

FOCAL POINT

Newsletter from Raju and Prasad Chartered Accountants

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Dear Reader,

The Policy updates and Verdicts of Various High Courts are enclosed in this newsletter.

We would like to draw your attention to various important updates, including CBIC explanatory notes pertaining to provisions of the Finance Act, 2023. Additionally, the Ministry of Corporate Affairs (MCA) has notified norms regarding the listing of equity shares in the International Financial Services Centre, SEBI has prescribed the procedure for offering shares to employees in Offer for sale through stock exchanges, and extension of due dates for various compliances by various authorities.

Hope this issue will find you and your near & dear in good health. Be safe, and healthy

Regards

For Raju and Prasad

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“Learn from the mistakes of others. You can’t live long enough to make them all yourself.”

- Eleanor Roosevelt

Policy Watch

Direct Tax

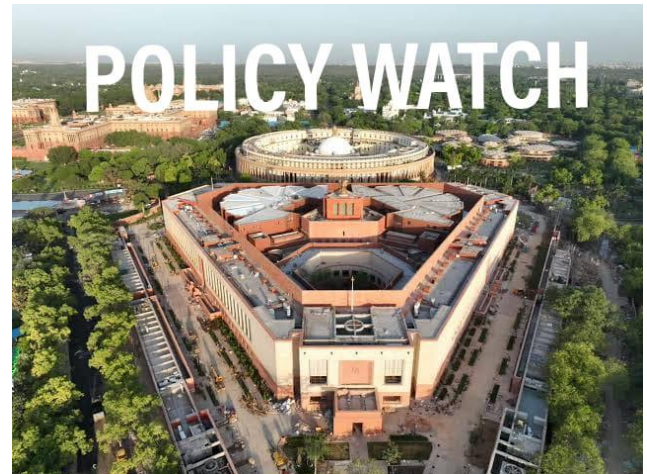


CBDT Notifies ITR-6 for the Assessment Year 2024-25.

CBDT vide Notification No. 16/2024 dated 24th January 2024 had issued a circular notified Income-tax Return Form 6. Earlier the board notified the Income-tax Return (ITR) forms 1 & 4 for the Assessment Year 2024-25 vide Notification no. 105/2023, dated 22nd December 2023.

The newly notified ITR-6 form incorporates changes pertaining to amendments made by the Finance Act 2023. The form also seeks a few additional details from companies, including Legal Entity Identifier (LEI), MSME registration, reasons for tax audit under section 44AB, disclosure of winnings from online games taxable under section 115BBJ, and more.

Companies filing ITR for Assessment Year 2024-25 are now obligated to



provide these specific details as part of their tax reporting.

Refer to the following link for the Form ITR-6:

<https://incometaxindia.gov.in/communications/notification/notification-16-2024.pdf>

CBDT Releases Explanatory Notes Pertaining to Provisions of the Finance Act, 2023

CBDT vide Circular No. 01/2024 has released the explanatory notes to the provisions of the Finance Act, 2023. These explanatory notes describe the substance of the provisions/amendments made by the Finance Act, 2023 relating to Income-tax.

Refer to the following link for the circular:

<https://incometaxindia.gov.in/communications/circular/circular-1-2024.pdf>

MCA



MCA Notifies Norms w.r.t Listing of Equity Shares in IFSC (International Financial Services Centre) by Public Companies

MCA vide notification no. G.S.R. 61(E) dated 24th January 2024, has notified the Companies (Listing of equity shares in permissible jurisdictions) Rules, 2024.

These regulations apply to unlisted public companies and listed public companies (as far as they are following regulations framed or directions issued in this regard by the SEBI) issuing securities for listing on approved stock exchanges in permissible jurisdictions, such as the IFSC (International Financial Services Centre).

The Permitted exchanges include the India International Exchange and the NSE International Exchange. Additionally, the Ministry of Corporate Affairs (MCA) outlines certain ineligible entities under these rules, such as Nidhi Companies and companies limited by guarantee.

