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Monthly Newsletter Series

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## **Parliamentary panel asks Finance Ministry to expeditiously come out with common ITR form.**

The Parliamentary Standing Committee on Finance, chaired by former minister of state for finance Jayant Sinha, has asked the finance ministry to come out with a common income tax return at the earliest for the convenience of taxpayers.

The finance ministry in its reply said that the income tax department is already working on it and it had expanded the scope of pre-filled information, including on income from house property, bank interest, dividends. In November, the income tax department had announced a user-friendly common income tax return form for all taxpayers, except trusts and non-profit organisations. It had invited stakeholder comments on the same. However the department is yet to launch the common return.

<https://economictimes.indiatimes.com>

## **Inoperative PAN is not inactive: Income Tax Department clarifies on ITR filing, NRI PAN cards.**

Many non-resident Indians (NRIs) had their investments blocked and some were unable to file their tax returns, and this has created pain and hardship due to "inoperative" PAN cards. Despite not being required to link their PAN with Aadhaar, some NRIs and OCIs have expressed concern about their PANs becoming inoperative.

If a person is eligible to receive an Aadhar Card number, they must link it with their PAN card in accordance with Section 139AA (2). The deadline to link PAN with Aadhaar was June 30, 2023.

The Income Tax Department issued a clarification regarding the same on its official Twitter account.

<https://economictimes.indiatimes.com>

## **Claim of carry forward of loss by revising the return not allowed**

In the case of RRPR Holding Private Limited Vs DCIT, ITAT Delhi held that claim of capital loss by furnishing of revised return is unsustainable.

It was held that Revised return cannot be filed to cover up deliberate omission etc. in the original return. Thus, claim of the Assessee towards incurring impugned capital loss and carry forward thereof vide the revised return is unsustainable. The Assessee has failed to furnish any explanation whatsoever on the nature and character of transactions resulting in such capital loss. An unsubstantiated and uncorroborated claim is thus, in any case, untenable in law. Hence, on this score too, the claim does not meet the ingredients of provisions of section 139(5) of the Act.

<https://www.itat.gov.in>

## **Young-professionals to be hired by I-T department to help in tax litigation.**

Perhaps for the first time, the Income-tax department is tapping into the young-talent by introducing the 'Young Professional Scheme'. The objective is to attract young professionals who have domain knowledge in law and accountancy. To begin with, 50 such professionals (the cut-off age is 35 years) will be appointed to aid departmental representatives (DRs) in conducting research to strengthen the revenue's arguments in appeals before the Income-tax Appellate Tribunal (ITAT). The scheme will initially run for two years and will be evaluated for further extension.

<https://timesofindia.indiatimes.com>

## **I-T Dept to complete scrutiny assessment of 1 lakh notices by March 2024, says Finance Minister Nirmala Sitharaman**

The income tax department by March 2024 will complete the assessment of one lakh income tax notices sent for mismatch in disclosed income and information available with the department, Finance Minister Nirmala Sitharaman said on Monday. The tax department has sent about 1 lakh notices to individuals with income above Rs 50 lakh for a mismatch in income disclosed in ITR versus information available with the department. Also, notices have been sent to non-filers of tax returns.

Under income tax law, officers can reopen past assessments of up to six years.

"Now no tax assessee will have to face reopening of tax assessment after six years. And in 4th, 5th and 6th year, they (tax officers) reopen the assessment only under certain situations," Sitharaman said at the 164th income tax day event here.

<https://economictimes.indiatimes.com>

## **I-T searches, assets seizure increased over the last three fiscals: Govt data**

The number of groups searched by the Income Tax Department and the resulting seizure of assets has shown an increasing trend over the last three financial years, according to a government data placed in the Parliament. Minister of State for Finance Pankaj Chaudhary said, in a written reply, to the Rajya Sabha that a total of 741 groups were raided by the tax department and assets worth Rs 1,765.56 crore seized during the 2022-23 fiscal.

Similarly, 686 groups were searched by the I-T department during the 2021-22 fiscal and properties worth Rs 1,159.56 crore were seized preceded by 569 groups raided in 2020-21 and assets worth Rs 880.83 crore were seized.

<https://economictimes.indiatimes.com>

## **More Indians filing tax returns but only 1-2% of population actually pays income tax, shows Govt data**

Just about 1-2 per cent of all Indians actually pay income tax and contribute as much as 27 per cent of India's total tax collections, data presented to Parliament shows.

