NEWSLETTER

AJAY RATTAN & CO.

Chartered Accountants

Newsletter for October'22
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ADVISORY BOARD

CA. Ajay Aggarwal
B. Com. (Hons.), FCA, FCS, LLB DISA, Dip. (International Taxation)
Email ID: ajay@ajayrattanco.com
Phone Number: 9810005583

CA. Varun Garg
B. Com. (Hons.), FCA
Email ID: varun@ajayrattanco.com
Phone Number: 9023637000

CA Pradeep Rastogi
B. Com. (Hons.), FCA, LLB, MIMA, PGD (ADR), APCCL
Email ID: pradeep@ajayrattanco.com
Phone Number: 9818344544

IN THIS ISSUE:

DUE DATES |OCTOBER 2022

Due Date	Compliance Detail	Applicable To
7th	a) TDS/ TCS deposit b) Equalization Levy deposit c) Audit Report in Form 3CA / 3CB / 29B	a) Non-Government Deductors b) All Deductors c) Extended date for cases getting time-barred on 30th September, 2022
10th	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
11th	GSTR – 1 (Outward supply return)	a) Taxable persons having annual turnover > Rs. 5 Crore in FY 2021-22 b) Taxable persons having annual turnover ≤ Rs. 5 Crore in FY 2021-22 and not opted for Quarterly Return Monthly Payment (QRMP) Scheme.
13th	a) GSTR – 1 (Outward supply return) - Quarterly b) GSTR-6 [Return by Input Service Distributor (ISD)]	a) Taxable persons having annual turnover ≤ Rs. 5 Crore in FY 2021-22 and opted for Quarterly Return Monthly Payment (QRMP) Scheme. b) Person registered as ISD
14th	Filing of statutory auditor's appointment in form ADT-1	All companies in which statutory Auditors are appointed in the Annual General Meeting held on 30th September, 2022
15th	a) Filing of KYC details of directors inForm Web KYC b) Filing of KYC details in form DIR-3 KYC c) Deposit of PF & ESI contribution d) Form 27EQ – TCS return	a) All directors / designated partners holding Director Identification No (DIN) where DIN was allotted prior to 31st March 2022 b) All directors / designated partners holding DIN where DIN was allotted during FY 2021-22 c) All Deductors d) All Collectors

20th	a) GSTR-5 (Return by Non-resident) b) GSTR-5A (OIDAR) services return c) GSTR-3B (Summary return)	a) Non-resident taxable person b) OIDAR services' provider c) (i) Taxable person having annual turnover > Rs. 5 Crore in FY 2021-22 (ii) Taxable persons having annual turnover ≤ Rs. 5 Crore in FY 2021-22 and not opted for Quarterly return Monthly Payment (QRMP) Scheme.
22th	GSTR-3B (Summary return)	Taxable persons having annual turnover ≤ Rs. 5 crore in FY 2021-22 and opted for QRMP scheme and having principal place of business in Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andamanand Nicobar Islands. Lakshadweep
24th	GSTR-3B (Summary return)	Taxable persons having annual turnover ≤ Rs. 5 crore in FY 2021-22 and opted for QRMP scheme and having principal place of business in other States
29th	Filing of audited financial statements in form AOC-4 / AOC-4 XBRL	All Companies holding AGM on 30th September, 2022
30th	Filing of Annual Accounts in Form 8	All LLPs
31st	a) TDS Return b) Filling of MSME dues in MSME Form I for the period Apr- Sep 2022 c) Income-tax Return (where TransferPricing is not applicable) d) Transfer Pricing (TP) Report in Form 3CEB. e) Tax Audit Report in Form 3CA / 3CB	a) All Deductors b) All Companies c) • Corporates • Non corporates (whose accounts are required to be audited) • Partner of a firm whose accounts are required to be audited d) Taxable persons having international transaction or specified domestic transaction e) Taxable persons having international transaction or specified domestic transaction

APPLICABILITY OF GST ON ADVOCATE SERVICES

BY CA AJAY AGGARWAL

With coming into force of Goods & Services Tax (GST) w.e.f., 1st July, 2017, all goods and services are brought under GST.

While prescribing rates of GST to be charged by goods' suppliers/ service providers, the government has given certain exemptions from GST which are contained in Central Tax (Rate) notifications.

As per Notification Number 12/2017 – Central Tax (Rate), the following exemption is given from Advocate Services:

Entry Number 45 - Heading 9982 or Heading 9991: Services provided by-

(a) an arbitral tribunal to -

i. any person other than a business entity;
*ii. a business entity with an aggregate turnover up to such amount in the preceding financial year as makes it eligible for exemption from registration under the Central Goods and Services Tax Act, 2017 (12 of 2017); or **
iii. the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity.

(b) a partnership firm of advocates or an individual as an advocate other than a senior advocate, by way of legal services to -

i. an advocate or partnership firm of advocates providing legal services;
ii. any person other than a business entity;
*iii. a business entity with an aggregate turnover up to such amount in the preceding financial year as makes it eligible for exemption from registration under the Central Goods and Services Tax Act, 2017 (12 of 2017); or **
iv. the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity.