Eligibility Criteria: Companies ineligible to Issue Securities in Approved Jurisdictions

As per the Companies (Listing of equity shares in permissible jurisdictions) Rules, 2024, a company ineligible to issue securities under this rule is:

- (a) has been registered under section 8 or declared as Nidhi under section 406 of the Act;
- (b) is a company limited by guarantee and also having a share capital;
- (c) has any outstanding deposits accepted from the public;
- (d) has a negative net worth;

(e) has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holder or any other secured creditor.

It should be noted that this clause shall not apply if the company had made good the default and a period of two years had lapsed since the date of making good the default;

(f) has made any application for winding-up under the Act or for resolution or winding-up under the IBC, 2016, and in case any proceedings against the company for winding-up under the Act or for resolution or winding-up under the IBC, 2016 is pending;

(g) has defaulted in filing of an annual return under section 92 or a financial statement under section 137 of the Act within the specified period.

An unlisted public company, which does not fall under the above list and which has no partly paid-up shares, may issue equity shares for the purposes of listing on a stock

exchange in a permissible jurisdiction. It is to be noted that the conditions specified under FEM (Non-Debt Instrument), Amendment Rules, 2024 are to be complied with.

These regulations provide clarity on eligibility criteria, listing requirements, and reporting obligations, fostering transparency and compliance within the international financial landscape.

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NDE1NzI3NjYy&docCategory=Notifications&type=open>

MCA Extends the Deadline for Filing Form BEN-2 & Form 4D for LLPs Without Additional Fees Until May 15th 2024.

MCA vide Notifications dated 09.11.2023 and 27.10.2023 had prescribed E-form LLP BEN-2 to file a return to the Registrar in respect of declaration u/s 90 of Companies Act, 2013 and E-form LLP Form No. 4D to file a return to the Registrar in respect of declaration of beneficial interest in contribution received by the LLP.

In view of the transition of MCA-21 from V2 to V3 and to promote compliance on the part of reporting LLPs, the MCA has decided to allow LLPs to file Form LLP BEN-2 and LLP Form No. 4D, without payment of any additional fees, up to 15th May 2024. The two forms shall be made available in version 3 for filing purposes w.e.f 15th April 2024.

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NDE3OTY0MjMy&docCategory=Circulars&type=open>

RBI Updates



RBI Hikes Ceiling on Remuneration for Non-Executive Directors of Private Banks From 20 Lakhs to 30 Lakhs Per Annum.

According to the circular dated 26.04.2021, the ceiling of Rs. 20 lakh per annum was specified in respect of remuneration of Non-Executive Directors (NEDs), other than the Chair of the Board.

Considering the crucial role of NEDs in the efficient functioning of bank Boards and its various Committees and in order to enable the banks further to attract qualified competent individuals to their Boards sufficiently,

RBI vide circular No. RBI/2023-24/121 DoR.HGG.GOV.REC.75/29.67.001/2023-24, dated 9th February 2024 has now decided to revise the aforementioned ceiling to Rs. 30 lakh per annum.

Further, the banks are required to have suitable criteria for granting fixed remuneration to its NEDs, with the approval of its Board before any review of the extant remuneration. The Board of the bank may fix a lower amount within the ceiling limit of Rs. 30 lakh per annum depending upon the size of the bank, experience of the NED, and other relevant factors.

The instructions would apply to all the Private Sector Banks including Small Finance Banks (SFBs) and Payment Banks (PBs) as also the wholly owned subsidiaries of Foreign Banks. The

instructions would come into force with immediate effect.

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12607&Mode=0>

RBI to Introduce Key Fact Statement (KFS) for Retail and MSME Loans & Advances.

RBI vide. Press release 2023-2024/1827, Dated 08th February 2024, has released a Statement on Developmental and Regulatory Policies. The Statement sets out various developmental and regulatory policy measures relating to Financial Markets, Regulations, and Payment Systems & Fintech.

The key highlights of the Statement on Developmental and Regulatory Policies include:

1. Review of Regulatory Framework for Electronic Trading Platforms

In October 2018, the Reserve Bank implemented a regulatory framework concerning electronic trading platforms (ETPs) facilitating transactions in financial instruments under its jurisdiction. This framework

was designed to promote fair access, transparency, safety, and efficiency within trading processes while establishing robust infrastructures and preventing market abuse.