Finance Minister Nirmala Sitharaman presented this data as part of a reply to a question in the Lok Sabha. The data shows that income tax compliance has increased over the period 2019-20 to 2022-23, as measured by the number of people filing tax returns. However, within this, the number of people with zero tax incidence has grown faster.

<https://theprint.in>

## **TDS Credit be given in the year in which income is offered**

In the case of Ignitive Digitech Private Limited Vs DCIT, Mumbai ITAT has held that:

The point of time at which the benefit of TDS is to be given, is governed by sub-rule (3) of Rule 37BA, which unequivocally provides through clause (i) that the 'credit for tax deducted at source and paid to the Central Government, shall be given for the assessment year for which such income is assessable'. Credit should be aligned with the income offered in the year. Although the TDS being had been deducted and deposited in AY 2019-20, credit for the TDS should be given to the assessee in AY 2018-19 being the year in which the income had been offered by it as per mercantile system of accounting.

This ruling will provide a good precedent for future about for income assessment in determining TDS benefits.

[www.itatonline.org](http://www.itatonline.org)

## **Claiming HRA exemption on rent paid to spouse? New I-T regime will end this game of truth or dare**

Curiouser and curiouser – one cannot help but echo Alice (of the Alice in Wonderland fame), after reading various judicial and quasi-judicial decisions relating to allowability of house rent allowance (HRA), in those instances where rent has been paid to a close relative such as a spouse or a parent.

In end June, the Income-tax Appellate Tribunal (ITAT), which is the final 'fact-finding' authority when it comes to tax disputes, held that an HRA deduction of Rs. 3.69 lakh, for rent paid to his wife, should be allowed. Since allowability of HRA deduction is a matter of fact, the dispute typically ends here. The aggrieved party – be it the taxpayer or the Income-tax (I-T) department can appeal to the high courts, only if the issue involves a question of law and not of fact.

<https://economictimes.indiatimes.com>



## **New record of over 6.77 crore ITRs filed till 31st July, 2023**

The Income-tax Department appreciates the taxpayers and tax professionals for making compliances in time, leading to a surge in filing of Income-tax Returns (ITRs), resulting in a new record of ITRs filed. The total number of ITRs for AY 2023-24 filed till 31st July, 2023 are more than 6.77 crore, which is 16.1% more than the total ITRs for AY 2022-23 (5.83 crore) filed till 31st July 2022.

The filing of ITRs peaked on 31st July, 2023 (due date for salaried taxpayers and other non-tax audit cases) with over 64.33 lakh ITRs being filed on a single day i.e. on 31st July, 2023.

The Department also received 53.67 lakh ITRs till 31st July, 2023 from first time filers, a fair indication of widening of tax base. Campaigns on Social media along with targeted e-mail and SMS campaigns were launched to encourage the taxpayers to file their ITRs early.

Out of the 6.77 crore ITRs filed for AY 2023-24, 49.18% of ITRs are ITR-1 (3.33 crore), 11.97% are ITR-2 (81.12 lakh), 11.13% are ITR-3 (75.40 lakh), 26.77% are ITR-4 (1.81 crore) and 0.94% are ITR-5 to 7 (6.40 lakh). Over 46% of these ITRs have been filed using the online ITR utility available on the e-filing portal and the balance have been filed using offline ITR utilities.

During the peak filing period, e-filing portal successfully handled huge traffic providing a seamless experience to taxpayers for filing of ITRs. During the period from 1st July, 2023 to 31st July, 2023, there were more than 32 crore successful logins on the e-filing portal. On 31st July, 2023 itself, successful logins stood at 2.74 crore.

<https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1144/Press-Release-New-record-of-over-6.77-crore-ITRs-filed-till-31st-July-2023.pdf>

The Central Board of Indirect Taxes & Customs (CBIC) has issued a series of circulars on 17th July 2023 & 31/07/2023. These circulars address various areas in the Goods and Services Tax (GST) regime that required. We provides a summary and analysis of some important circulars.