(c) a senior advocate by way of legal services to -

i. any person other than a business entity;
*ii. a business entity with an aggregate turnover up to such amount in the preceding financial year as makes it eligible for exemption from registration under the Central Goods and Services Tax Act, 2017 (12 of 2017); or **
iii. *the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity.*

*NOTE - The aggregate turnover upto which registration is not required is Rs. 20 lakhs except for a few states where limit is Rs. 10 lakhs.

Hence, the only chargeable event is when the service is provided to a business entity having turnover exceeding basic exemption limit as prescribed.

Now, let us understand the definition of business entity.

As explained in point 2(n) of the said notification - "business entity" means any person carrying out business;

Business is defined under Section 2(17) of CGST Act, 2017 as –

"business" includes—

a. any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
b. any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
c. any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
d. supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
e. provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
f. admission, for a consideration, of persons to any premises;
g. services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
h. activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and
i. any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.

It implies that services provided by advocates to business entities are chargeable to GST. In order to shift the burden of registration and related compliances, the government has issued notification number 13/2017 – Central Tax Rate by which the following services are liable to be discharged by service recipient and not by service provider.

Entry Number 2 –

Category of Supply of Services	Supplier of Service	Recipient of Service
Services provided by an individual advocate including a senior advocate or firm of advocates by way of legal services, directly or indirectly.	An individual advocate including a senior advocate or firm of advocates.	Any business entity located in the taxable territory. **

Explanation.— "Legal service" means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority.

** NOTE: Taxable territory is defined in the Central Goods & Services Tax (CGST) Act, 2017 as –

Section 2(109) - "taxable territory" means the territory to which the provisions of this Act apply. **[i.e., India].**

Thus, any legal service provided by advocates to any business entity located in the taxable territory is covered under Reverse Charge and hence, the business entity is required to discharge GST liability thereon at the prevailing rates.

The only area of concern remains –

Legal services provided to a business entity which is located in non-taxable territory which is defined in the Central Goods & Services Tax (CGST) Act, 2017 as –

Section 2(79) - "non-taxable territory" means the territory which is outside the taxable territory. [i.e., outside India].

To conclude, any legal services provided by an advocate to a business entity located outside India is taxable under the GST Act.

Circular No 18 of 2022

Additional Guidelines for removal of difficulties under sub-section (2) of section 194R of the Income-tax Act, 1961

Question 1:

If loan settlement/waiver by a bank is to be treated as benefit/perquisite, it would lead to hardship as the bank would need to incur the additional cost of tax deduction in addition to the haircut that he has taken. Will section 194R of the Act apply in such a situation?

Answer:

It is true that waiver or settlement of loan by the bank may be an income to the person who had taken the loan. It is also true that subjecting such a transaction to tax deduction under section 194R of the Act would put extra cost on such bank, as this would require payment of tax by the deductor in addition to him taking a haircut already. Hence, to remove difficulty, it is clarified that one-time loan settlement with borrowers or waiver of loan granted on reaching settlement with the borrowers by the following would not be subjected to tax deduction at source under section 194R of the Act:

Question 2:

If under the terms of the agreement, the expense incurred by the service provider is the cost-of-service recipient and such cost is reimbursed by the service recipient to service provider, how is it benefit/perquisite if the bill is not in the name of service recipient?

Answer :

It has been clarified that any expenditure which is the liability of a person carrying out business or profession, if met by the other person is in effect benefit/perquisite provided by the second person to the first person in the course of business/profession. Now, if service provider incurs some expense while rendering service to service recipient and the bill is in the name of service provider, then in substance (irrespective of the terms of the agreement) this expense is the liability of the service provider and not of service recipient. It is service provider who gets input credit of GST included in the expenses incurred by him. If it was the liability of the service recipient, then GST input credit would have been allowed to him (service recipient) and not to service provider. Hence, the answer to question No 7 in the Circular No 12 of 2022. Correctly clarifies that in such a situation reimbursement of such an expense is benefit/perquisite on which tax is required to be deducted under section 194R of the Act.

Question 3:

Tax deduction under section 194C and 194J is required to be made from the gross amount of bill including the reimbursement. A person has provided service to a Company and out of pocket expenses are charged by him to the Company along with service fee in the same bill. Company deducts tax under section 194J of the Act on both service fee component as well as on out-of-pocket expense in accordance with this circular. Is there a noncompliance with the provision of section 194R of the Act?

Answer:

If out of pocket expenses (reimbursement) are already part of the consideration in the bill on which tax is deducted under the relevant provisions of the Act, other than section 194R, in accordance with the Circular No 715 dated 8th August 1995, it is clarified that there will not be further liability for tax deduction under section 194R of the Act. In the above example, out of pocket expense is part of the consideration in the bill for professional fee that is charged to the Company and the tax is deducted under section 194J of the Act on the entire consideration including on out-of-pocket expense. In such a case, the out-of-pocket expense is already included as part of professional fee. Hence, there IS no further benefit/perquisite which requires tax deduction under section 194R of the Act.

