

NEWS LETTER

AJAY RATTAN & CO Chartered Accountants

NEWSLETTER FOR NOVEMBER 23
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ADVISORY BOARD

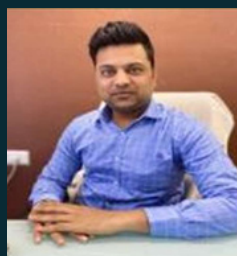


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COMPLIANCE



DUE DATES | November 2023

INCOME TAX

| Due Date | Compliance Detail | Applicable To |
|------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 7 th | a) TDS/TCS deposit b) Equalization Levy deposit | a) Non-Government deductors b) All dedutors |
| 15 th | <ul style="list-style-type: none">TDS certificate in Form 16A (non-salary) | <ul style="list-style-type: none">All Deductors |
| 30 th | <ul style="list-style-type: none">Income-tax Return (where Transfer Pricing is applicable)Income tax return (ITR) in Form ITR 7 | <ul style="list-style-type: none">All taxpayers subject to Transfer Pricing regulations as per Income-tax Act, 1961Charitable & Religious Trusts / Institutions |

ROC

| Due Date | Compliance Detail | Applicable To |
|------------------|----------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 29 th | <ul style="list-style-type: none">Filing of Annual Return in form MGT-7/MGT-7A with ROCFiling of form PAS- 6 with ROC | <ul style="list-style-type: none">All Companies (whose AGM is held on 30 October 2023).filling of the reconciliation of the share capital audit report (half yearly) |

GST

| Due Date | Compliance Detail | Applicable To |
|------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 10 th | a) GSTR-7 (TDS return under GST) b) GSTR-8 (TCS return under GST) | a) Person required to deduct TDS under GST b) Person required to collect TCS under GST |
| 11 th | GSTR – 1 (Outward supply return) | <ul style="list-style-type: none"> • Taxable persons having annual turnover > Rs. 5 crore in FY 2022-23 • Taxable persons having annual turnover ≤ Rs. 5 crore in FY 2022-23 and not opted for Quarterly Return Monthly Payment (QRMP) Scheme |
| 13 th | a) GSTR-6 [Return by input service distributor (ISD)] b) GSTR-5 (Return by Non- resident) c) Invoice Furnishing Facility- IFF (Details of outward supplies of goods or services) | a) Person registered as ISD b) Non-resident taxable person (NRTP) c) Taxable persons having annual turnover ≤ Rs. 5 crore in FY 2022-23 and opted for QRMP scheme |
| 20 th | a) GSTR-3B (Summary return) b) GSTR-5A [Online Information Database Access and Retrieval (OIDAR) services return] | a) .Taxpayers having annual turnover > Rs. 5 crore in FY 2022-23 . .Taxpayers having annual turnover ≤ Rs.5 crore in FY 2022-23 and not opted for QRMP Scheme . b) OIDAR services provider |
| 25 th | Form GST PMT-06 (Payment of tax for Quarterly filers) | Taxable persons having annual turnover ≤ Rs. 5 crore in FY 2022-23 and opted for QRMP scheme |

other

| Due Date | Compliance Detail | Applicable To |
|------------------|---------------------------------|---------------|
| 15 th | Deposit of PF &ESI contribution | All Deductors |

DIRECT TAX

Section 115BAA of the Income-tax Act, 1961 allowing option to follow concessional tax regime for domestic companies – Central Board of Direct Taxes (CBDT) condones delay in filing of Form 10-IC for Assessment Year (AY) 2021-22, till 31 January 2024

Background

Section 115BAA of the Act provides for an optional concessional tax regime for domestic companies @ 22% (plus surcharge and cess) on profits, provided they are willing to give-up / forego on certain specific tax exemptions / incentives mentioned in the said section. The option to exercise being governed by the said provision is applicable from AY 2020-21 onwards.

The taxpayer is required to submit Form 10-IC with the tax authorities if it wants to follow section 115BAA. The form is required to be submitted on or before the due date of filing corporate Income-tax Return (ITR) u/s 139(1) of the Income-tax Act for the relevant year. The option once exercised is applicable to subsequent AYs as well. Failure to submit Form 10-IC timely results in denial of the concessional tax rate.

The issue that arose

AY 2020-21 being the 1st year for which section 115BAA is applicable, representations were received by the CBDT from industry that delay in filing Form 10-IC for the said year should be condoned. This is because many companies though have opted for section 115BAA in AY 2020-21, had not filed Form 10-IC which was a statutory requirement. While processing corporate ITRs of AY 2020-21, huge demands were created as higher tax rate under regular provisions of the Act was applied.