In recent years, there's been greater integration of onshore and offshore forex markets, tech advancements, and more product diversity. Market makers have also requested to access offshore ETPs offering permitted Indian Rupee (INR) products. Responding to these trends, the RBI reviewed the regulatory framework for ETPs. The revised regulatory framework will be issued separately for public feedback.

2. Expansion of Gold Price Risk Hedging Options for Resident Entities

In December 2022, resident entities were granted the ability to hedge their exposures to gold price risk efficiently by accessing recognized exchanges in the International Financial Services Centre (IFSC). Building upon this, the RBI has decided to extend this flexibility by allowing resident entities to hedge

the price of gold in the over-the-counter (OTC) segment within the IFSC. Detailed instructions regarding this update will be issued separately.

3. Enhanced Transparency in Loan Pricing: Key Fact Statement Requirement Expanded

The Reserve Bank has recently introduced measures to enhance transparency and disclosure practices among regulated entities (REs) regarding loan pricing and associated charges.

One such measure involves the provision of a Key Fact Statement (KFS) to borrowers. KFS ensures clear and concise communication of essential loan details, including the total cost of borrowing. Initially, the KFS was specifically mandated regarding loans by scheduled commercial banks to individual borrowers; digital lending by REs; and microfinance loans. The requirement for KFS will now extend to all REs offering retail and MSME loans.

4. Proposed Measures to Enhance Security in Aadhaar Enabled Payment System

Aadhaar Enabled Payment System (AePS), operated by NPCI, facilitated over 37 crore transactions in 2023, showcasing its crucial role in financial inclusion. To bolster security, the RBI has proposed to streamline the onboarding process, including mandatory due diligence, for AePS touchpoint operators, to be followed by banks. Additional fraud risk management requirements will also be considered.

5. Proposal of a new Framework for Secure Digital Payments Authentication

The Reserve Bank has consistently emphasized the necessity of Additional Factor of Authentication (AFA). While the RBI hasn't mandated a specific AFA method, the payments landscape has predominantly relied on SMS-based One Time Passwords (OTPs).

However, with advancements in technology, alternative

authentication methods have surfaced. To promote the adoption of these innovative security measures in digital transactions, the RBI proposed a principle-based "Framework for authentication of digital payment transactions". Detailed instructions on this framework will follow separately.

https://rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=57276

SEBI



SEBI Allows Promoters to Offer Shares to Employees in 'Offer for Sale' Through Stock Exchange Mechanism

As per the extant procedure of Offer for Sale (OFS) to employees of the eligible company is happening outside the stock exchange (SE) mechanism. SEBI observed that said procedure is time-consuming & involves additional costs, therefore, it has now decided that the promoters can also offer the shares to employees in OFS through the SE Mechanism. The procedure for OFS to employees through the SE

Mechanism is an additional option to the existing procedure of OFS to employees.

SEBI vide Circular No. SEBI/HO/MRD/MRD-PoD-3/P/CIR/20-24/6, Dated 23rd January 2024 has prescribed the procedure for offering shares to the employees in OFS through SE. As per the procedure, the OFS to employees must be on T+1 day along with the retail category under a new category called 'Employee', for whom a certain number of shares must be reserved. Bidding must be allowed during trading hours on T+1 day only. The employees must place bids only at the cut-off price of T+1 day.

Likewise, the floor price of the retail category must be disclosed to the participants under the 'Employee' category. The employees shall be allotted shares at a price based on a cut-off of the retail category, subject to discount, if any.

Each employee is eligible for allotment of equity shares up to INR 2,00,000. Provided that in the event of

under-subscription in the employee portion, the unsubscribed portion may be allotted to such employees whose bid amount is more than INR 2,00,000, on a proportionate basis, for a value over INR 2,00,000, subject to the total allotment to an employee not exceeding INR 5,00,000.

The maximum bid amount must be INR 5,00,000. Also, the employees are required to make upfront payments in cash or cash equivalents to the extent of 100% of the order value.

