, including for transportation of goods, including through mail and courier, sale of space on an immovable property, service provided by vendor to the advertising company without sale of space or right to use the space on immovable property and co-location services viz. hosting and information technology infrastructure provisioning service.

Circular No. 203/15/2023-GST dated October 27, 2023

Judicial Rulings

Services provided by director

Guarantee/security to bank against personal properties and personal guarantee provided by Managing

Taxability of personal and corporate guarantee notified

Export supplies permitted under payment of tax route

ITC on CSR not permitted

Director is liable to GST on reverse charge basis.

M/s BST Steels Pvt Ltd (Telangana High Court)

ITC on CSR expenses

Since CSR spendings are made free of cost, and not with motive to earn profit but to fulfil commitments towards society, environment etc., such expenses are not in course or furtherance of business. Thus, ITC not eligible on such spendings.

M/s Adama India Pvt Ltd (AAAR Gujarat)



CORPORATE & ALLIED LAWS

Circulars / Notifications

NSWS Portal integration with MCA

MCA has integrated with NSWS for the incorporation of companies and LLPs. Incorporation services can now also be availed through NSWS portal, while MCA21 portal continues to render such services. NSWS allows securing government approvals without going to individual ministries or states.

MCA Announcement dated October 23, 2023

Listing in permitted foreign exchanges

Specified public companies may issue specified class of securities for listing on permitted stock exchanges in permissible foreign jurisdictions effective October 30, 2023.

MCA Notification October 30, 2023

Additional compliance requirements for LLPs

MCA has amended the LLP Rules, introducing key changes related to the Register of Partners and the declaration of beneficial interest in contributions. The key changes are:

- i. Register of Partners: Every LLP, from the date of its incorporation, is required to maintain a register of its partners in Form 4A. Existing LLPs must comply within thirty days from the commencement of the Amendment Rules.
- ii. Declaration of Beneficial Interest: Registered partners without beneficial interest in contribution must file a declaration in Form 4B within 30 days of registration. Changes in beneficial interest should also be reported within 30

days. Beneficial partners who have an interest in contributions not registered in their name must file a declaration in Form 4C within 30 days. Changes in beneficial interest should also be reported within 30 days.

- iii. Designated Partner for providing information: Each LLP should specify a designated partner responsible for furnishing and cooperating in providing information about beneficial interest. This information should be filed with the Registrar via Form 4. Until a designated partner is specified, every designated partner is responsible for providing information.

MCA Notification dated 27.10.2023

Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023

MCA has introduced the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023 impacting both, private and public companies. The significant requirements are:

- i. Share warrants: Any public company that had previously issued share warrants before the commencement of Companies Act, 2013 should inform the relevant details within 3 months and further request the bearers of such warrants to surrender them and get the shares dematerialized within 6 months from this notification.
- ii. Dematerialization of securities: Any private company which is not a small company must, within 18 months of the closure of financial year, viz. September 30, 2024, comply with the following:

Listing in permitted foreign exchanges

NSWS Portal integration with MCA

Specified person to be designated for furnishing information to MCA

- ensure that before making an offer for issue/ buyback of securities, bonus/ rights issue, the entire holding of securities of its promoters, directors, key managerial personnel has been dematerialized
- every holder of securities shall ensure that the securities are in dematerialized form, prior to transferring or subscribing to securities.

MCA Notification dated 27.10.2023

Specified person to be designated for furnishing information

Every company is now required to designate a person for furnishing information to the Registrar w.r.t. beneficial interest in the shares of the Company. Such person to be designated should be as specified in the notification, and till such time, all the specified persons shall be deemed to be the designated person. The details of the designated person shall be informed by the Company in the Annual Return and any change in the designated person shall be intimated to the Registrar in Form GNL-2.

MCA Notification dated 27.10.2023

CFO WATCH

Extension of timeline for verification of market rumours

SEBI notifies revised framework for borrowings by large corporates

Government promotes ESG by issuing green credit for undertaking environmental activities

SEBI extends timeline for verification of market rumours by listed entities

Market regulator SEBI has extended the timeline for verification of market rumors. In June 2023, SEBI amended SEBI (Listing Obligations and Disclosure Requirements) Regulations, requiring listed companies to address market rumours. The revised timelines for compliance are applicable from February 01, 2024 (earlier October 01, 2023) for top 100 listed companies and from August 01, 2024 (earlier April 01, 2024) for top 250 listed companies.

SEBI revises the fund-raising framework for issuance of debt securities by large corporates

Regulations have been revised to streamline debt market funding for listed companies with long-term borrowings of INR 10 billion or more and a credit rating of AA/AA+/AAA, replacing the previous INR 1 billion limit. These companies are now required to raise a minimum of 25% of their eligible borrowings through debt securities within a specific time frame to enjoy reduced fees. The new rules will be in effect from April 1, 2024 for companies with April-March financial years and from January 1, 2024, for those with January-December financial years.