Condonation of delay by CBDT for AY 2020-21 (vide circular issued in March 2022)

Considering the difficulties faced by industry in submission of Form 10-IC for AY 2020-21 (being the 1st year for which section 115BAA was applicable), CBDT vide circular issued in March 2022 had condoned the delay for submission of Form 10-IC in cases where the following conditions were fulfilled:

- ITR for AY 2020-21 was filed on or before the due date u/s 139(1) of the Income-tax Act
- The taxpayer has opted for taxation u/s 115BAA in 'Filing Status' in 'Part A-GEN' of Form ITR-6, and
- Form 10-IC was filed electronically on or before 30 June 2022

Similar extension in due date for submission of Form 10-IC for AY 2021-22 allowed by CBDT, till 31 January 2024

Following its footsteps of last year, CBDT has granted similar extension in timeline for submission of Form 10-IC for AY 2021-22, till 31 January 2024 (provide the remaining 2 conditions are also fulfilled by the taxpayer).

Amendment in Income-tax Rules relating to obtaining & quoting Permanent Account Number (PAN)

CBDT has amended the following Income-tax Rules.

| Rule | Description | Amendment by CBDT |
|--------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Rule 114B of Income-tax Rules, 1962 | <ul style="list-style-type: none"> • The Rule relates to various transactions in relation to which quoting of PAN is mandatory • A person is allowed to furnish declaration in Form 60 if he does not possess PAN | <ul style="list-style-type: none"> • A company or partnership firm (including limited liability partnership) is not required to submit Form 60 • A foreign company has been allowed to furnish declaration in Form 60 if such foreign company has no taxable income in India and does not have PAN. The relaxation is available only with respect to the following transactions entered into with an International Financial Services Centre (IFSC) banking unit: <ul style="list-style-type: none"> ✓ Opening an account with bank (other than basic savings bank deposit account) ✓ A time deposit, if the amount of deposit > Rs. 50,000 in each transaction or Rs. 5 lakh in aggregate during a FY with bank, post office, nidhi company or non-banking finance company • Necessary changes have been made in Form 60 |
| Rule 114BA of Income-tax Rules, 1962 | <p>The Rule lists following additional situations in which a person is required to obtain PAN:</p> <ul style="list-style-type: none"> • Cash deposit or withdrawal of Rs. 20 lakh or more with bank or post office • Opening a current account or cash credit account with the bank or post office | <p>Both Rule 114BA and 114BB have been amended to give more clarity with respect to non-residents and foreign companies.</p> <p>Further, these rules do not apply if a non-resident or foreign company conducts transactions with an IFSC banking unit that involve deposits or withdrawals through means other than cash or opening a current account that is not a cash credit account.</p> <p>However, the benefit is available subject to the condition that non-resident / foreign company has no taxable income in India.</p> |
| Rule 114BB of Income-tax Rules, 1962 | <p>A person must quote either his PAN or Aadhaar number if he enters into any of the transactions mentioned above</p> | |

Charitable & Religious Trusts / Institutions – CBDT relaxes reporting details of ‘Significant Donors’ & their relatives /concerns in audit report in Forms 10B, 10BB

Background

Trusts / Institutions are eligible to claim tax exemption under 2 regimes:

- 1st Regime - Fund / Institution / Trust / University / Educational Institution / Hospital / Medical Institution referred u/s 10(23C)(iv) or (v) or (vi) or (via) of Income tax Act, and
- 2nd Regime Trust registered u/s 12AA/ 12AB of Income tax Act.

Trusts / Institutions are required to get their accounts audited annually in order to be entitled for the prescribed tax exemption under the Income tax Act. The audit report is required to be submitted in Form 10B, where

- The total income of Trust / Institution > Rs . 5 Crore during the year, or
- Such Trust / Institution has received any foreign contribution during the year, or
- Such Trust / Institution has applied any part of its income outside India during the year

In othercases, the audit report is required to be furnished in Form 10BB. The Income tax return(ITR) in Form ITR 7 is requiredto be submitted by the Trusts / Institutions annually.

Last month, the due date to submit audit reports in Form 10B and 10BB for FY 2022-23 was extended by a month from 30 September 2023 to 31 October 2023. Similarly, the due date for submission of ITR 7 was extended from 31 October 2023 to 30 November 2023.

Option to avail lower tax rate @ 15% for new domestic manufacturing co-operative societies u/s 115BAE of Income-tax Act – CBDT prescribes Form 10-IFA to be submittedby taxpayer before due date of filing Income-tax Return (ITR)

Background

Vide Finance Act 2023, a new section 115BAE was inserted in the Income-tax Act providingan option of concessional tax rate @ 15 % for new domestic manufacturing co-operative societies set up in India, provided they:

- Do not avail specified incentives / deductions, and
- Are registered / set up on or after 1 April 2023, and
- Commence manufacture / production on or before 31 March 2024

Income from non-manufacturing activities earned by such co-operative societies are taxable @ 22% (and not 15%) without any deductions / allowances.

