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Monthly Newsletter Series
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Income Tax Department extends time to claim lower tax rate for AY 2021-22

Central Board of Direct Taxes ('CBDT') by Circular No. 6/2022 dated 17.03.2022 had condoned the delay in filing of Form No. 10-IC as per Rule 21AE of the Income-tax Rules, 1962 ('the Rules') for the previous year relevant to A.Y. 2020-21 in cases where the conditions stipulated in the said Circular are satisfied.

Now considering the representation received to the CBDT, with a view to avoid genuine hardship to the domestic companies in exercising the option u/s 115BAA of the Act, CBDT has condoned the delay in filing of Form No. 10-IC as per Rule 21AE for A.Y. 2021-22 in cases where the following conditions are satisfied:

- i) The return of income for relevant assessment year has been filed on or before the due date specified under section 139(1) of the Act;
- ii) The assessee company has opted for taxation u/s 115BAA of the Act in item (e) of "Filing Status" in "Part A-GEN" of the Form of Return of Income ITR-6; and
- iii) Form 10-IC is filed electronically on or before 31.01.2024 or 3 months from the end of the month in which this Circular is issued, whichever is later.

<https://incometaxindia.gov.in/communications/circular/circular-no-19-2023.pdf>

35L refund cases 'held up' for various reasons; I-T dept call centre working to resolve: CBDT chairperson

Around 35 lakh cases for issuance of refunds are currently "held up" with the Income-Tax Department owing to mismatch and validation of the taxpayers' bank accounts and the taxman is reaching out such assesseees via a special call center, CBDT Chairperson Nitin Gupta said on Tuesday. The direct taxes body chief said the department was "in correspondence" with such taxpayers and it is their aim to expeditiously resolve these issues.

"We want to credit the refunds to the correct bank accounts of the taxpayers quickly," he said.

Asked during an interaction about instances where refunds are stuck as taxpayers were getting old around 2011 from paper-based registers to

computers and hence some of those old demands were showing up in the accounts of the assesseees.

<https://economictimes.indiatimes.com>

Nearly 70% of taxpayers opted for new Personal Income Tax Regime: CBDT chief

Around 60%-70% of the individual taxpayers have likely shifted to the exemption-less personal income tax (PIT) regime, Central Board of Direct Taxes (CBDT) chairman Nitin Gupta said, indicating that the steps announced in the Budget FY24 including making it the "default regime" has worked.

As such, post-refunds PIT receipts jumped 32.5% on year by October 9 in the current fiscal year against the budgeted growth of 11.4% for the whole year, Gupta said

<https://www.financialexpress.com>

I-T commences 360 degree profiling of HNI tax evaders

Concerned that the cut in the highest tax rate on personal income from 42.74% to 39% in the Budget FY24 hasn't curbed tax evasion among high net worth individuals (HNIs), the income-tax department is all set to crack down on the super rich who underpay their taxes.

Individuals with reported or likely annual income above Rs 1 crore are being subjected to "360-degree profiling," a per senior tax department official on condition of anonymity. The department is tracking these individuals' investment profiles, expenses incurred and sources of income for assessment, the official added.

<https://www.financialexpress.com>

Taxpayers slapped with unexpected notices for old tax demands

The taxman never ceases to surprise. Now, it's the season of ghost demands: old tax demands going back more than 15 years, long paid and closed, are popping up as new claims.

In the past few weeks, several individuals have been slapped with notices from the Income Tax (I-T) department asking them to cough up the amounts within a week.

While the department's records show the demands as 'unpaid', tax payers who have received the notices are confident they have no such outstanding with the tax office.

<https://economictimes.indiatimes.com>

The taxman wants to know if Indians are taking the FPI route to mask investments

In a slew of unusual and probing questions, tax authorities have asked several offshore funds to spell out how they go about raising money, share of Indian investments in the fund pools, and details of top investors in a fund. At least a dozen FPIs have received notices over the past few weeks from the income-tax (I-T) department trying to extract information on who was running the funds and from where, two persons familiar with the queries told ET.

Resident Indians can only invest in FPIs whose exposure to India is less than 50% while total subscription by non-resident Indians (NRI) cannot exceed 50% of a fund corpus.

