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Monthly Newsletter Series
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Over 30 lakh audit reports filed on Income Tax Department portal

The Income Tax Department's e-filing portal received more than 30 lakh audit reports (TAR) up till September 30, the tax authority of India reported on Monday.

In a release, the Income-tax Department expressed its gratitude to taxpayers and tax experts for timely compliance. The tax audit report had to be submitted by September 30 of the applicable assessment year by those who had their books audited.

"More than 30.75 lakh audit reports, including about 29.5 lakh Tax Audit Reports have been filed for AY 2023-24 on the e-filing portal till the end of the due date (September 30)," the release added.

<https://economictimes.indiatimes.com>

India's corporate tax collections seen in line with budget estimates: Govt official

India's corporate tax collections must be looked at over a longer period of time and the full-year numbers are likely to be in line with budget estimates, the country's economic affairs secretary said on Thursday.

"We should not look at few months' data and try to find a long-term trend over there... my sense is that whatever numbers are there in terms of budget estimates and revenues, those will be realised," Ajay Seth told reporters.

Corporate tax collections between April and July fell 10% to 1.76 trillion Indian rupees (\$21.20 billion) from a year earlier, government data showed.

<https://economictimes.indiatimes.com>

Extension of Time Limit for submitting Form 10B / BB and ITR 7 for AY 2023-24

CBDT has issued Press release dated 18th September wherein the due date of furnishing Audit reports in Form 10B/Form 10BB for the Financial Year 2022-23, which is 30.09.2023 has now been extended to 31.10.2023

The due date of furnishing of Return of Income in Form ITR-7 for Assessment Year 2023-24, which is 31.10.2023 is also extended to 30.11.2023

<https://incometaxindia.gov.in>

Tax deducted on NRIs income: CBDT changes process to get NIL TDS certificate

A Non-Resident Indian (NRI) who wants to avoid tax deducted on incomes earned from India is required to apply for a TDS certificate. Remember, NRIs cannot submit Form 15G/H to avoid TDS on their incomes. Hence, they are required to submit an application to the assessing officer to get the lower or NIL TDS certificate. Based on this certificate, the payer of the income will either not deduct taxes or deduct it at the lower tax rates on the income paid.

The Central Board of Direct Taxes (CBDT) updated the procedure, rules and format to apply for the TDS certificate. The circular was issued on September 27, 2023. According to tax experts, the new rules are mostly similar to the old rules. However, there are certain changes in the operational aspects of applying for TDS certificates for NRIs:

<https://economictimes.indiatimes.com>

Respond to intimation of past tax demands for faster refund: I-T dept

The income tax department on Saturday asked taxpayers to respond to intimation from the I-T department regarding outstanding demands of previous years to facilitate faster clearance of refunds for 2022-23 fiscal.

With some taxpayers taking to social media about receiving intimation from the I-T department regarding past unsettled tax demands, the department in a post on 'X' said, this is a taxpayer-friendly measure where an opportunity is being provided to assesseees in line with "principles of natural justice".

<https://www.business-standard.com>

Net direct tax collection rises 23.5 pc to over Rs 8.65 lakh crs

The net direct tax collection increased 23.51 per cent

to over Rs 8.65 lakh crore till mid-September on higher advance tax mop-up from corporates, the Finance Ministry said on Monday.

The net collections have reached 47.45 per cent of the full-year budget estimates (BE) of Rs 18.23 lakh crore.

<https://www.financialexpress.com>

The GST Council inter-alia made the following recommendations relating to changes in GST tax rates, measures for facilitation of trade and measures for streamlining compliances in GST in 52nd Meeting of the GST Council was held on 7th October, 2023 in New Delhi.

Measures for facilitation of trade:

- **Amnesty Scheme for filing of appeals against demand orders in cases where appeal could not be filed within the allowable time period:**

The Council has recommended providing an amnesty scheme through a special procedure under section 148 of CGST Act, 2017 for taxable persons, who could not file an appeal under section 107 of the said Act, against the demand order under section 73 or 74 of CGST Act, 2017 passed on or before the 31st day of March, 2023, or whose appeal against the said order was rejected solely on the grounds that the said appeal was not filed within the time period specified in sub-section (1) of section 107. **In all such cases, filing of appeal by the taxpayers will be allowed against such orders up to 31st January 2024,** subject to the condition of payment of an amount of pre-deposit of 12.5% of the tax under dispute, out of which at least 20% (i.e. 2.5% of the tax under dispute) should be debited from Electronic Cash Ledger. **This will facilitate a large number of taxpayers, who could not file appeal in the past within the specified time period.**

- **Clarifications regarding taxability of personal guarantee offered by directors to the bank against the credit limits/loans being sanctioned to the company and regarding Taxability of corporate guarantee provided for related persons including corporate Guarantee provided by holding company to its subsidiary company:**

The Council has inter alia recommended to:

(a) issue a circular clarifying that when no consideration is paid by the company to the director in any form, directly or indirectly, for providing personal guarantee to the bank/ financial institutes on their behalf, the open market value of the said transaction/supply may be treated as zero and

hence, no tax to be payable in respect of such supply of services.