Government notifies Green Credit Rules, 2023

Ministry of Environment, Forest and Climate Change issued the Green Credit Rules, 2023 with an objective to incentivise environmental positive actions through market-based mechanism and generate green credit, which would be tradable and made available for trading on a domestic market platform. The ministry has specified a list of activities with environmental benefits like tree plantation, waste management etc. that will result in the creation of green credits. The methodology and procedure for calculation of generating green credit for each of the abovementioned environment activities and the trading platform are yet to be developed.

MERGERS & ACQUISITIONS

Tax authorities roll out angel tax rules for startup valuation

The Income Tax department has notified new angel tax rules to evaluate the value of equity and CCPS issued by unlisted start-ups. Earlier, this tax was levied on local investors. However, the Finance Act 2023 proposed to widen its ambit to include foreign investments from April 1, 2024. The key changes in the rules include:

- **Angel Tax:** The excess premium received will be considered 'income from sources'. The tax on this will be 30.6%. Startups registered by the DPIIT along with certain types of investor category are exempt from the new norms.
- **Valuation Methods:** Besides the DCF method for resident investors, the new rule prescribes five methods for non-resident investors including:
 - Comparable Company Multiple Method
 - Probability Weighted Expected Return Method
 - Option Pricing Method
 - Milestone Analysis Method, and
 - Replacement Cost Method.
- **CCPS Valuation:** The rules also provided valuation methods for CCPS, which can also be based on the fair market value of unquoted equity shares.
- **Safe Harbour:** The safe harbour provision of 10% is prescribed to account for forex fluctuations, bidding processes and variations in other economic indicators.
- **Price Matching:** Any deal made within 90 days of a previous equity fund infusion done by an investor exempt from angel tax rules can be done at the same fair market valuation as before.

The amended rules are aimed at bridging the gap between the rules outlined in Foreign Exchange Management Act & Income Tax Act, and promote startup investments, simplify valuation and provide clarity, ultimately benefiting both taxpayers & the government. By allowing multiple valuation methods and introducing the safe harbour mechanism, the government aims to strike a balance between promoting entrepreneurship and preventing misuse of the system.



[EN] Blockchain's Impact on Auditing and Assurance: Embracing the New Landscape - October 30, 2023

Author: CA Rahisuddin Saifi, Associate Director, Assurance, ASA

The article explores the transformative impact of blockchain technology on the field of auditing and assurance. It discusses how blockchain's transparent and tamper-proof ledger system is revolutionizing traditional auditing processes. Embracing this new landscape is essential for auditors to adapt to the changing dynamics of financial transactions and data verification.

[EN] Data Analytics in 2023: Navigating a World Powered by Insight - October 27, 2023

Author: Manuj Dua, Associate Director, Digital Automation and Transformation Services, ASA

In 2023, data analytics are playing a pivotal role in a world driven by insights. Businesses and organizations use advanced data tools to gain a competitive advantage and make informed decisions. As data strategies grow in importance, professionals must

effectively navigate this data-rich landscape to realize its potential for success. Staying on top of trends in data analytics is essential to staying relevant in this insights-driven environment.

[EN] Incentives Available for SEZ Units - October 31, 2023

Author: Himanshu Srivastava, Director, Business Advisory Services, ASA

SEZs offer a range of enticing incentives to encourage businesses to set up shop within their boundaries. These incentives typically include tax breaks, duty-free imports and exports, streamlined regulatory processes, and infrastructure support. SEZ units enjoy a competitive advantage in today's global economy, attracting both domestic and international enterprises seeking a favourable business environment.

[FR] Preventing whistleblower retaliation for sound corporate governance - Oct 13, 2023

Author: Bhushan Sharma, Partner, Risk Advisory, ASA

In today's diverse and challenging business landscape, organizations

span borders and cultures, necessitating a focus on ethics. To combat unethical practices like fraud and corruption, a robust governance framework with a transparent ethical culture is essential. A key tool in this effort is an effective whistleblowing system, which uncovers internal misconduct, enhances corporate transparency and safeguards stakeholder interests.



GLOSSARY



AY

Assessment Year

CBDT

Central Board of Direct Taxes

CCPS

Compulsorily Convertible Preferable Shares

DCF

Discounted Cash Flow

DPIIT

Department of Industrial Policy & Promotion

DTAA

Double Taxation Avoidance Agreement

ESG

Environmental, Social & Governance

GST

Goods & Services Tax

ITC

Input Tax Credit

ITR

Income Tax Return

LLP

Limited Liability Partnership

MCA

Ministry of Corporate Affairs

MFN

Most Favoured Nation

NSWS

National Single Window System

OECD

Organisation for Economic Cooperation & Development

PAN

Permanent Account Number

RBI

Reserve Bank of India

SEZ

Special Economic Zone

SEBI

Securities and Exchange Board of India

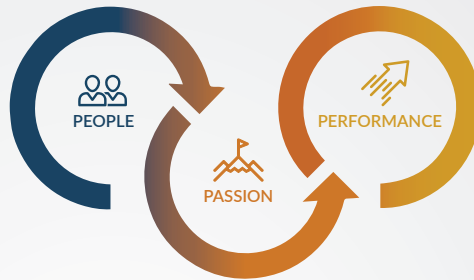
TDS

Tax Deducted at Source

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