<https://economictimes.indiatimes.com>

Advisory: Person supplying of Online Money Gaming services or OIDAR or Both– Form GST REG-10 and Form GSTR-5A

General: In terms of the recent amendments made in the CGST/SGST Act, the IGST Act and the CGST/SGST Rules, any person located outside taxable territory making supply of online money gaming to a person in taxable territory, is liable to get registered in GST and is required to pay tax on such supply. In this context, every person located outside taxable territory making such supplies of online money gaming to a person in India is now mandated to take registration/amend his existing registration in accordance with the proposed Row (iia) in FORM GST REG-10 and also required to furnish information regarding the supplies in the proposed Tables in FORM GSTR-5A. GSTN is in the process of developing the functionality of such new registrations or required amendment in existing registration, as the case may be. In the meantime, till the said functionality is made available on the portal, a workaround is suggested to be followed as below:

1. Registration (Form GST REG-10):

- a) As per the proposed amendments, person engaged in the supply of Online money gaming are required to identify themselves as being engaged in such supplies in Form GST REG-10. Further, new registrations in respect of such supplies may also be required, for which application may have to be filed in the said FORM GST REG-10 and also the 'Type of Supply' may be required to be declared in Row (iia) of the Form GST REG-10 while applying for registration. Existing already registered taxpayers of OIDAR services also would have to amend their registrations by furnishing the said information at Row (iia).
- b) As a workaround, it is hereby advised that any person engaged in the supply of Online Money Gaming, who is required to be registered in accordance with the recent amendments, can file their registration application in the existing Form GST REG-10 itself. Along with the said application, such person will also be required to upload a pdf copy of the information furnished in Row 2(iia) of the amended FORM GST REG-10 in the 'Documents Upload' section available in

2. Return (Form GSTR-5A):

- a) Person engaged in the supply of Online Money Gaming are required to furnish the details of such supplies in Table 5D and 5E of Form GSTR-5A.
- b) Till such tables are developed and added in Form GSTR-5A on the portal, persons engaged in making supplies of Online Money Gaming are hereby advised to furnish the details of such supplies in the existing Tables 5 and 5A of Form GSTR-5A itself.

The above procedure can be followed till the changes are implemented in GST Portal.

Facility of enrolment for supply of goods through e-commerce operators by GST un-registered suppliers

1. In terms of the recent amendments to the Act and the rules and notification number 34/2023 dated 31.07.2023, persons supplying goods through e-commerce operators shall be exempt from mandatory registration under the CGST Act even if they supply goods through e-commerce operators (ECO) if they satisfy the following conditions:
 - (a) Such person is engaged in the supply of goods through the ECO and such supplies are made only in one State/UT,
 - (b) Such person does not make any inter-state supply,
 - (c) The said person has a Permanent Account Number (PAN) under the Income Tax Act, 1961,
 - (d) Such persons shall declare his PAN (which shall be validated) on the common portal (i.e. GST Portal) along with the address of his place of business and the name of the State/UT or Union territory before making such supplies,
 - (e) Such person has been granted an enrolment number on the common portal upon validation of his PAN before which he shall not make any such supply through any ECO.
2. GSTN has developed the necessary functionality for enrolment of unregistered persons and the same is available on the portal. Accordingly, unregistered person desirous of enrolling on the GST portal for making supplies of goods through ECOs in any one State/UT are hereby advised to follow the path/procedure specified below:

- Visit the GST Portal at <https://www.gst.gov.in/> and click the GST Portal link
- Select the “User Services” Tab and choose “Generate User Id for Unregistered Applicant”
- Click “Yes” on the Warning window which asks you to Continue
- Check the “To apply as a supplier to e commerce operators” box
- Proceed to fill the Form that opens on your screen
- Upon successful validation of your PAN the enrolment number will be generated by the portal.

Supreme Court rules for Mandatory Notification for Taxpayers to Access Benefits under Income Tax Treaty's Most Favoured Nations Clause

A recent Supreme Court judgment has significant implications for Indian tax treaties with certain countries like the Netherlands, France, Switzerland, Hungary, Sweden, and others. These treaties include a Most Favoured Nation (MFN) clause, which extends the benefit of a lower tax rate or restricted tax scope for specific types of income, such as interest, dividends, royalties, and fees for technical services. The MFN clause comes into play if, after the signing or enactment of the treaty containing the MFN clause, India enters into a tax treaty with a member state of the Organization for Economic Cooperation and Development (OECD) that provides for a lower tax rate or a more limited tax scope.

The recent Supreme Court case in *Nestle SA v. India* raised questions regarding the application of the MFN clause. Specifically, it addressed whether the lower tax rate or restricted tax scope under the MFN clause should automatically apply or if it requires notification from the Indian government. The court also had to determine when the condition of the third state becoming an OECD member should be fulfilled – at the time of applying the MFN clause or at the time when India signed the treaty with the third state.

The Supreme Court's ruling in the *Nestle SA* case established that a notification under Section 90 of the Income-tax Act, 1961, is mandatory for any court, authority, or tribunal to give effect to a tax treaty or any protocol altering its terms or conditions, which results in changes to existing tax law provisions. Furthermore, the Supreme Court clarified that the benefit provided under a subsequent treaty with a country, which was not an OECD member at the time of signing the treaty but later becomes an OECD member, cannot be claimed under the MFN clause.