The intention behind insertion of above provision was to provide a level-playing field between company and co-operative society form of legal entities. Similar exemption for companies was already existing in the Income-tax Act but not for co-operative societies.

As per section 115BAE(5), the above benefit of lower tax rate of 15% is available only if the co-operative society exercises the option to be governed by section 115BAE by filing a form before due date of filing ITR for the 1st year commencing on or after Assessment Year 2024-25, for which it wants to avail the lower tax rate. Once the option has been exercised for any year, it is not be allowed to be withdrawn for the same or any other year.

Special audit u/s 142(2A) of the Income-tax Act – CBDT prescribes Form 6D for audit report on inventory valuation to be furnished by taxpayer

Background

Special audits u/s 142(2A) of the Income-tax Act are audits conducted on the direction of tax officer during the course of scrutiny proceedings of a taxpayer. If at any point of time during the scrutiny proceedings, tax officer having regard to the nature, complexity, volume of accounts, doubts about its correctness and in the interest of the revenue is of the opinion that it is necessary to do so, may direct the taxpayer to get his accounts audited by an auditor nominated by the revenue and furnish the audit report.

Amendment by Finance Act 2023 to plug tax avoidance through valuation of inventory

It is possible for taxpayers to reduce their tax liability by undervaluing inventory. A need was felt to equip the tax department to prevent such practice. Accordingly, vide an amendment (addition) made in section 142(2A) by Finance Act 2023, tax officer has been equipped during the course of scrutiny proceedings to direct the taxpayer to get its inventory valued by a cost accountant nominated by the Commissioner of Income-tax.

Guidelines prescribed by CBDT vide Notification no. 82 dated 27 September 2023 for inventory valuation

CBDT has prescribed Form 6D as the format in which inventory valuation audit report would be required to be produced by the taxpayer. Remuneration payable by the taxpayer to the auditor / cost accountant shall range between Rs.3,750 to Rs.7,500 per hour (to ensure quality deliverable).

The inventory valuation report shall consist of detailed information such as:

- Audited financial results for the relevant year
- Details of raw material for the period under reporting
- Valuation of finished goods, stock-in-trade, by-products, work-in-progress, intermediate products, etc.
- Valuation of special categories of assets held as inventory (such as shares, debentures, agricultural products, livestock, mineral oils, etc.)

Angel tax u/s 56(2) (viib) – CBDT notifies new valuation rules (i.e, amended Rule 11UA of Income-tax Rules, 1962) for equity shares & compulsorily convertible preference shares (CCPS)

- Prior to amendment by Finance Act 2023, section 56(2)(viib) of the Income-tax Act provided that where a closely held company received from a Resident, any consideration for issue of shares exceeding the face value of such shares, the consideration amount exceeding the fair market value of the shares, would be taxable as 'income from other sources' in the hands of the company

- The Finance Act 2023 has amended the above provision with effect from 1 April 2023, bringing even Non-Resident Investors within the ambit of angel tax as an anti-abuse provision. This created much hue and cry within the industry especially start-ups, since it is common for start-ups to receive premium money at a nascent stage from overseas investors

[Amendment to Rule 11UA - Public consultation document issued by CBDT in May, 2023](#)

On 26 May 2023, CBDT issued draft of amended Rule 11UA of the Income-tax Rules, 1962 as below, for public comments.

- Rule 11UA currently prescribed 2 valuation methods with respect to valuation of shares namely, Discounted Cash Flow (DCF) and Net Asset Value (NAV) method for resident investors. It was proposed to include 5 more valuation methods (in addition to DCF and NAV) as below, available for non-resident investors:
 - ✓ Comparable company multiple method
 - ✓ Probability weighted expected return method
 - ✓ Option pricing method
 - ✓ Milestone analysis method
 - ✓ Replacement cost method
- Further, where any consideration is received by a company for issue of shares from any non-resident entity notified by the Central Government, such price / consideration may be adopted as the benchmark fair value of equity shares for resident and non-resident investors subject to the following:
 - ✓ To the extent such consideration from does not exceed the aggregate consideration that is received from the notified entity, and
 - ✓ The consideration has been received by the company within 90 days of issue of shares which are the subject matter of valuation

On similar lines, price matching for resident and non-resident investors would be available with reference to investment by venture capital funds or specified funds.