Circular No. & Particulars of Issue covered	Clarification issued by CBIC
192/04/2023 -GST Interest U/s 50(3) on wrong availment of IGST Credit	In case of wrong availment and subsequent reversal of IGST credit, For applicability of interest u/s 50(3), It needs to be seen whether the aggregate balance in electronic credit ledger (Ecl) of IGST, CGST & SGST/UtGST has fallen below such wrongly availed ITC or not. In case, the aggregate balance has been more than the wrongly availed ITC, then no interest would be payable. Further, it is clarified that balance of GST compensation cess in ECL would not be included for above specified interest calculation
193/05/2023- GST Difference in Input Tax Credit(ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for the period from 1st April 2019 till 31st December 2021	Through this circular, CBIC has extended the applicability of procedure for dealing with differences between ITC claimed in GSTR-3B and as available in GSTR-2A specified through circular no. 183/15/2022-GST dated 27th December 2022 to the period 1st April 2019 to 31st December 2021. However, It has been stated that since rule 36(4) was made operational from 9th October 2019 inter alia permitting only specified additional credit(20%/10%/5% of Eligible Credit) over and above the ITC available in GSTR-2A, Thus even after complying the procedure as per circular 183/15/2022, Only following additional ITC can be claimed over and above the credit reflected in GSTR-2A>1st April 2017 to 8th October 2019 – <b>without any limit</b> >9th October 2019 to 31st December 2019 – <b>20% of eligible credit as per GSTR-2A</b> >1st January 2020 to 31st December 2020 – <b>10% of eligible credit as per GSTR-2A</b> > 1st January 2021 to 31st December 2021 – <b>5% of eligible credit as per GSTR-2A.</b>
194/06/2022 – GST TCS liability U/s 52 in case of multiple E Commerce operators in one transaction	In the event of multiple E-Commerce operators (ECO) in a single transaction, clarification has been issued to determine the ECO responsible for collection of TCS Where the supplier side ECO himself is not the supplier and finally releases the payment to supplier, then this supplier side ECO shall be required to comply with compliances under section 52 including collection of TCS. In this case buyer side ECO would not be required to do any compliance U/s 52 or to collect TCS Where the supplier side ECO himself is the supplier then buyer side ECO shall be required to comply with compliances under section 52 including collection of TCS while releasing payment to such supplier side ECO.

Circular No. & Particulars of Issue covered	Clarification issued by CBIC
195/07/2023- GST Availability of ITC in respect of warranty replacement of parts and repair services during warranty period	<p>Issues regarding tax liability and credit reversal has been ongoing since Pre-GST era.-</p> <ol style="list-style-type: none"> <li>1. Manufacturer himself provides free replacement of parts and/ or repair services to customers under warranty - <b>No GST is chargeable on such replacement</b></li> <li>2. Whether manufacturer is required to reverse ITC on such replacement of parts or repair services as part of warranty without consideration - <b>Not required to reverse ITC in respect of said replacement of parts or on the repair services provided.</b></li> <li>3. Distributor provides replacement of parts and / or repair services without any consideration from the customer, as part of warranty on behalf of the manufacturer - <b>No GST</b></li> <li>4. In above scenario whether there would be any supply between distributor and manufacturer, or the distribute or would be required to reverse ITC - <b>3 Different Scenario discussed in Notification</b></li> <li>5. Distributor provides repair services to customer without any consideration but charges the manufacturer for such repair services - <b>GST would be payable on such provision of service.</b></li> <li>6. Taxability of extended warranty at the time of original supply or just before the expiry period - <b>2 Different Scenario discussed in Notification</b></li> </ol>
196/08/2023 - GST Taxability of shares held in a subsidiary company by a holding company	<p>The securities held by the holding company in the subsidiary company are neither goods nor services. Further, purchase or sale of shares or securities, in itself is neither a supply of goods nor a supply of services. Therefore, the activity of holding of shares of subsidiary company per se cannot be treated as a supply of services by a holding company to the said subsidiary company and cannot be taxed under GST.</p>
197/09/2023-GST - Clarification on refund related issues	<ol style="list-style-type: none"> <li>1. Refund of accumulated ITC U/s 54(3) as available in GSTR-2B</li> <li>2. Requirement of undertaking of tax paid back to the Government with interest.</li> <li>3. Refund to exporter on subsequent compliance with sub-rule (1) of Rule 96A.i.e. Consideration for export of services not realized with in prescribed time frame.</li> </ol>
198/10/2023-GST -Clarification on requirement of E-invoice to Government departments or establishments/ Government agencies/ local authorities/ PSUs which are solely registered for doing compliance with TDS provisions	<p>These persons though registered for compliance of TDS provisions U/s 51 of CGST Act would be treated as registered person under GST Law and thus E-invoices need to be issued for supplies made to them by a supplier who is liable to issue E-invoice under rule 48(4) of CGST Rules.</p>