This Supreme Court decision has far-reaching consequences for taxpayers seeking to benefit from MFN clauses in India's tax treaties with other countries. Foreign companies must ensure that the benefits derived from MFN clauses have been explicitly notified by the Indian government before attempting to access them. Moreover, it's important to note that MFN benefits can only be availed of in the

context of subsequent treaties between India and existing OECD member countries, not with countries that join the OECD after signing their tax treaty with India. This restriction significantly narrows the scope of benefits that foreign companies can claim under MFN clauses, particularly concerning the taxation of dividend income received from India.

In the aftermath of the Supreme Court's ruling, taxpayers may be interested in whether the Indian Government will issue notifications to allow taxpayers to benefit from MFN clauses, possibly with retrospective effect, for tax treaties previously signed by India. For example, in the case of France, where the restricted scope for "fees for technical services" has not been explicitly notified, despite the absence of any legal dispute regarding its eligibility under the relevant MFN clause, this decision could have implications.

(AO, *International Taxation v. Nestle SA* (Civil Appeals 1420 to 1432 of 2023) – SC)

Notification dated 20th October, 2023 as the Companies (Incorporation) Third Amendment Rules, 2023 amending further the Companies (Incorporation) Rule, 2013

By present modification, following amendments are made in Rule 30 (i.e. Shifting of Registered office from one State or Union Territory to another State". In sub Rule (9) of Rule 30, after the proviso, the following proviso inserted.

"Provided further that where the management of the company has been taken over by new management under a resolution plan approved under section 31 of the Insolvency Bankruptcy Code, 2016 (31 of 2016) and no appeal against the resolution plan is pending in any Court or Tribunal and no inquiry, inspection, investigation is pending or initiated after the approval of the said resolution plan, the shifting of the Registered Office may be allowed."

Notification dated 27th October, 2023 related to amendment in the Limited Liability Partnership (Third Amendment) Rules, 2023

By present notification, after Rule 22, a new rule from 22A and 22B has been inserted.

Rule 22A-

It provides for maintenance of Register of Partners since incorporation in Form 4A (containing details of the Partner), which shall be kept at the Registered Office of the Limited Liability Partnership.

The entries in the Register maintained under this rule shall be made within seven days pursuant to any change made in the contribution amount, or in name and details of the partners in the Limited Liability Partnership Agreement, or in case of cessation of partner.

Rule 22B-

It provides for Declaration in respect of beneficial interest in any contribution.

Where a Person whose name is entered in the Register of Partners of a Limited Liability Partnership but does not hold any beneficial interest fully or partly in contribution, such person shall file with the Limited Liability Partnership, a declaration to that effect in Form 4B within a period of thirty days from the date on which his name is entered in the Register of Partners

specifying the name and other particulars of the person who actually holds any beneficial interest in such contribution. In case of, any change in the beneficial interest in such contribution, such person shall inform the same within a period of thirty days from the date of such change in Form no. 4B.

- Filing of disclosure by the person who holds or acquires a beneficial interest in contribution of a Limited Liability Partnership but is not a Registered Partner.

Every person who holds or acquires a beneficial interest in contribution of a Limited Liability Partnership but his name is not registered in the Register of Partners (hereinafter referred to as "the beneficial partner") shall file with Limited Liability Partnership, a declaration disclosing such interest in Form 4C within a period of thirty days after acquiring such beneficial interest in the contribution of the Limited Liability Partnership. Any change occurs in the beneficial interest in such contribution, the beneficial partner shall, within a period of thirty days from the date of such change, make a declaration of such change to the Limited Liability Partnership in Form 4C.

- **Filing of Return by the LLP**

Any declaration received by the Limited Liability Partnership (i.e. Form 4B or Form 4C, the Limited Liability Partnership shall record such declaration in the Register of Partners and shall file, within a period of thirty days from the date of receipt of declaration by it, a return in Form 4D to the Registrar in respect of such declaration with fees.

- Every Limited Liability Partnership shall specify a Designated Partner who shall be responsible for furnishing of and extending co-operation for providing, information with respect to beneficial interest in contribution in Limited Liability Partnership to the Registrar or any other officer authorised by the Central Government and shall file information of such Designated Partner with the Registrar in Form 4. Until a Designated Partner is specified under sub-rule (4), every Designated Partner shall be deemed to be responsible for furnishing of, and extending co-operation for

providing, information with respect to beneficial interest in contribution under this sub-rule.