In circumstances like a mismatch of the 'Employee' category PAN, bids shall be rejected as their allotment is based on the PAN details of employees shared by the company on T+1 day. The total shares on T+1 day including reserved shares for the 'Employee' category must be transferred to the designated Clearing Corporation.

For the implementation of this framework, SEBI has advised all recognized stock exchanges & clearing corporations to take necessary steps, make necessary

amendments to the relevant bylaws, rules & regulations, and bring these provisions to the notice of market participants along with disseminating the same on their website.

The provisions of this circular shall come into effect from the 30th day of issuance of this circular.

https://www.sebi.gov.in/legal/circulars/jan-2024/framework-for-offer-for-sale-ofs-of-shares-to-employees-through-stock-exchange-mechanism_80842.html

Verdicts

Direct Tax

Direct
Tax

Act: The Income Tax Act, 1961

1. Delay in Payment of Tax Can't be Equated with Wilful Attempt to Evade Tax

Vide Decision of HIGH COURT OF BOMBAY Unique Trading Co. v. Income tax officer.

Facts of the case:

1. The case in question was a criminal complaint filed by the Income Tax

Department against Unique Trading Company and its partners for an offence punishable under Section 276C(2) of the Income Tax Act, 1961. The section deals with the wilful attempt to evade the payment of tax, penalty, or interest under the Act. The Income Tax Department alleged that the company had wilfully attempted to evade the tax payment and sought to prosecute the company and its partners for the same.

2. The company, however, argued that the delay in tax payment was not a wilful attempt to evade the tax payment. It was also argued that it had paid the tax due immediately after the service of the show cause notice. After hearing both sides, the Bombay High Court agreed with the company and quashed the criminal complaint filed by the Income Tax Department.

Judgement:

1. The High Court observed that the delay in tax payment was not a wilful attempt to evade the tax payment. It also observed that the

company had paid the tax due immediately after the service of the show cause notice and that the tax due was paid in full.

2. The court also noted that the company had paid the interest on the due amount and that the tax due was paid within 5 days of the service of the show cause notice. The court also observed that the company had declared the income and assessed the self-assessment tax. It was neither a case of underreporting income nor showing diminished tax liability.
3. Accordingly, prosecution for an alleged offence punishable under section 276C(2) was to be quashed.

2. High Court condones delay in filing ITR as Company was under bona fide belief that it can't file ITR if AAR ruling is pending

Vide decision of HIGH COURT OF MADRAS in Tiong Woon Project & Contracting (P.) Ltd. vs Central Board of Direct Taxes.

Facts of the case:

1. The petitioner was a company incorporated in Singapore undertaking turnkey construction projects involving erection, installation, and commissioning. In relation to three projects, the petitioner approached the Authority for Advance Rulings (AAR) and requested a ruling with regard to the tax liability in India. The due date for filing the return of income for the relevant assessment year was 30.09.2012, and the extended deadline under Section 139(4) of the Income Tax Act, 1961 (the Income Tax Act) was 31.03.2014.
2. Referring to the provisions of Section 245(R)(1) providing that the AAR shall not allow an application where the question raised in the application is already pending before any income tax authority, the petitioner did not furnish the returns of income for the relevant AY as it would result in the pending applications.
3. Subsequently, the questions were answered, holding that the income is taxable in India, and the petitioner filed the return of income for that year in March 2017, along with an

application for condonation of delay. However, the application for condonation of delay was rejected.

4. Aggrieved by the order, the assessee filed a writ petition to the Madras High Court.

Judgement:

1. The High Court held that section 119(2)(b) enabled the Board to condone the delay in filing the return of income. The provision indicated that the Board may admit an application if it is desirable or expedient to condone the delay to avoid genuine hardship.
2. In the instant case, the petitioner explained the delay and that it relied on the provision of Section 245R(2). The section empowers the AAR not to allow an application for an advance ruling where the question raised in the application is already pending before any income tax authority or the Appellate Tribunal. The petitioner asserted and contended that it was under the bona fide belief that the filing of income returns would qualify as a

pending proceeding before the assessing officer.