Circular No. & Particulars of Issue covered	Clarification issued by CBIC
32/2023 – Central Tax – GST Annual Return Filing Exemption for Registered Persons (FY 2022-23)	Exemption granted to registered person whose aggregate turnover in the financial year 2022-23 is up to Rs. 2 Crore from filing annual return for the said financial year. GST Annual Return Filing Exemption for Registered Persons (FY 2022-23)
34/2023- Central Tax – Exemption from Mandatory GST Registration for ECO Suppliers.	Through this notification, conditions for unregistered persons for making supplies of goods through an E-Commerce Operator and specifies conditions for persons who may be exempted from obtaining registration under the Central Goods and Services Tax Act, 2017 ("the CGST Act").

199/11/2023-GST - Clarification regarding ISD or Cross Charge mechanism to be followed in relation to third party services obtained or internally generated services.

Input Tax Credit	Mechanism of taking ITC
Services procured from a third party	HO has an option to distribute ITC in respect of such common input services by following ISD mechanism or Cross Charge Mechanism.
	ITC can be distributed if Input services should be attributable to the said BO (ISD) or Input services have actually been provided to the concerned Bos (Cross Charge).
	For using ISD mechanism HO has to take GST registration as ISD
Internally generated services (Recipient is eligible for full ITC)	<b>Invoice is Raised:</b> Value declared on Invoice should be Open Market Value
	<b>No Invoice is Raised:</b> It shall be deemed that nil value has been declared by HO (Revenue Neutrality)
Internally generated services (Recipient is not eligible for full ITC)	The said services are not mandatorily required to be included while computing the taxable value.



## **Reimbursement of Salary of seconded employees by the Indian subsidiary to the UK holding company is not taxable as fees for technical service**

Based on the facts and in the circumstances of the case, recently, the Delhi Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of Serco India Pvt. Ltd. (the taxpayer) held that the amounts paid by an Indian subsidiary to the UK holding company on account of the secondment of employees are not taxable in the nature of FTS. The Tribunal observed that there was an employer- employee relationship between the Indian company and the deputed employees. It was proved that the Indian company was the legal and economic employer of the deputed employees. The tax was deducted by the Indian company on the salary payment to the deputed employees and it was also deposited with the government. Accordingly, the Tribunal deleted the disallowance made on account of non-deduction of tax at source.

The taxability of payments made by the Indian companies to their foreign group companies for the secondment of employees has been a matter of debate from a long time. While taxpayers argue that the payment is in the nature of reimbursement on a cost-to-cost basis, the tax department has been treating such payments as Fees for Technical Services (FTS). Further, in several cases, the tax department has alleged that the presence of seconded employees forms a Permanent Establishment of the foreign company in India. It is important that the taxpayer should take into consideration various decisions while dealing with secondment related aspects.

Serco India Pvt. Ltd. v. DCIT (I.T.A. No. 1432/Del/2016) – Taxsutra.com

## **Payment to the Malaysian group company for granting access to the SAP system software is not taxable as royalty under the Income-tax Act**

Based on the facts and in the circumstances of the case, recently, the Bombay High Court in the case of Colgate Palmolive Marketing SDN BHD (the taxpayer) dealt with the issue of taxability of the

payment for providing access to the SAP system. The High Court concurred with the Tribunal's decision and held that the payment received by the Malaysian company from the Indian group company for providing the SAP system is not taxable as royalty. The payment for the SAP system does not satisfy the conditions of the royalty provisions of the Income-tax Act, 1961 (the Act). It did not satisfy the conditions of process royalty. Further, the payment was not in respect of any right, property or information, copyright, or transfer of right to use of any computer software.

The taxation of income from cross-border software transactions has been a contentious issue from many years, with the key question being whether such income is to be characterized as royalty or as business income. The Indian tax authorities have generally been contending that income from sale/license of software programs should be characterized as royalty. However, taxpayers have been contending that only access to standard software without transfer of any copyrights or any other rights of software does not result into royalty income.

CIT v. Colgate Palmolive Marketing SDN BHD (ITA No. 171 of 2018) – Taxsutra.com

## **Circular related to merger of Multiple User IDs in V2 portal with new User ID in V3 portal of Ministry of Corporate Affairs (MCA) and deactivation of old user ID in V2 portal**

The Circular summarises the procedure for merging existing user IDs with the new MCA21 V3 portal or deactivating old user IDs.