(b) To insert sub-rule (2) in Rule 28 of CGST Rules, 2017, to provide for taxable value of supply of corporate guarantee provided between related parties as one per cent of the amount of such guarantee offered, or the actual consideration, whichever is higher.

(c) to clarify through the circular that after the insertion of the said sub-rule, the value of such supply of services of corporate guarantee provided between related parties would be governed by the proposed sub-rule (2) of rule 28 of CGST Rules, 2017, Irrespective of whether full ITC is available to the recipient of services or not.

- **Issuance of clarification relating to export of services:-**

The Council has recommended to issue a circular to clarify the admissibility of export remittances received in Special INR Vostro account, as permitted by RBI, for the purpose of consideration of supply of services to qualify as export of services in terms of the provisions of sub-clause (iv) of clause (6) of section 2 of the IGST Act, 2017.

Some Other Recommendations made by the 52 GST Council

- No GST will be charged for loose millet flour with 70% millet content (Hs1901). A 5% GST will be applied if it's pre-packaged or labelled.
- Imitation zari thread or yarn is taxed at a 5% GST rate. However, there won't be any refunds granted for polyester film (metallized) or plastic film due to inversion.
- GST on molasses has been reduced from 28% to 5%, benefiting sugarcane farmers and reducing the cost of cattle feed.
- A separate HSN code has been introduced for rectified spirit used for industrial purposes, providing its own distinct HSN code. Authorities must now levy an 18% tax on ENA for industrial use.
- To boost tourism in India, a conditional GST exemption has been granted to foreign-flagged/owned or foreign-going vessels travelling

through our coastal areas during the upcoming winter season, exempting them from 5% GST.

- For clarity, job work services related to turning barley into malt are taxed at a 5% GST rate, just like other job work services involving food and food products. This is lower than the 18% rate.
- Indian Railways will now follow the forward charge mechanism for all its services, allowing them to access Input Tax Credit (ITC) to meet their tax liabilities.

Revenue from HR Screening Services to Indian Clients Not Classified as 'Royalty' or 'FTS' per India-UK DTAA

Based on the facts and circumstances of the case, recently the Delhi bench of the Income-tax Appellate Tribunal (Tribunal), in the case of HireRight Ltd., UK has held that revenue generated from delivering human resource screening services, including investigative due-diligence services to clients in India, does not fall under the categories of 'royalty' or 'fees for technical services (FTS)' as outlined in Article 13 of the India-UK Double Taxation Avoidance Agreement (DTAA).

The Tribunal noted that the services provided by the taxpayer involve generating a report for their Indian clients, containing factual findings related to the background checks conducted. As such, these reports primarily consist of factual data and do not meet the criteria for literary, artistic, or copyrightable work according to Article 13(3) of the India-UK DTAA for them to be classified as royalty.

Additionally, the Tribunal highlighted that Indian clients do not possess rights to publicly display, sell, distribute, copy, edit, modify, or commercially exploit the reports provided by the taxpayer. Moreover, the taxpayer does not transfer any skill or knowledge to its Indian clients during the issuance of the screening reports, as the clients only gain access to factual information from the taxpayer's findings.

The Tribunal emphasized that the taxpayer's role is confined to validating data provided by candidates proposed for hiring and presenting relevant facts derived during the validation process to its clients. The clients then independently decide whether to hire the candidate. Thus the income received for such services does not qualify as royalty, given the absence of involvement in technical skill, knowledge sharing, or consultancy with the clients, and hence cannot be considered as FTS either.

HireRight Limited v/s. ACIT (ITA No. 373/Del/2023 – AY 2020-21 and ITA No. 1884/Del/2022-AY 20019-20)

Indian AE offering marketing support services without the authority to finalize contracts does not establish a permanent establishment (PE) for the foreign entity

Recently the Bangalore bench of the Income-tax Appellate Tribunal, based on the facts and circumstances of the matter, in the case of SanDisk International Ltd clarified that the Indian group company, (or the Indian associated enterprise (AE)), cannot be deemed as an agency permanent establishment (agency PE) for the foreign company when the Indian AE is not involved in securing, negotiating, or concluding contracts on the foreign company's behalf.

The Tribunal's assessment revealed that the sales of the foreign company were predominantly managed by its distributors in India, as confirmed by statements from employees of the Indian company. The marketing support service agreement between the foreign company and the Indian AE demonstrated that the Indian company's role was primarily to educate customers about the foreign company's products. Final contracts were negotiated between customers and the foreign company's distributors.