Question 4:

If there is a dealer conference to educate the dealers about the products of the company - (i) is there a requirement that all dealers must be invited in the conference, (ii) what if dealers arrive one day before and leave one day after and (iii) how to identify benefit against individual dealers in a group activity?

Answer:

Representations have been received from various stakeholders seeking clarity on these questions arising out of answer to question No 8. It is clarified that

it is not necessary that all dealers are required to be invited in a dealer/business conference for the expenses to be not considered as benefit/perquisite for the purposes of tax deduction under section 194R of the Act.

(ii) Expenditure on participants of dealer/business conference for days which are on account of overstay prior to the dates of conference or beyond the dates of such conference would be considered as benefit/perquisite for the purposes of section 194R of the Act. However, a day immediately prior to actual start date of conference and a day immediately following the actual end date of conference would not be considered as overstay.

It is brought to the notice that there may be expenses during such dealer/business conference which need to be classified as benefit/perquisite and tax is required to be deducted under section 194R of the Act. However, there may be practical difficulties in identifying such benefit/perquisite to actual recipient due to the fact that it is a group activity and reasonable allocation is not possible. Noncompliance of the provision of section 194R of the Act, in such a case, would not only result in disallowance under clause (ia) of section 40 of the Act but may also result in treating the benefit/perquisite provider as assessee in default under section 201 of the Act with all other consequences.

In order to remove these practical difficulties, it is clarified that if benefit/perquisite is provided in a group activity in a manner that it is difficult to match such benefit/perquisite to each participant using a reasonable allocation key, the benefit/perquisite provider may at his option not claim the expense, representing such benefit/perquisite, as deductible expenditure for calculating his total income. If he decides to opt so, he will not be required to deduct tax under section 194R on such benefit/perquisite and therefore he will not be treated as assessee in default under section 20 I of the Act. Thus, in such a case he must add back the expenditure, representing such benefit/perquisite, to calculate his total income if such expenditure is debited in the account

Question 5:

Company "A" gifts a car to its dealer "B" and deducted tax on this benefit under section 194R of the Act. Dealer "B" uses this car in his business. Will he get deduction for depreciation in calculating his income under the head "profits and gains of business or profession"?

Answer:

Once Company "A" has deducted tax on gifting of car in accordance with section 194 R of the Act (or released the car after dealer "8" showed him payment of tax on such benefit) and dealer "8" has included this benefit as income in his income tax return, it would be deemed that the "actual cost" of the car for the purposes of section 32 of the Act shall be the amount of benefit included by dealer "8" as income in his income-tax return. Hence, dealer "8" can get depreciation on fulfillment of other conditions for claiming depreciation.

Question 6:

Whether Embassy/High Commissions are required to deduct tax under section 194R of the Act?

Answer:

For the removal of difficulty, it is clarified that the provision of section 194R is not applicable on benefit/perquisite provided by, an organization in scope of The United Nations (Privileges and Immunity Act) 1947, an international organization whose income is exempt under specific Act of Parliament (such as the Asian Development Bank Act 1966), an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign state.

Question 7:

Whether issuance of bonus share/right share is a benefit or perquisite if issued by a company in which the public are substantially interested as defined in clause (18) of section 2 of the Act and whether tax is required to be deducted under section 194R of the Act?

Answer:

In case of bonus shares which are issued to all shareholders by a company in which the public are substantially interested as defined in clause (18) of section 2 of the Act, it has been represented that this does not result in any benefit to shareholders as the overall value and ownership of their holding does not change. Further cost of acquisition of bonus share is taken as nil for capital gains computation when this share is sold. Similar representations have been received seeking clarity on issuance of right shares. It is clarified that the tax under section 194R of the Act is not required to be deducted on issuance of bonus or right shares by a company in which the public are substantially interested as defined in clause (18) of section 2 of the Act, where bonus shares are issued to all shareholders by such a company or right shares are offered to all shareholders by such a company, as the case may be.

Circular No. 19/2022

Extension of timeline for filing of various reports of audit for the Assessment Year 2022-23– reg

On consideration of difficulties faced by the taxpayers and other stakeholders in electronic filing of various reports of audit under the provisions of the Income-tax Act,1961 (Act), the Central Board of Direct Taxes (CBDT), in exercise of its powers under Section 119 of the Act, extends the due date of furnishing of report of audit under any provision of the Act for the Previous Year 2021- 22, which was 30th September 2022 in the case of assessees referred in clause (a) of Explanation 2 to sub-section (1) of section 139 of the Act, to 07th October, 2022

Notification no. 110/2022

Central Board of Direct Taxes (CBDT) notifies Form ITR-A for filingof modified tax-return by successor entity in case of business re- organizations (such as amalgamation / merger / demerger)

Background

Section 170 of the Income-tax Act, 1961 ('Act') governs the procedure of taxation in case of successionto a business pursuant to reorganization (such as amalgamation / merger / demerger). In practice, oncean application is filed with Court, it takes a long time to conclude. Courts have held that Income-tax proceedings pending / completed on the predecessor in such cases are illegal as the predecessor ceases to exist

Further, due to the long time-gap involved between the effective date of business reorganization anddate of issue of final order by the Court, taxpayers are unable to modify their tax return for the said intervening period

Amendment by Finance Act, 2022

The Finance Act, 2022 inserted a new section 170A to enable entities going through business reorganization to file *modified tax returns* for the period between the date from which order of the court iseffective till the date of issue of the order. The modified tax return is required to be furnished within 6 months from the end of the month in which the order is issued. The form for submission of modified tax return was yet to be prescribed by the Government.