- The valuation report by a merchant banker would be acceptable, if it is not more than 90 days'old prior to the date of issue of shares which are subject matter of valuation (currently, the DCF valuation report by merchant banker must be issued as on the date of issue of shares)
- To account for foreign exchange fluctuations, bidding processes and variations in other economic indicators, etc. which may affect the valuation of the unlisted equity shares during multiple rounds of investment, a safe harbor of 10% variation in value had been proposed

CBDT had sought public comments on the above draft by 5 June 2023.

[Final amendment in Rule 11UA notified by CBDT on 25 September 2023](#)

Finally, CBDT on 25 September 2023 has notified the new Rule 11UA with following significant changes viz-a-viz the draft amendment issued in May 2023 for public comments:

- Bringing parity between valuation of unlisted equity shares and CCPS (except for NAV method which applies only to unlisted equity shares)
- Clarifying the ambiguity on window period of 90 days for price matching facility
- There is no change in the safe harbor tolerance limit of 10% proposed in May 2023.

The new Rule 11UA is applicable from 25 September 2023 onwards. Applicability of the new Rule on shares issued between 1 April 2023 to 24 September 2023 may be disputed. Further, the new Rule may be disputed on some other grounds as well, such as why the 5 new methods of valuation are restricted to investment by non-residents only. This may create practical challenge and discrimination for resident investors even if issue price is same for both category of investors.

Form 10F can now be submitted electronically by non-residents without the need to hold PAN

India has entered into Double Taxation Avoidance Agreements (DTAAs) with various countries, which allow income earned by non-residents from India to be taxable in India at a comparatively lower rate of tax. In order to claim benefit under the DTAA, however, a non-resident has to submit Form 10F with the India tax authorities.

Form 10F is a self-declaration that a non-resident taxpayer must provide along with a tax residency certificate from the government of its home country. According to the Income-tax Act of India, non-resident taxpayers can claim the advantages of a DTAA only if they furnish a valid tax residency certificate from their country of residence. If the tax residency certificate does not include all the necessary information, non-residents must submit Form 10F.

Form 10F can be submitted as per below conditions:

- If non-resident has PAN in India, it can submit Form 10F online through the Income-tax portal
- If non-resident does not have PAN in India, it can submit Form 10F manually (this relaxation was provided by Central Board of Direct Taxes till 30 September 2023)

Now, from 1 October 2023 onwards, there was a state of confusion as to how non-residents can claim DTAA benefits since timeline to submit Form 10F without the need to hold PAN has expired.

CBDT considering the above difficulty has enabled non-residents who do not have a PAN to e-file Form 10F on the Income-tax portal by creating an account without the requirement of first obtaining a PAN. A new option of 'Non-Residents not holding and not required to have PAN' is now available on the income tax portal's registration tab although there is no official notification on this.

portal.incometax.gov.in/iec/foportal/#/pre-login/register

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Register and find all your tax data in a single secure platform! * Indicates mandatory fields

Let's Get Started

Register as

Taxpayer Others

Category *

Non-Residents not holding and not req...

Continue >

Cancel

Chartered Accountant / External Agency / Tax Deductor and Collector / e-return intermediary/ TIN 2.0 Stakeholders

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Procedure for registration for online submission of Form 10F

- Step 1 – Open the window <https://www.incometax.gov.in/iec/foportal/>. Click on 'Register' at top right.
- Step 2 – Click on 'Others' under 'Let's get started' option
- Step 3 – Select 'Non-Residents not holding and not required to have PAN' in the drop-down menu under 'Category'. Click on 'Continue'
- Step 4 – Proceed to fill the relevant details
- Step 5 – Verify contact details (email address and mobile number via one time password)
- Step 6 – Upload documents like tax residency certificate, address proof, identity proof, etc.

After following the above steps, an account will be created for the non-resident taxpayer which can then proceed to submit Form 10F online.

Requirement to submit Form 10F had created hurdle for non-residents who wish to claim benefits of DTAA. Eliminating the need for holding a PAN has provided comfort to non-residents to engage in cross-border transactions with India and claim tax benefit with greater ease.



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CBIC ISSUED NOTIFICATIONS IN THE MONTH OF OCTOBER 2023:

Notification No. 52/2023- Central Tax, Dated-26.10.2023

1. Short Title and Commencement: The notification formally names the rules as the Central Goods and Services Tax (Fourth Amendment) Rules, 2023. These rules will come into effect from 26th October, 2023.

2. Rule 28 Amendment: The notification formally names the rules as the Central Goods and Services Tax (Fourth Amendment) Rules, 2023. These rules will come into effect from 26th October, 2023.

3. Rule 142 Modification: Rule 142 Modification: In Rule 142, Sub-rule (3) is updated. The term “order” is replaced with “intimation,” indicating a shift in communication from the proper officer.

4. Rule 159 Adjustment: Rule 142 Modification: In Rule 142, Sub-rule (3) is updated. The term “order” is replaced with “intimation,” indicating a shift in communication from the proper officer.