The determination of an agency relationship between a foreign entity and its Indian AE has been a matter of ongoing debate and is relying heavily on factual evidence. The Tribunal underscored the significance of maintaining comprehensive documentation. Tax authorities are increasingly scrutinizing the actual implementation of recorded documentation through the conduct of employees. This highlights the importance of the conduct of taxpayers, their employees, associated entities, and associated entity employees in assessing the agency relationship between the parties.

SanDisk International Ltd. v/s. ACIT (ITA No. ITA 763 to 768/Bang/2022)

General Circular No. 9/2023 dated 25th September, 2023 regarding clarification on holding Annual General Meeting (AGM)/ Extra Ordinary General Meeting (EGM) through Video Conferencing

By present circular, Ministry of Corporate Affairs has allowed to hold Annual General Meetings (AGMs) due in the year 2023 and 2024 through video conference (VC) mode till September 30, 2024.

The MCA has also allowed companies to hold their Extraordinary General Meetings (EGMs) via video conference and transact items through postal ballot till end of September 2024.

<https://www.mca.gov.in/bin/dms/getdocument?mds=HaKq8Y72SkO5wIQe05fjLQ%253D%253D&type=open>

Notification related to amendment in the Limited Liability Partnership (Second Amendment) Rules, 2023

By present notification, Form-3 (filed to register initial LLP Agreement amongst the partners/ changes in LLP Agreement) and Form-4 (filed to intimate changes in Partners or Designated partner due to admission of new partner or cessation of existing partner or change in designation of current partner have been substituted with new Forms.

<https://www.mca.gov.in/bin/dms/getdocument?mds=ywlii5hvZvLABylQ7KmtNA%253D%253D&type=open>

Compliance Calendar

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Due dates for the Month of Nov, 2023#

Regulation	Due Date	Compliance	Description
The Companies Act, 2013	On or Before 28th November, 2023	Form MGT-7/ Form MGT-7A	Form for filing Annual Return by a Company
	On or Before 30th November, 2023	Form PAS-6	Form for filing of half yearly Return of Reconciliation of Share Capital Audit Report
Income Tax Act, 1961	7-Nov-23	TDS Payment	Due date for deposit of tax deducted/collected for the month of October, 2023.
	14-Nov-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 Sept, 2023
	15-Nov-23	TCS Certificate	Quarterly TDS certificate in respect of tax deducted by any person for the quarter ending Sept 30, 2023
	30-Nov-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 Nov, 2023
	30-Nov-23	ITR (TP case)	Return of income for the assessment year 2023-24 in the case of an assessee if he/it is required to submit a report under section 92E pertaining to international or specified domestic transaction(s)
	30-Nov-23	Form 3CEAA	Report in Form No. 3CEAA by a constituent entity of an international group for the accounting year 2022-23
	30-Nov-23	ITR 7	The due date of furnishing of Return of Income in Form ITR-7 for the Assessment Year 2023-24 in the case of assessee referred to in clause (a) of Explanation 2 to section 139(1). Note: The due date has been extended from October 31, 2023 to November 30, 2023 vide Circular no. 16/2023, dated 18-09-2023
Goods and Service Tax (GST)	10-Nov-23	GSTR 7	Summary of Tax Deducted at Source (TDS) and deposited for the month of October 2023
	10-Nov-23	GSTR 8	Summary of Tax Collected at Source (TCS) and deposited by E-Commerce Operator for the month of October 2023
	11-Nov-23	GSTR -1	Return of outward supplies of taxable goods and/or services for the Month of October 2023 (for Assesses having turnover exceeding 1.5 Cr.)
	13-Nov-23	IFF-QRMP	Option of uploading Invoices for October 2023 using Invoice Furnishing Facility (IFF) applicable to tax payers opted for Quarterly Return Monthly Payment (QRMP) Scheme
	13-Nov-23	GSTR 6	Return for Input Service Distributors for the month of October 2023
	20-Nov-2023 or 22-Nov-2023 or 24-Nov-2023	GSTR-3B	Simple GSTR return for the Month of October 2023 (based on category of taxpayer)
PT Act 1975 (Employee)	30-Nov-23	PT Employees	Monthly PT Payment for the month of Oct, 2023
Employees' Provident Funds & Miscellaneous Provisions Act, 1952	15-Nov-23	PF Payment	PF Payment for the month of Oct, 2023
Employees' State Insurance Act, 1948 - (ESIC)	15-Nov-23	ESIC Payment	ESIC Payment for the month of Oct, 2023

The above due date calendar contains compliances generally applicable to taxpayers and this calendar 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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