New Rule 12AD inserted by CBDT

To implement the change, CBDT has notified a new Rule 12AD in the Income-tax Rules mentioning thebelow.

New form 'ITR-A' prescribed for such 'modified tax returns', to be furnished by the successorelectronically

Form ITR-A asks for details such as,

- Details of the successor entity filing the tax return
- Details of the predecessor entity
- Details of original tax return filed for the relevant intervening year
- Details of the court order approving business reorganisation (such as authority, date, no. of order, etc.)
- 'Effective date' of the business reorganisation as per court order
- Income-tax Return (ITR) 6 modifying the taxable income for relevant intervening year
- Acknowledgment no. and date of filing the modified ITR 6 (auto filled at the time of submission)

If assessment proceedings for a relevant year (to which the court order applies) has been completed *or* ispending on the date of furnishing the modified tax return u/s 170A, the tax officer shall pass an order modifying the taxable income or proceed to complete the assessment, as the case may be, in accordance with the court order and the modified tax return furnished by the successor.

Notification no. 109/2022

CBDT notifies Form 52A for annual reporting by producers of cinematograph films / persons engaged in specified activities (suchas event management, documentary production, production of programmers for telecast on television, etc.)

Amendment by Finance Act, 2022

The Finance Act, 2022 widened the scope of above requirement to include not only producers ofcinematographic films, but also other persons engaged in following (specified) activities:

- Event management
- Documentary production
- Production of programs for telecast on television or over the top (OTT) platforms or other similarplatform
- Sports event management
- Other performing arts
- Any other activity as the Central Government may specify going forward

(1) The statement required to be furnished under section 285B by a person carrying on production of cinematograph film or engaged in specified activity, or both, shall be in Form No. 52A for each previous year.
(2) Form No. 52A shall be furnished within sixty days from the end of the previous year.
(3) For the purpose of section 285B, the prescribed authority shall be the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) or any person authorized by the Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems).
(4) Form No. 52A, shall be furnished electronically, — (i) under digital signature, if the return of income is required to be furnished under digital signature; (ii) through electronic verification code in a case not covered under clause (i).

Notification No. 111/2022 : Application for recomputation of income under sub-section (18) of section 155 of Income -tax Act,1961". Online utility will be available soon 28 September 2022

(1) An application requesting for recomputation of total income of the previous year without allowing the claim for deduction of surcharge or cess, which has been claimed and allowed as deduction under section 40 in the said previous year, shall be made in Form No. 69 on or before the 31st day of March 2023.

(2) Form No. 69 shall be furnished electronically to the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) or the person authorized by the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems).

(3) Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) shall lay down the procedures and standards for furnishing and verification of Form No. 69 and to forward the application received in Form No. 69 to the Assessing Officer.

(4) The Assessing Officer shall, on receipt of the application in Form No. 69, recompute the total income by amending the relevant order and issue notice under section 156 specifying the time period within which amount of tax payable, if any, is to be paid,- (i) for the assessment year relevant to the previous year referred to in sub-rule (1); and (ii) for the assessment years subsequent to the assessment year referred to in clause (i), if the order for such assessment year results in variation in carry forward of loss or allowance for unabsorbed depreciation or credit for tax under section 115JAA or section 115JD

(5) The assessee shall, after making the payment of the tax determined under sub-rule (4), furnish the details of payment of tax in Form No.70 to the Assessing Officer within thirty days from date of making the payment.".