3. It was held that the petitioner's assertion that it believed bona fide that it could lose the valuable right of requesting an advance ruling by filing the returns of income while the applications are pending before the AAR cannot be disregarded as lacking credibility.
4. If the petitioner had filed the returns of income prior to the due dates, it was likely that the applications for advance ruling would have been held to be not maintainable as per the proviso to Section 245R(2). Accordingly, the writ petition was allowed.

Vide decision of HIGH COURT OF MADRAS in Supreme Paradise vs Assistant Commissioner.

Facts of the case:

1. The petitioner was engaged in the retail sale of mobile phones. The GST Authorities had issued a notice to the petitioner demanding a tax on the discount ordered by the supplier. The authorities argued that the discount could be allowed only in cases specified in Section 15(3)(a) and (b) of the CGST Act, 2017.
2. The petitioner challenged the order on the ground that the transactional value should be the value on which GST was levied and paid on the entire invoice amount, which included a volume discount. The petitioner further argued that the discount was not deducted for GST levy purposes and that the invoice value (without deduction of the volume discount) including GST was paid to the vendor supplier. Hence, the petitioner did not need to pay further tax on the volume discount amount.

Indirect Tax

Act: Central Goods and Services Act, 2017

1. High Court Set Aside Order Demanding Tax on Post-Supply Volume Discount Being Not Includible in Transaction Value

Judgement:

1. The Honorable High Court noted that a further sale or supply of goods or services by the recipient of such goods or services at a discounted price cannot form part of the "transaction value" of such recipient/seller unless such discount was on account of subsidy for such supply given by a 3rd party and was disguised as a discount. A discount linked to subsidy alone can form part of "transaction value".
2. The court also noted that the discount ordered to the petitioner and the discounted price at which the petitioner elected further sale to its customers were two independent transactions and there was no scope for intermingling them for demanding tax from the petitioner. The Court, therefore, quashed the impugned orders and remitted the case back to the respondent authority to pass the order on merits.

2. High Court Directs Assessee to Approach Department Seeking Redetermination of Interest Demand as Per Retrospective Amendment

Vide Authority of HIGH COURT OF RAJASTHAN in Swift Motors v. Superintendent Central Goods & Service tax.

Facts of the case:

1. The petitioner, a registered person, was issued a notice demanding interest under Section 50 of the Central Goods and Services Tax Act, 2017 (CGST Act). The petitioner was issued notice whereby it was called upon to deposit interest amounting to Rs. 22,94,722/- within a period of three days. It filed a writ petition and submitted that in view of the retrospective amendment to Section 50 of the Act, the demand raised by the department requires to be re-determined.

Judgement:

1. The Honorable High Court noted that during the pendency of the petition, the provisions of Section 50 of the CGST Act, 2017 have undergone change by the Finance Act, 2019, whereby proviso to Section 50 was inserted vide Section 100 of the said Finance Act, 2019. Whereafter,

further amendment has taken place by the Finance Act, 2021, wherein by Section 112 of the said Finance Act, 2021, proviso has been given a
2. retrospective effect and has been made applicable w.e.f. 01.07.2017. Therefore, the Court disposed of the petition and directed the petitioner to approach revenue indicating the payable amount and seeking re-determination of demand in line with amended provisions of Section 50.

<https://www.taxmann.com/research/gst/caselaws>

Statutory and Tax Compliance Calendar of March 2024

GOODS & SERVICE TAX

10-Mar	GSTR 8 for Feb
11-Mar	GSTR 1 for Feb
13-Mar	GSTR 5 for Feb (NRTP)
20-Mar	GSTR 3B for Feb
20-Mar	GSTR 5A for Feb (OIDAR)

STATUTORY

10-Mar	Professional Tax (PT)
15-Mar	Provident Fund (PF), ESI Payment for Feb

INCOME TAX

07-Mar	TCS Payment for Feb
07-Mar	TDS Payment for Feb
15-Mar	Q4 Advance tax
31-Mar	Country By Country Report in Form No. 3CEAD

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