5. FORM GST REG-01 Update: In FORM GST REG-01, PART-B, a new clause (xiva) is added to include “One Person Company” as a type of business entity registering under GST.

6. FORM GST REG-08 Revision: FORM GST REG-08 is substantially updated to cover the order of cancellation of registration as a Tax deductor at source or Tax Collector at source. The form outlines the reasons for cancellation and emphasizes the liability to pay tax and other dues even after registration cancellation for the prior period.

7. FORM GSTR-8 Amendments: In FORM GSTR-8, serial number 5 is omitted. The section pertaining to interest and late fee payable and paid is revised, with separate entries for interest on TCS and late fees for Central Tax and State/UT Tax. Debit entries in the cash ledger for TCS, interest, and late fee payments are included.

8. FORM GST PCT-01 Modification: A paragraph is added to FORM GST DRC-22, indicating that the order shall cease to have effect either on the date of issuance of an order in FORM GST DRC-23 by the Commissioner or after one year from the date of issuance, whichever is earlier.

9. FORM GST DRC-22 Alteration: A paragraph is added to FORM GST DRC-22, indicating that the order shall cease to have effect either on the date of issuance of an order in FORM GST DRC-23 by the Commissioner or after one year from the date of issuance, whichever is earlier.

Conclusion: The Ministry of Finance's recent notification, No. 52/2023 – Central Tax, brings forth important amendments to the Central Goods and Services Tax Rules, 2017. These changes impact various aspects of GST, including the valuation of supplies, refund periods, and forms used for registration and compliance. Businesses and professionals working within the GST framework should acquaint themselves with these amendments to ensure compliance and avoid any unintended consequences of the changes.

CBIC ISSUED NOTIFICATIONS IN RATES IN THE MONTH OF OCTOBER 2023:

1). Notification No. 12/2023- Central Tax (Rate) Dated-19.10.2023

Where the supplier of passenger transport services or rental services of any motor vehicles with operator, opts to discharge GST @5%, ITC in excess of 5% shall be restricted.

Activities of a race club by way of totalisator and gambling have been excluded from the service rate notification.

The entry related to 'Gambling', 'Gambling and betting services including similar online services' and 'Lottery services' in the scheme of classification of services has been omitted.

This notification shall come into force with effect from the 20th day of October, 2023.

2). Notification No. 13/2023- Central Tax (Rate) Dated-19.10.2023

Services of water supply, public health, sanitation conservancy, solid waste management, slum improvement and upgradation supplied to Governmental Authorities have been exempted from GST.

This notification shall come into force with effect from the 20th day of October, 2023.

3). Notification No. 14/2023- Central Tax (Rate) Dated-19.10.2023

Supply of all goods and services by Indian Railways taxed under forward charge mechanism to enable them to avail ITC to reduce the cost for Indian Railways.

This notification shall come into force with effect from the 20th day of October, 2023.

4). Notification No. 15/2023- Central Tax (Rate) Dated-19.10.2023

Refund of unutilized ITC now restricted to only those construction services of complex, building or a part thereof, which are intended for sale to a buyer and where the amount charged includes the value of land or undivided share in land.

This Notification shall come into force with effect from 20th of October, 2023.

5). Notification No. 16/2023- Central Tax (Rate) Dated-19.10.2023

Bus operators organized as companies providing transportation services through Electronic Commerce Operators (ECOs) to pay GST using their ITC.

This Notification shall come into force with effect from 20th of October, 2023.

Conclusion: The Government of India, through the Ministry of Finance, has made significant amendments to the Central Goods and Services Tax Act, 2017, with Notification No. 16/2023. These changes primarily impact the classification and taxation of omnibuses in the transportation sector. Businesses and individuals dealing with the transportation of passengers via omnibuses need to take note of these changes. Companies supplying such services through electronic commerce operators may not benefit from the exemption provided in clause (ia). It's imperative for affected entities to stay informed and compliant with these regulatory adjustments to avoid any potential legal or financial consequences. The effective date of 20th October 2023, marks the commencement of these amendments, and timely adaptation is essential.

6). Notification No. 17/2023 and 18/2023 - Central Tax (Rate) Dated-19.10.2023

- GST on molasses reduced from 14% to 2.5%
- GST on spirits for industrial use taxable @ 9%
- GST on food preparation of millet flour in powder form containing at least 70% millets by weight:
 - 2.5% pre-packaged and labelled form
 - 0% other than pre-packaged and labelled form.

This Notification shall come into force with effect from 20th of October 2023.

7). Notification No. 19/2023- Central Tax (Rate) Dated-19.10.2023

Sale of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by Ministry of Railways shall be taxed under forward charge.