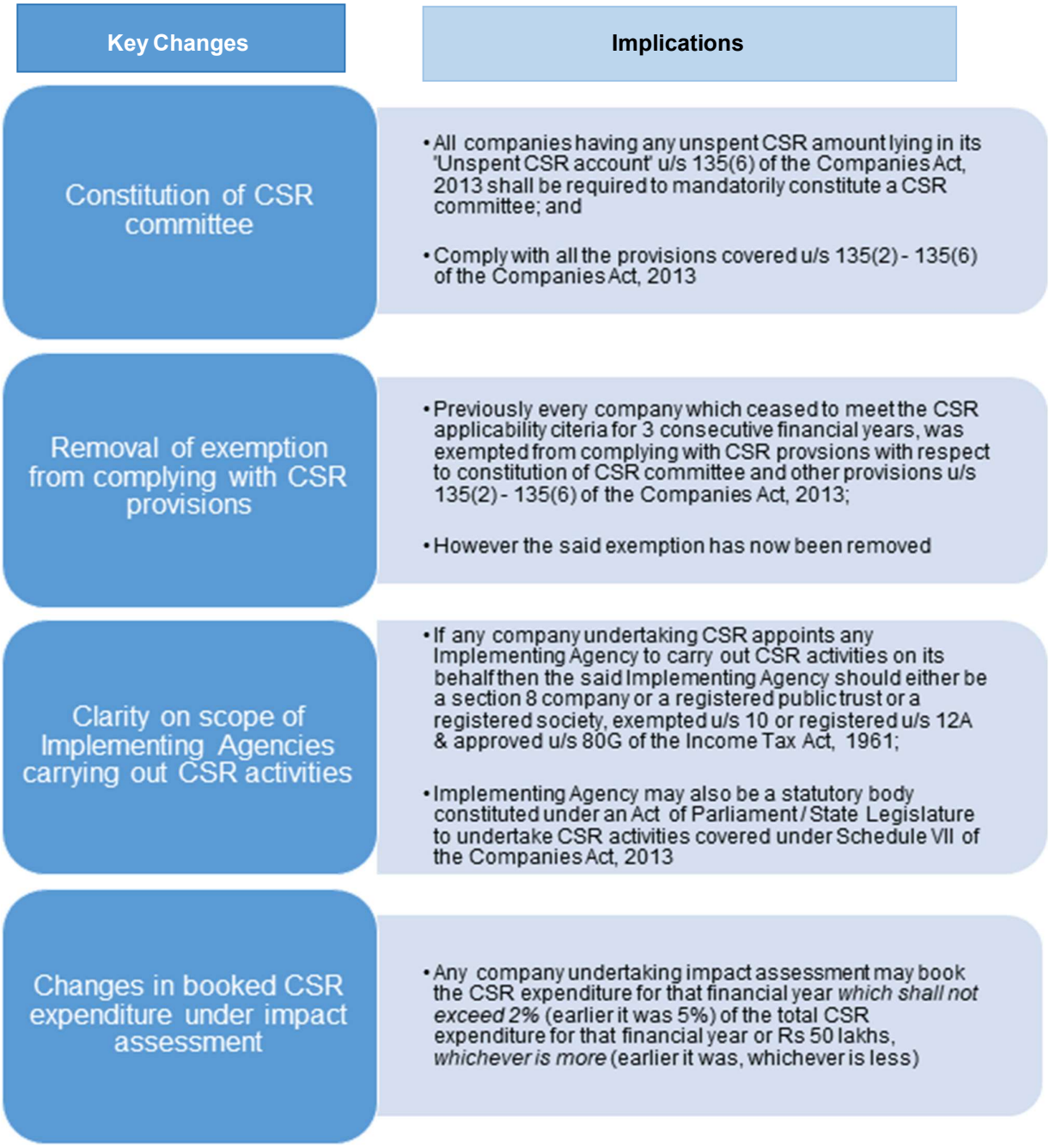
Extension of time limit for filing e-form DIR-3 KYC & web- form DIR-3 KYC (without late filing fee) upto 15 October 2022

Every Director / Designated Partner (DP) holding Director Identification No (DIN) is required to file his / her KYC related details annually in e-Form DIR-3 KYC & web-form DIR-3 KYC on or before 30 September. Any delay in filing attracts late filing feeof Rs 5000.

Ministry of Corporate Affairs (MCA) vide circular no 09/2022 dated 28th September 2022 has extended the time limit for filing above forms (without late filing fee) for FY 2021-22 till 15th October 2022.

Corporate Social Responsibility (CSR) rules – Changes notified such as constitution of CSR committee, clarity on scope of CSR implementing agencies & changes in booked CSR expenditure under impact assessment

With the objective of providing wider and clearer regulation for companies complying with CSR provisions u/s 135 of the Companies Act, 2013, MCA vide notification dated 20 September 2022 has amended the CSR rules and notified the following key changes:



Ministry of Corporate Affairs (MCA) raises the threshold limit for qualifying as a 'Small Company' in India

What is a Small Company?

As per the existing rules, 'Small Company' is a Private Limited Company in Indiahaving:

