

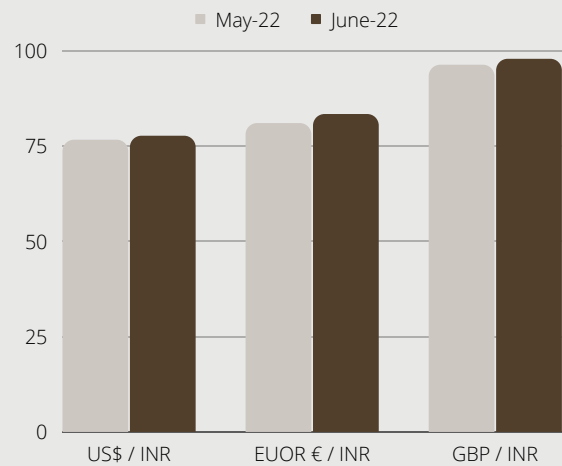
NYCA'S THE RECAP

June, 2022 / Vol 3

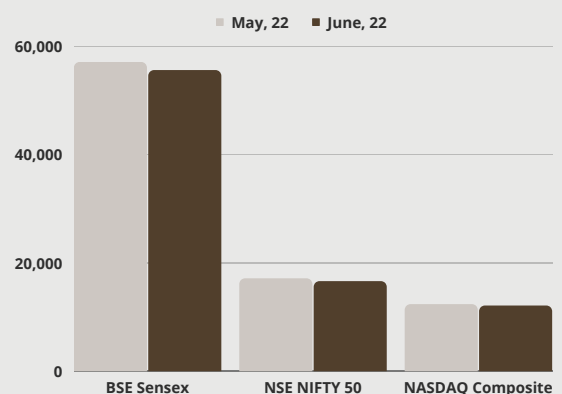
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Currency



Indices



Note: The month-on-month movement as on May 31, 2022 is represented in percentages Source: Yahoo Finance, Investing.com



Compliance Alert - July, 2022

07th July

TDS Payment for June

11th July

GSTR-1 (Monthly) For June, 2022

13th July

GSTR-1 (QRMP) For April-June, 2022

15th July

TCS Payment for Apr-Jun Quarter

15th July

Provident Fund (PF) Payment for June
ESI Payment for June

15th July

TDS Filing for Jan-March 2022

15th July

FORM - 11 for LLP

20th July

GSTR 3B for June for Monthly

22nd July

GSTR 3B (Apr-Jun, 2022) for South India

24th July

GSTR 3B (Apr-Jun, 2022) for North India

25th July

GST Challan Payment if no sufficient
ITC for Jun (for all Quarterly Filers)

30th July

Quarterly TCS certificate for the
quarter ending June 30

31st July

TDS Filing for April to June

30TH July

GSTR-4 (FY 2021-22) for Composition
taxpayers

*"Move forward.
Good things are
up ahead."*

31st July

Income Tax Returns for Individuals,
Non Corporates who are not-liable to
Tax Audit for AY 2022-23

31st July

INC 22A Filing for Companies

31st July

IEC Code Renewal

Don't give up easily

Giving up is something anyone can do
and one of the easiest things to do.
You should never give up on what you
are aiming for, because only you
believe in what you are doing.

Direct Tax

Notifications / Circulars

CBDT condones delay in filing of Form 10-IC for AY 2020-21

Condonation of delay has been provided in filing Form 10-IC required to avail concessional tax rate of 22% under s. 115BAA for AY 2020-21. Form can now be filed till June 30, 2022, if the return was originally filed within due date and the option was opted in Form ITR 6.

[Circular No. 6/2022 dated March 17, 2022](#)

Circular issued for TDS on salary under s. 192 for FY 2021-22

Circular issued for applicability of TDS on income chargeable under the head 'Salaries' during FY 2021-22 detailing the procedure to be followed by an employer for deducting tax from the salary income of their employees. It explains related provisions and the rules along with illustrations and various forms applicable for TDS compliance.

[Circular No. 4/2022 dated March 15, 2022](#)

Cases getting time-barred on March 31, 2022 excluded from the Faceless Assessment regime

Cases pending with jurisdictional assessing officers as on March 15, 2022 or thereafter, for which the time limit for completion expires on March 31, 2022, shall be out of the purview of faceless assessment under s. 144B, if such cases cannot be completed within limitation period due to technical or procedural constraints.