8). Notification No. 20/2023- Central Tax (Rate) Dated-19.10.2023

In case of supply of imitation zari thread or yarn made out of metallized polyester film /plastic film, refund of unutilized ITC due to inverted duty structure shall not be available.

Similar Notifications have been issued under:

- IGST Act vide Notification Nos. 15 to 23/2023 - Integrated Tax (Rate) dated 19 October 2023; and
- UTGST Act vide Notification Nos. 12 to 20/2023 - Union Territory Tax (Rate) dated 19 October 2023.

1). Circular No. 202/14/2023-GST, Dated - 27.10.2023

Circular 202/14/2023 provides essential clarification regarding the use of INR for export remittances. It ensures that when Indian exporters of services receive payments in INR through designated Special Rupee Vostro Accounts, they fulfill the conditions for export of services as per the IGST Act. This clarification simplifies the process and promotes ease of doing business for exporters. Suitable trade notices are recommended to publicize the content of this circular, and any implementation difficulties should be promptly brought to the notice of the Board for resolution.

2). Circular No. 203/15/2023-GST, Dated – 27.10.2023

Circular No. 203/15/2023-GST offers valuable insights into the determination of the place of supply for various services. This article delves into the key clarifications provided in the circular, addressing issues related to the transportation of goods, advertising services, and co-location services.

ISSUE 1- Place of supply in case of supply of service of transportation of goods, including through mail and courier

It is hereby clarified that with effect from 01.10.2023 the place of supply of services of transportation of goods, including through mail and courier, in cases where location of supplier of services or location of recipient of services is outside India, will be determined by the default rule under section 13(2) of IGST Act and not as performance based services under sub-section (3) of section 13 of IGST Act. Accordingly, in cases where location of recipient of services is available, the place of supply of such services shall be the location of recipient of services and in cases where location of recipient of services is not available in the ordinary course of business, the place of supply shall be the location of supplier of services.

ISSUE 2- Place of supply in case of supply of services in respect of advertising sector:

First Case - Supply of Space or Rights:

In the first scenario, where there is a supply (sale) of space or rights to use space on hoardings or structures (immovable property) owned by the vendor to an advertising company for displaying their advertisements, the determination of the place of supply follows Section 12(3)(a) of the IGST Act. In this case, the place of supply for services provided by the vendor for the supply or sale of space on hoarding/structures or for granting rights to use these hoardings/structures for advertising is the location where such hoarding/structure is physically situated.

Second Case – Advertising Services by Vendor:

In the second case, the advertising company intends to display its advertisements on hoardings or billboards at a specific location, and they engage the services of a vendor. The responsibility for arranging these hoardings/billboards lies with the vendor, who may either own these structures or rent them or obtain rights to use them from another entity. The vendor is solely responsible for displaying the advertising company's advertisements at the designated location. In this scenario, the place of supply for the services provided by

the vendor to the advertising company is different. These services are fundamentally categorized as advertising services and fall under the purview of Section 12(2) of the IGST Act. The determination of the place of supply is as follows: i. If the services are provided to a registered person, the place of supply is the location of that registered person. ii. If the services are provided to a person who is not a registered entity, then: If the address on record exists, the place of supply is the location of the recipient. In all other cases, the place of supply is the location of the supplier of services. This clarification ensures that the place of supply for advertising services is determined in a manner that accurately reflects the nature of the services and the status of the recipient. It provides clarity for businesses in the advertising sector, enabling them to comply with GST regulations effectively.

ISSUE - 3- Place of supply in case of supply of the “co-location services”

Understanding Co-location Services:

Co-location services are a critical aspect of the modern digital landscape, offering businesses the opportunity to rent space in data center facilities for hosting their servers and computing hardware. These services often come bundled with various offerings related to hosting and information technology (IT) infrastructure. When it comes to determining the place of supply for these services, the Central Board of Indirect Taxes and Customs (CBIC) provides clarification for two distinct scenarios.

Scenario 1: Comprehensive IT Infrastructure Services

In the first scenario, co-location service providers offer a comprehensive range of services related to hosting and IT infrastructure. This includes essential components such as network connectivity, backup facilities, firewall services, and monitoring and surveillance services. These services are crucial for ensuring the uninterrupted operation of servers and related hardware. In such cases, the place of supply for co-location services follows the default rule outlined in sub-section (2) of Section 12 of the Integrated Goods and Services Tax (IGST) Act. According to this rule, the place of supply is determined as the location of the recipient of co-location services. This scenario is applicable when the services provided by the supplier are indispensable for the recipient's business or company to interact with the system through a web-based interface, particularly concerning server hosting and operation.