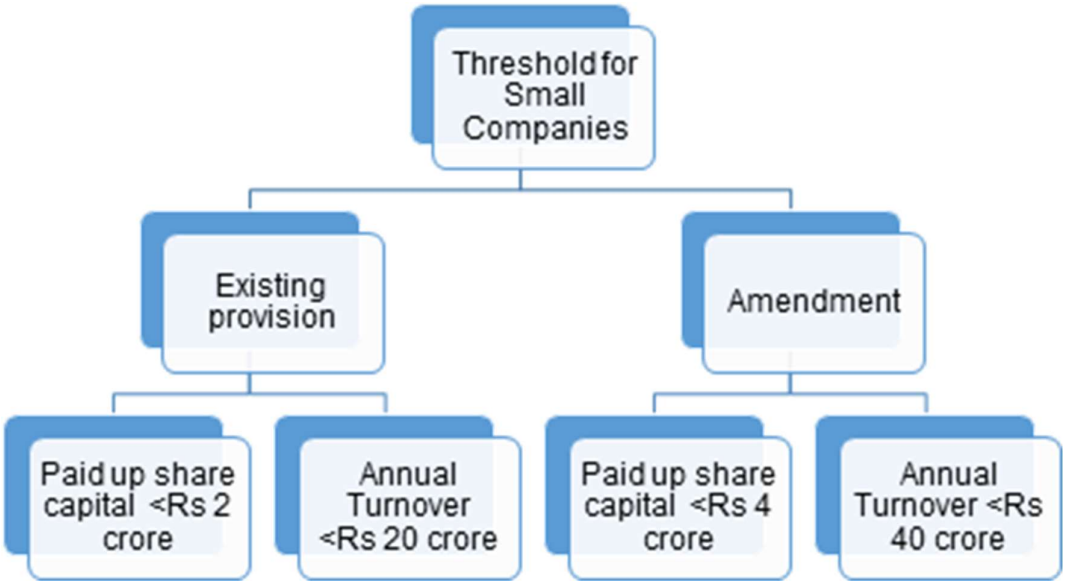
- Paid up share capital < Rs. 2 crore; and
- Annual turnover < Rs. 20 crore

'Small companies' enjoy certain exemptions as per the Companies Act, 2013, suchas below:

- *Certification of annual return not required*
- *Only 2 board meetings to be held in a year*
- *No requirement for rotation of statutory auditors every 5 – 10 years*
- *No requirement to report on internal financial controls in audit report*
- *Exemption from preparation of cash flow statement in annual financial statements*

Relaxation of threshold criteria for qualifying as 'small company' in India

MCA vide notification dated 15th September 2022 has relaxed the monetary threshold limit for qualifying as a small company as below:



This is a welcome move by the Government. By raising the threshold limit, now more Private Limited Companies would be covered within the ambit of Small Company and hence would be able to enjoy the above exemptions.

RBI

RBI notifies new reference rates for determining the interest rates on Foreign Currency (Non-Resident) (FCNR) deposits &notifies new eligibility criteria for opening saving deposits with scheduled commercial & co-operative banks

RBI vide notification dated 16th September 2022 has notified the following changes:

Regarding	Existing provision	Amendment
New reference rate for determining the interest rates on Foreign Currency (Non-Resident) (FCNR) deposits	The Overnight Alternative Reference Rate for the respective currency / Swap rates quoted / displayed by Foreign Exchange Dealers Association of India (FEDAI) shall be used as the reference for arriving at the interest rates on FCNR deposits.	Foreign Exchange Dealers Association of India (FEDAI) is replaced by Financial Benchmarks India Private Limited (FBIL)
Eligibility criteria for opening saving deposits with Scheduled Commercial Banks & Co- operative Banks	Scheduled Commercial Banks and Co-operative Banks shall not open savings deposit accountin the name of any other entities except the following: • Individuals; • Karta of Hindu Undivided Family (HUF); • Organizations / agencies listed in schedule I of RBI Master Directions (Interest rate on Deposits), 2016	Scheduled Commercial Banks & Co-operative Banks shall not open savings deposit account inthe name of following entities: • Government departments; • Bodies depending upon budgetary allocationsfor performance of their functions; • Municipal Corporations or Municipal Committees; • Panchayat Samitis; • State Housing Boards; • Water and Sewerage / Drainage Boards; • State Text Book Publishing Corporations / Societies / Metropolitan Development Authority; • State / District Level Housing Co-operative Societies; • Any political party or any trading / business or professional concern, whether such concern is a proprietary or a partnership firm or a company oran association; Any other entity except individuals, Karta of HUF and Organizations / agencies listed in schedule I of RBI Master Directions (Interest rate on Deposits), 2016

Central Board of Indirect Taxes & Customs (CBIC) issues guidelines for claiming transition Input Tax Credit (ITC) pursuant to Supreme Court (SC) ruling in case of Filco Trade Centre Pvt. Ltd.

[Refer Circular No-180/12/2022-GST dated 09.09.2022]

The Supreme Court extended the time for opening the GST common portal for the above purpose by another 4 weeks. The facility will be made available by GSTIN during the period from 1st October 2022 to 30th November 2022.

CBIC has issued guidelines to file the revised TRAN-1/ TRAN-2 form in compliance from the Circular are as follows:

- The applicant filing or revising the TRAN-1/ TRAN-2 shall also upload Annexure-A along with that form.
- In respect of C/ F/ H/ I forms received after 27.12.2017, the transitional credit of the same cannot be claimed in table 5(b) or 5(c) of TRAN-1.
- The Form once submitted cannot be revised. Therefore, utmost care should be taken before hitting the submit button.
- In case of an already filed form and the credit has been disputed by the Department, the appropriate remedy is to file the appeal or pursue the alternate remedies available in law. In such cases, the taxpayer is not allowed to file the revised form GST TRAN-1/ TRAN-2.
- The declaration submitted by the applicant will be verified by the proper officer and the applicant shall keep ready all the documents/ invoices on the basis of which credit has been claimed.
- No order will be passed by the jurisdictional authority before giving an opportunity of a personal hearing.