Notification dated 27th October, 2023-These rules may be called the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023

By present notification the Ministry of Corporate Affairs has mandated the following:

- a) Every Public Company which has issued Share warrants before the commencement of Companies Act, 2013 and has not converted them into shares shall within a period of three months, inform the Registrar about the details of such share warrants in Form PAS-7;

and

within a period of six months of the commencement of the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023, require the bearers of the share warrants to surrender such warrants to the company and get the shares dematerialised in their account and for this purpose the company shall place a notice for the bearers of share warrants in Form PAS-8 on the website of the Company, if any and shall also publish the same in a newspaper in the vernacular language which is in circulation in the district and in English language in an English newspaper, widely circulated in the State in which the Registered Office of the company is situated.

- b) Private company (which as on last day of a financial year, ending on or after 31st March, 2023, is not a small company as per audited financial statements for such financial year) shall compulsorily dematerialise its shares within a period of 18 months of closure of such financial year.
- c) Issue of securities by Private Limited Company which is not a small company only in dematerialised form.
- d) Every holder of securities of the private company who intends to transfer such securities on or after the date when the company is required to comply with above mentioned rules, shall get such securities dematerialised before the transfer and a person who subscribes to any securities of the concerned private company whether by way of private placement or bonus shares or rights offer

on or after the date when the company is required to comply with above mentioned rule shall ensure that all his securities are held in dematerialised form before such subscription.

Notification dated 27th October, 2023 as Companies (Management and Administration) Second Amendment Rules, 2023

By present modification, it requires every company to designate a person responsible for providing information to the Registrar or any authorized officer regarding beneficial interests in the company's shares.

A responsible person, may be company secretary or key managerial personnel (other than the company secretary) or every director.

Every company shall inform the details of the designated person in Annual return.

If the company changes the designated person at any time, it shall intimate the same to the Registrar in e-form GNL-2 specified under the Companies (Registration Offices and Fees) Rules, 2014.

Notification dated 30th October, 2023

By present Notification, Ministry of Corporate Affairs has made the provisions of section 5 of the Companies (Amendment) Act, 2020 effective from 30th October, 2023.

The amendment provides flexibility to Public Companies to list their securities on foreign stock exchanges and includes provision for exemption by the Central Government. This Section amends Section 23 of the Companies Act, 2013.

Ministry of Corporate Affairs has integrated with National Single Window System (NSWS) for the Incorporation of Companies and LLPs. Incorporation services can also be availed through NSWS portal.

Compliance Calendar

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Due dates for the Month of Dec, 2023#

Regulation	Due Date	Compliance	Description
Income Tax Act, 1961	7-Dec-23	TDS Payment	Due date for deposit of tax deducted/collected for the month of November, 2023.
	14-Dec-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 Oct, 2023
	15-Dec-23	TCS Certificate	Quarterly TDS certificate in respect of tax deducted by any person for the quarter ending Oct 30, 2023
	15-Dec-23	Advance Tax	Third instalment of advance tax for the assessment year 2024-25
	30-Dec-23	Form 3CEAD	Furnishing of report in Form No. 3CEAD for a reporting accounting year (assuming reporting accounting year is January 1, 2022 to December 31, 2022) by a constituent entity, resident in India, in respect of the international group of which it is a constituent if the parent entity is not obliged to file report under section 286(2) or the parent entity is resident of a country with which India does not have an agreement for exchange of the report etc.
	31-Dec-23	Belated ITR	Filing of belated/revised return of income for the assessment year 2023-24 for all assessee (provided assessment has not been completed before December 31, 2023)
Goods and Service Tax (GST)	10-Dec-23	GSTR 7	Summary of Tax Deducted at Source (TDS) and deposited for the month of November 2023
	10-Dec-23	GSTR 8	Summary of Tax Collected at Source (TCS) and deposited by E-Commerce Operator for the month of November 2023
	11-Dec-23	GSTR -1	Return of outward supplies of taxable goods and/or services for the Month of November 2023 (for Assesses having turnover exceeding 1.5 Cr.)
	13-Dec-23	IFF-QRMP	Option of uploading Invoices for November 2023 using Invoice Furnishing Facility (IFF) applicable to tax payers opted for Quarterly Return Monthly Payment (QRMP) Scheme
	13-Dec-23	GSTR 6	Return for Input Service Distributors for the month of November 2023
	20-Dec-23 or 22-Dec-23 or 24-Dec-23	GSTR-3B	Simple GSTR return for the Month of November 2023 (based on category of taxpayer)
PT Act 1975 (Employee)	30-Dec-23	PT Employees	Monthly PT Payment for the month of Nov, 2023
Employees' Provident Funds & Miscellaneous Provisions Act, 1952	15-Dec-23	PF Payment	PF Payment for the month of Nov, 2023
Employees' State Insurance Act, 1948 - (ESIC)	15-Dec-23	ESIC Payment	ESIC Payment for the month of Nov, 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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