Scenario 2: Physical Space Rental without IT Infrastructure Services

The second scenario pertains to cases where the agreement between the co-location service provider and the recipient is limited to the rental of physical space along with basic infrastructure. In such instances, the services provided do not include components of Hosting and IT Infrastructure Provisioning services. Furthermore, the responsibility for the upkeep, operation, monitoring, and surveillance of servers and related hardware rests entirely with the recipient of the services. In this case, the supply of services falls under the category of renting of immovable property. As a result, the place of supply for these services is determined as the location where the immovable property, in this case, the data center or co-location facility, is physically situated. This clarification provided by the CBIC ensures that the determination of the place of supply for co-location services aligns with the specific nature and scope of the services offered.

It offers clear and well-defined guidelines for businesses operating in the co-location sector, facilitating consistent and accurate compliance with Goods and Services Tax (GST) regulations. Businesses and service providers in this sector can now effectively navigate the complexities of GST compliance, depending on the nature of the co-location services they offer.

Conclusion: Circular No. 203/15/2023-GST brings significant clarity to the determination of the place of supply for various services. These clarifications are essential for businesses to ensure accurate GST compliance and reporting. Staying informed about such circulars is pivotal for businesses navigating the complex world of GST.

3). Circular No. 204/16/2023-GST, Dated – 27.10.2023

The circular offers clarification on two significant issues:

1). Taxability of Personal Guarantee by Directors

This section deals with the taxability of personal guarantees provided by directors to banks for securing credit facilities for the company, especially when provided without any consideration. According to the CGST Act, directors and companies are considered related persons. The circular explains that even when provided without consideration, this activity is treated as a supply of service as per the CGST Act. To determine the taxable value, Rule 28 of the Central Goods and Services Tax Rules, 2017, is invoked. However, it mentions that if the RBI mandates that no consideration, including commission or fees, can be paid to directors for providing personal guarantees, the open market value is effectively zero. Therefore, no GST is payable on such supplies when no consideration can be paid. In exceptional cases where directors or guarantors are paid remuneration, the taxable value of the supply of service is the remuneration or consideration provided by the company, directly or indirectly.

2. Taxability of Corporate Guarantee

This section addresses the taxability of corporate guarantees provided by one company on behalf of another related company or a holding company to secure credit facilities, even when provided without consideration. In both cases, the activities are treated as supplies of service between related parties as per Schedule I of the CGST Act. To determine the taxable value, Rule 28 of the CGST Rules is employed. However, recognizing the variations in practices followed by field formations and taxpayers in determining the taxable value, a new sub-rule (2) has been added to Rule 28 of the CGST Rules. This sub-rule, introduced through Notification No. 52/2023 dated 26th October 2023, provides a standardized method for determining the taxable value of such supplies between related persons. The circular emphasizes that the new sub-rule (2) will apply to all cases of supply of services involving the provision of corporate guarantees between related persons, regardless of the availability of Input Tax Credit (ITC) to the recipient of services.

Conclusion: Circular 204/16/2023 offers essential clarity on the taxability of personal and corporate guarantees in the context of GST. It ensures uniformity in the application of GST provisions and provides clear guidelines for businesses and tax authorities. This circular will help taxpayers navigate the complexities of GST and comply with the regulations effectively. It is advised that suitable trade notices be issued to publicize the contents of this circular. Any difficulties in implementing these guidelines should be promptly brought to the notice of the Board for resolution.

4). Circular No. 205/17/2023-GST, Dated – 31.10.2023

Imitation Zari Thread Classification

The circular addresses an important question that has arisen after the initial recommendation. It pertains to whether metal-coated plastic film, which is later converted to metallized yarn and twisted with materials like nylon, cotton, polyester, or any other yarn to create imitation zari thread, falls under the category covered by Sl No. 218AA of Schedule I, which attracts a 5% GST rate, or if it should be classified under Sl No. 137 of Schedule III, attracting a 12% GST rate. To resolve this issue, reference is made to the HS Explanatory Notes, which provide essential guidance. The heading 5605 in these notes encompasses various products, including yarn consisting of textile material combined with metal thread or strip. It also covers yarn of any textile material covered with metal using various processes, such as electro-deposition or metal dust coating. Additionally, products made of a core of metal foil or plastic film coated with metal dust and sandwiched between plastic film layers are also included.

GST Council's Recommendation

In light of the information provided by the HS Explanatory Notes, the GST Council has recommended that imitation zari thread or yarn made from metallized polyester film or plastic film, falling under HS 5605, should be classified under Sl No. 218AA of Schedule I. This means that such products will attract a **5%** GST rate. Furthermore, the GST Council has specified that no refund will be permitted on polyester film (metallized) or plastic film due to the inversion of the tax rate. This decision aims to simplify and clarify the taxation of these products, ensuring uniformity in the applicable GST rates.