It has been observed that, many members of the Institute of Chartered Accountants of India, Institute of Cost Accountants of India, and Institute of Company Secretaries of India have created multiple user IDs on the MCA21 V2 portal and some members are unable to create user ID on the new MCA21 V3 portal due to their existing IDs that they are not aware of or do not remember creating on the V2 portal.

The members are requested to approach their respective institutes with their credentials and the Institutes shall provide recommendation for merging multiple existing user IDs with the ID created in V3 portal or for deactivation of the old user IDs in V2 portal. The Institute Shall forward the recommendation to email ID prescribed in the circular and based on email sent by the President or Vice President of the Institute, the changes will be made in the User IDs in the V3 portal.

<https://www.mca.gov.in/bin/dms/getdocument?mds=IPgXWqVdrvG%252FOTWP8QcM%252Bw%253D%253D&type=open>

# Compliance Calendar

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Due dates for the Month of Sept, 2023#

Regulation	Due Date	Compliance	Description
The Companies Act, 2013	30-Sep-23	DIR 3 KYC	Every Director who has been allotted DIN on or before the end of the financial year, and whose DIN status is 'Approved', would be mandatorily required to file form DIR-3 KYC before 30th September of the immediately next financial year.
	30-Sep-23	AGM	Every company other than a One Person Company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of a company
Income Tax Act, 1961	7-Sep-23	TDS Payment	Due date for deposit of Tax deducted/collected for the month of Aug, 2023
	14-Sep-23	TDS Certificate	Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194-IB, 194-M in the month of Jul, 2023
	15-Sep-23	Advance Tax	Second instalment of advance tax for the assessment year 2024-25
	30-Sep-23	TDS Payment	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA/194-IB/194-M in the month of Aug, 2023
	30-Sep-23	Tax Audit	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 is required to submit his/its return of income on October 31, 2023)
	30-Sep-23	Form 10	Statement in Form no. 10 to be furnished to accumulate income for future application under section 10(21) or section 11(1) (if the assessee is required to submit return of income on November 30, 2023).
	30-Sep-23	TCS Return	Quarterly statement of TCS deposited for the quarter ending June 30, 2023 Note: The due date of furnishing TCS statement has been extended from June 30, 2023 to September 30, 2023 vide Circular no. 9/2023, dated 28-06-2023
Goods and Service Tax (GST)	30-Sep-23	TDS Return	Quarterly statement of TDS deposited for the quarter ending June 30, 2023 Note: The due date of furnishing TDS statement has been extended from June 30, 2023 to September 30, 2023 vide Circular no. 9/2023, dated 28-06-2023
	10-Sep-23	GSTR 7	Summary of Tax Deducted at Source (TDS) and deposited for the month of July 2023
	10-Sep-23	GSTR 8	Summary of Tax Collected at Source (TCS) and deposited by E-Commerce Operator for the month of July 2023
	11-Sep-23	GSTR -1	Return of outward supplies of taxable goods and/or services for the Month of July 2023 (for Assesses having turnover exceeding 5 Cr.)
	13-Sep-23	GSTR 6	Return for Input Service Distributors for the month of July 2023
	13-Sep-23	IFF-QRMP	Option of uploading Invoices for July 2023 using Invoice Furnishing Facility (IFF) applicable to tax payers opted for Quarterly Return Monthly Payment (QRMP) Scheme
PT Act 1975 (Employee)	20-Sep-23 Or 22-Sep-23	GSTR-3B	Simple GSTR return for the Month of July 2023 (based on category of taxpayer) & Payment for QRMP Taxpayer
	30-Sep-23	PT Employees	Monthly PT Payment for the month of Aug, 2023
Employees' Provident Funds & Miscellaneous Provisions Act, 1952	15-Sep-23	PF Payment	PF Payment for the month of Aug, 2023
Employees' State Insurance Act, 1948 - (ESIC)	15-Sep-23	ESIC Payment	ESIC Payment for the month of Aug, 2023

# The above due date calender contains compliances generally applicable to taxpayers and this calender has been compiled by HSCo on basis of data available on various portals and other sources. One should always check applicable compliances based on their business needs and should also check updated due dates, if any, on the government portal before making the compliance.

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