[Order dated March 17, 2022](#)

E-Assessment of Income Escaping Assessment Scheme, 2022 notified

The Scheme covers assessment, reassessment or recomputation under s. 147 and issuance of notice under s. 148. It provides for automated allocation as per CBDT's risk management strategy for issuance of notice under s. 148 in a faceless manner.

[Notification No. 18/2022 dated March 29, 2022](#)

CBDT notifies e-Dispute Resolution Scheme, 2022 along with rules relating to DRC

CBDT notified the e-Dispute Resolution Scheme, 2022, to settle tax disputes involving small taxpayers. Taxpayers having total returned income up to INR 5 million and having income tax disputes not exceeding INR 1 million, will be able to avail the scheme. Entire procedure will take place electronically. Further, rules have also been notified providing for constitution of DRC, manner of application for resolution of dispute before the DRC, power of DRC to reduce or waive penalty imposable or grant immunity from prosecution or both.

[Notification No. 26 and 27 dated April 05, 2022](#)

CBDT notifies additional conditions for filing return by persons otherwise not required to file

The Finance Act, 2019 had introduced a requirement for furnishing return of income by persons who are otherwise not required to file the return. The requirement was triggered if during the previous year the person had aggregate deposits of INR 10 million or more or incurred specified amount of expenditure or fulfilled such other conditions as may be prescribed. The other conditions have now been prescribed as:

Assesses required to file ITR otherwise not covered.

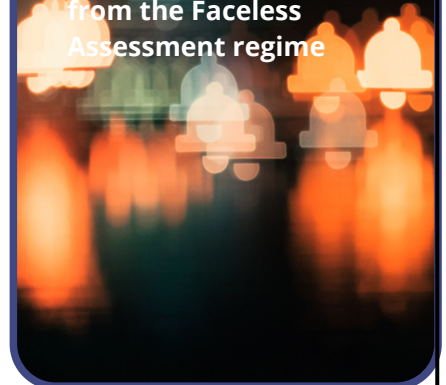
Circular issued for TDS on salary under s. 192 for FY 2021-22

CBDT notifies e-Dispute Resolution Scheme, 2022

- total sales, turnover or gross receipts in the business exceeds INR 60 Lakhs; or
- total gross receipts in profession exceeds INR 10 Lakhs; or
- aggregate of TDS and TCS is INR 25,000 or more (INR 50,000 or more in case of individual aged 60 years or more); or
- aggregate of deposit in one or more savings bank account is INR 50 Lakhs or more.

[Notification No. 37 dated April 21, 2022](#)

Cases getting timebarred on March 31, 2022 excluded from the Faceless Assessment regime



CBDT notifies rules for taxation of income from retirement benefit account maintained in a notified country

The Finance Act, 2021 had introduced a provision for addressing mismatch in taxation of income from notified overseas retirement fund. Now, CBDT has notified rule 21AAA giving an option to the specified persons to offer the said income at the time of withdrawal/receipt of the same in the notified country rather than at the time of accrual. Canada, UK and USA have been notified for this purpose.

[Notification No. 24 and 25 dt. 04/04 2022](#)

Instructions by CBDT to implement SC ruling on validity of reassessments u/s 147

CBDT has issued instructions for uniform implementation of the SC ruling in the case of Ashish Agarwal deeming the extended re-assessment notices as valid show cause notices under the IT Act, 1961. It clarified that the SC ruling will apply to all the reassessment notices issued between April to June 2021 following the old regime of reassessment, whether or not such notices were challenged before any court of law. It further lays down the procedure required to be followed by the AO to comply with the said ruling.

[Instruction No. 01 dated May 11, 2022](#)

PAN & Aadhar is compulsory in Cash deposit or withdrawal more than INR 20 Lakhs.

CBDT has notified that it is mandatory for every person to quote his/her PAN or Aadhaar number, for withdrawing or depositing cash aggregating to more than INR 20 Lakhs from the bank accounts, including co-operative banks and post offices, in any FY.

These rules shall also apply during the opening of a current account.

[Notification No. 53 dated May 10, 2022](#)

Income-tax Department came out with functionality "Compliance Check for s. 206AB & 206CCA"

This circular dated 17.05.2022 stated that now a person can become a specified person for default in one year instead of the earlier provision of default in two years.