5). Circular No. 206/18/2023-GST, Dated – 31.10.2023

The circular addresses various service-related issues and their implications for businesses and consumers.

1. 'Same Line of Business' and Passenger Transport Service

The first issue addressed in the circular is whether 'same line of business' includes passenger transport service and renting of motor vehicles, specifically leasing of motor vehicles without operators. It is clarified that input services in the same line of business include the transport of passengers or renting of motor vehicles with operators. Leasing of motor vehicles without operators is taxed differently and falls outside this category.

2. GST on Reimbursement of Electricity Charges

The circular also addresses the applicability of GST on the reimbursement of electricity charges received by real estate companies, malls, and airport operators from their lessees or occupants. It clarifies that when electricity is supplied bundled with renting of immovable property and/or maintenance of premises, it constitutes a composite supply. The principal supply, i.e., renting of immovable property and/or maintenance of premises, dictates the GST rate, even if electricity is billed separately.

3. GST on Job Work for Processing of “Barley” into “Malted Barley”

The circular provides guidance on whether job work for processing barley into malt attracts GST at 5% (as for job work related to food and food products) or 18% (for job work related to the manufacture of alcoholic liquor for human consumption). It clarifies that the conversion of barley into malt is considered job work related to food products, regardless of its end use. Therefore, it attracts a 5% GST rate.

4. District Mineral Foundations Trusts (DMFTs) and GST Exemptions

The circular also delves into the exemption from GST for services related to horticulture and horticulture works when the value of goods in the total supply does not exceed 25%. Such services, when provided to the Central Public Works Department (CPWD), are eligible for exemption under specific notification clauses. This exemption is aligned with constitutional provisions relating to Panchayats and Municipalities.

5. Exemption from GST for Horticulture Services to CPWD

The circular also delves into the exemption from GST for services related to horticulture and horticulture works when the value of goods in the total supply does not exceed 25%. Such services, when provided to the Central Public Works Department (CPWD), are eligible for exemption under specific notification clauses. This exemption is aligned with constitutional provisions relating to Panchayats and Municipalities.

Conclusion: The circular, Circular No. 206/18/2023-GST, offers valuable clarifications on the GST treatment of various services, ensuring that businesses and consumers have a clear understanding of their tax obligations and liabilities. These clarifications help streamline the GST process and promote transparency and compliance. If any difficulties arise in implementing the circular’s recommendations, stakeholders are encouraged to bring them to the notice of the Board for resolution.

GST PORTAL REQUIRES USERS TO REGISTER THEIR DEVICES FOR EACH SPECIFIED LOGIN ID

This means that if a user attempts to log in from a different system, an OTP will be necessary to access the GST portal. This step aims to enhance security and ensure that only authorized users can access the portal from registered devices.

LAST CHANCE TO CLAIM THE INPUT TAX CREDIT FOR THE FY-2022-23

Make sure to review all your purchase invoices for FY 22-23 for ITC. If any ITC remains unclaimed, remind your suppliers to include it in their GSTR 1 for October 2023. This will ensure its reflection in your GSTR 2B by the 14th of November, enabling you to claim the ITC in your GSTR 3B

Remember, as per Section 16(4), the last date to claim ITC is the GSTR 3B for October 2023, which must be filed before the 30th of November.



Sub-section (1A) was inserted under Section 29 of the Companies Act 2013 facilitating the Central Government to prescribe such class or classes of unlisted companies for which the securities shall be held and/ or transferred in dematerialised form only.

1. In exercise of the powers conferred under the said section, Rule 9B has been inserted vide the Companies (Prospectus and Allotment of securities) Second Amendment Rules, 2023 specifying the requirement of mandatory dematerialisation of securities issued by private companies.

2. The mandatory dematerialisation requirement is applicable on all securities of every private company, excluding small companies and government companies. The provisions are applicable with immediate effect, and a timeline upto 30th September, 2024 (18 months from 31st Mar 2023) is provided for the compliance with the mandatory dematerialisation requirements.

3. In case a company ceases to be a small company after 31st March, 2023, the timeline of 18 months triggers from the close of the financial year in which it ceases to be a small company.

4. Private companies shall Issue all securities in dematerialised form only and facilitate dematerialisation of all existing securities.

5. Private companies should make an application with depository for dematerialisation of all existing securities and securing ISIN for each type of security.

6. A small company means a company, other than a public company, having
(A) paid up share capital not exceeding Rs. 4 crores and
(B) turnover not exceeding Rs. 40 crores.

Further, the following cannot be a small company –

(A) A holding company or a subsidiary company.

(B) A company registered under section 8.

(C) A company or body corporate governed by any special Act.



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