Changes Introduced in Table 4 (Eligible ITC) of Form GSTR 3B (Summary return) at the GST Portal

CBIC vide notification no. 14/2022- Central Tax has notified certain changes in Table 4 of Form GSTR 3B for enabling taxpayers to correctly report information regarding ITC availed, ITC reversed and ineligible ITC.

Changes introduced in Table-4

The changes have been incorporated in Form GSTR-3B and are available on GST portal since 1st September 2022. The taxpayers have been advised to correctly report their ITC availment, reversal of ITC and ineligible ITC as per the prescribed format for Form GSTR-3B to be filed for the period August 2022 onwards. These changes in reporting are not applicable for period prior to August 2022. Changes introduced in the format of Table 4 are depicted in Red font in the table below:

Details	Integrated Tax	Central Tax	State Tax	Cess
1	2	3	4	5
(A)ITC Available (whether in full or part)				
(1) Import of goods				
(2) Import of goods				
(3) Inward supplies liable to reverse charge (other than 1 & 2 above)				
(B) ITC Reversed				
(1) As per rules 38, 42 and 43 of CGST Rules and Section 17(5)				
(2) Others				
(C) Net ITC Available [(A)-(B)]				
(D) Other Details				
1) ITC reclaimed which was reversed under Table 4(B)(2) in earlier tax period				
2) Ineligible ITC under section 16 (4) and ITC restricted due to PoS provisional				

Analysis

a) ITC in GST 2B for a tax period not claimable due to receipt of goods in next period or goods not received at all or because supplier has failed to pay tax:
   - To be claimed first in Table 4A (5) of GSTR 3B
   - To be reversed in Table 4B (2) of GSTR 3B
   - To be claimed again in Table 4A (5) in tax period in which good are received or tax period in which supplier makes payment of tax.
   - To be shown in Table 4D (1) in the tax period in which ITC is re- claimed.

b) Reversal of ITC wrongly availed in previous tax periods because of inadvertent mistake may be done in 4B(2).

c) Ineligible ITC u/s 17(5) to be first claimed in 4A (5) and then reversed in 4B (1). Ineligible ITC u/s 17(5) shall no longer be reflected in table 4D as was being done in old format of GSTR 3B.

d) ITC ineligible due to place of supply restrictions or because of limitation period of claim of itc u/s 16(4) is shown in table 4 of GSTR 3B to be also shown in Table 4D (2) of GSTR 3B. This information shall not be entered in Table 4A or 4B of GSTR 3B.

e) Reversal of ITC by banking companies' u/s 17(4) read with R.38: First full amount of ITC shall be shown in Table 4A and then reversal shall be made in Table 4B (1).

f) ITC reversed under Rule 42 and 43 because of partial exempt supplies, if reversed by making entry in 4B (1) in excess may require reclaim in Table 4A (5) because of Rule 42, however no row has been kept in table 4D for reclamation of such ITC. Advisory issued by GSTN says that ITC reversed in 4B (1) is not reclaimable, however Rule 42 perceives the restoration of excess reversal.

g) Similarly, if ITC blocked in 17(5) and reversed in 4B (1) is subsequently found to be eligible*, though may be reclaimed in 4A (5) but there is no row in 4D to reflect such reclaim. Advisory of GSTN says that ITC reversed in 4B (1) is not reclaimable.

h) Reclaimable reversals for *failure to pay suppliers within 180 days* may be parked in 4B (2). Reclamation at the time of payment through 4A (5) shall be supplemented by disclosure in 4D (1).

i) Lapse of ITC on opting for composition scheme or when taxable goods become exempt* shall be parked in 4B (2).

j) Reversal of ITC on inputs and capital goods held in stock on the date of *cancellation of registration* may also be effected through 4B (2).

k) Supplies of *restaurants, hotels, motor cabs etc., housekeeping* through e-commerce operators to be shown in table 3.1.1(ii) of GSTR 3B. Earlier Point 11 of Circular 167/23/2021 dated 17-12-2021 had required to reflect such supplies in table 3.1 (c) of GSTR 3B for the time being So, treatment as per Circular 167 was only ad hoc treatment.

CBIC issues guidelines for launch of prosecution under GST

[Refer Instruction No-4/2022-23 GST dated 01.09.2022]

Section 132 of CGST Act, 2017 prescribes offences which warrant institution of criminal proceedings and prosecution. Prosecution is commencement of legal proceeding and process of exhibiting formal charges against the offender. Earlier, CBIC had issued guidelines on issue of summons, arrests and bail under GST vide instruction no. 3/2022-23 dated 17 August 2022. However, those guidelines do not cover prosecution and hence separate guidelines have been issued by CBIC on 1 September 2022 as below.

Nature	Summary of Key guidelines
Sanction of Prosecution	➢ Availability of adequate evidence is an important consideration for launch of prosecution. ➢ The standard of proof required in a criminal prosecution is higher than adjudication proceeding as the case has to be established beyond reasonable doubt. ➢ Decision to file prosecution should be taken on case to case basis considering various factors such as nature and gravity of offence, quantum of tax evaded or ITC wrongly availed or refund wrongly taken and the nature as well as quality of evidence collected. ➢ Adequate evidence should be collected to establish beyond reasonable doubt that the person had guilty mind, knowledge of the offence, or had fraudulent intention or in any manner possessed an intention for committing the offence. ➢ Prosecution should not be filed merely because a demand has been confirmed in the adjudication proceedings. ➢ Prosecution should not be launched in cases of technical nature or where additional claim of tax is based on a difference of opinion regarding interpretation of law.

	➢ In case of public limited companies. prosecution should not be launched against all directors of the company but should be restricted to only those persons who oversee day to day operations of the company and have actively participated in committing the evasion.
Timing of Prosecution	➢ Generally, the decision on prosecution should be taken immediately on completion of the adjudication proceedings except in cases of arrest where prosecution should be filed as early as possible. However, in light of SC observations in Radheshyam Kejriwal case, prosecution complaint may be filed even before adjudication of the case, where offence involved is grave or qualitative evidence are available or it is apprehended that the concerned person may delay completion of adjudication proceedings. ➢ In cases where any offender is arrested under Section 69, prosecution complaint may be filed even before issue of the show cause notice.
Monetary Limits	➢ Prosecution should normally be launched where amount of tax evasion or ITC misuse or fraudulently obtained refund in relation to specified offences u/s 132(1) > Rs. 5 crores. However, the said monetary limit shall not be applicable in following cases: - Habitual evaders - Taxpayer who has been involved in 2 or more confirmed demand cases of tax evasion or fraudulent refund or misuse of ITC involving fraud, suppression of facts etc. (at the 1st adjudication level or above) in past 2 years and the total confirmed demand [pertaining to total tax evaded and/or total ITC misused and/or fraudulent refund] exceeds Rs. 5 crores. - Arrest cases - Cases where during the course of investigation, arrests have been made under section 69.
Sanctioning authority	➢ The prosecution complaint should be filed only after obtaining the sanction of the Principal Commissioner or Commissioner of CGST in terms of section 132(6) of CGST Act, 2017. ➢ In respect of cases investigated by Directorate General of GST Intelligence (DGGI), the prosecution complaint should be filed only after obtaining the sanction of Principal Additional Director General or Additional Director General, DGGI of the concerned zonal unit.
Compounding of offences	➢ Section 138 of CGST Act, 2017 provides for compounding of offences on payment of compounding amount. Same should be brought to the notice of person being prosecuted and such person should be given an offer of compounding.
Publication of names of convicted persons	➢ Section 159 empowers department to publish name and other particulars of the person convicted under the act. In deserving cases department should invoke this section in respect of persons who are convicted under the Act.
Transitional Provisions	➢ All cases where sanction for prosecution is accorded after the issue of instructions, shall be dealt in accordance with the provisions of the said instructions irrespective of the data of the offence. ➢ Cases where prosecution has been sanctioned but no complaint has been filed before the magistrate shall also be reviewed by the prosecution sanctioning authority considering the provisions of these instructions.

E-Invoice Applicability Mandatory from 1st October 2022 whose Turnover more than 10 Crores

1st October 2022 marks the date to generate e-invoices mandatorily for some businesses under the GST law. All GST-registered businesses with an annual turnover of more than Rs.10 crores in any previous financial year between FY 2017-18 to FY 2021-22 are covered.

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HEAD OFFICE: E-115, 11TH FLOOR, HIMALAYA HOUSE, KASTURBA GANDHI MARG, NEW DELHI-110001

BRANCH OFFICE: 1113, 11TH FLOOR, ARUNACHAL BUILDING, BARAKHAMBA ROAD, NEW DELHI -110001

(Partner-in-charge - CA Ajay Aggarwal)

BRANCH OFFICES:

Flat No. 103, Tower-5, Parsavnath Greenville Society, Sohna Road, Sector - 48, Gurugram -122001

(CA Varun Garg)

212-A, Vashisht Complex, Sikanderpur, Gurugram-122004

(CA Piyush Jindal)

House No. 14266, Street No. 2A, Ganesha Basti, Bhatinda-151001

(CA Yogesh Kumar Jain)

Flat No.- S-3, Second Floor, Yash Apartment, 37-B Patel Nagar, Raisen Road, Anand Nagar, Bhopal-462021

(CA Prakhar Srivastava)

Hanna Tower, Flat No.-1622, Gaur Saundaryam, Tech Zone-4, Near Charmurti Chowk, Gautam Buddha Nagar, Uttar Pradesh-201009

(CA Pradeep Rastogi)