- A list of specified persons is prepared as on the start of the FY 2022-23, taking previous year 2020-21 as the relevant previous year. List contains names of the taxpayers who did not file return of income for the AY 2021-22 and have aggregate of TDS and TCS of fifty thousand rupees or more in the previous year 2020-21.
- During the FY 2022-23, no new names are added in the list of specified persons. This is a taxpayer friendly measure to reduce the burden on tax deductor and collector of checking PANs of non-specified person more than once during the FY.
- If any specified person files a valid return of income (filed & verified) for the AY 2021-22 during the FY 2022-23, his name would be removed from the list of specified persons. This would be done on the date of filing of the valid return of income during the FY 2022-23.
- If any specified person files a valid return of income (filed & verified) for the AY 2022-23, his name would be removed from the list of specified persons.

Enabling compliance check for S.206AB & 206CCA

CBDT Notifies rules for taxation of income from retirement benefit account in Canada, UK, USA.

CBDT issues instructions for implementing SC ruling on validity of re-assessment notices

This would be done on the due date for filing of the return of income for AY 2022-23 or on the date of actual filing of valid return (filed & verified), whichever is later.

- If the aggregate of TDS and TCS, in the case of a specified person, in the previous year 2021-22 is less than fifty thousand rupees, his name would be removed from the list of specified persons. This would be done on the first due date under sub-s. (1) of s. 139 of the Act falling in the FY 2022-23. For the FY 2022-23 this due date is 31st July 2022.
- Belated and revised TCS & TDS returns of the relevant FY filed during the FY 2022-23 would also be considered for removing persons from the list of specified persons on a regular basis.

[Circular No 10 Dt.17/05/2022](#)

GUIDELINES FOR COMPULSORY SELECTION OF RETURNS FOR COMPLETE SCRUTINY DURING FY 2022-23

- Cases pertaining to survey u/s 133A of the Income-tax Act, 1961 (Act)
- Cases pertaining to Search and Seizure
- Cases in which notices u/s 142(1) of the Act, calling for return, have been issued & no return, have been furnished.
- Cases in which notices u/s 148 of the Act have been issued
Cases related to registration/ approval under various s.s of the Act, such as 12A, 35(l)(ii)/ (ia)/ (iii), 10(23C), etc.
- Cases involving addition in an earlier AY(s) on a recurring issue of law or fact and/or law and fact
- Cases related to specific information regarding tax-evasion

a. It is clarified that where return has been furnished in response to notice u/s 142(1) of the Act and such notice u/s 142(1) of the Act was issued due to the information contained in NMS Cycle/SFT information/ information received from Directorate of I&CI, such return will not be taken up for compulsory scrutiny. Selection of such cases for scrutiny will be done through CASS cycle.

b. The cases shall be selected for compulsory scrutiny by the International Taxation and Central Circle charges following the above prescribed parameters and procedure with prior administrative approval of Pr. CIT/Pr.DIT/CIT/DIT concerned.

- The cases which are selected for compulsory scrutiny by the International Taxation and Central Circle charges following the above prescribed parameters and procedure, shall, as earlier, continue to be handled by these charges.
- As per the amendments brought by Finance Act, 2021, the time limit for service of notice u/s 143(2) of the Act has been reduced to three months from end of the FY in which the return is filed. Therefore, selection of cases and transfer of cases, wherein assessments have to be completed in faceless manner, to NaFAC shall be completed positively by 31-5-2022. In cases selected for compulsory scrutiny, service of notice u/s 143(2) of the Act shall be completed by 30-6-2022

[Circular F. NO. 225/81/2022/ITA-II, Dt.11-5-2022](#)

Updated return of income for persons to update income within 24 months from the end of AY

It inserts Rule 12AC and new form – ITR -U.

Rule 12AC prescribes form ITR -U for return of income to be furnished under s. 139(8A) from AY 2020-21 and subsequent AYs. It also gives format of form ITR-U being “ INDIAN INCOME TAX UPDATED RETURN [For persons to update income within twenty-four months from the end of the relevant AY]

[NOTIFICATION F. NO. 370142/18/2022-TPL \(PART-1\)\] , DATED 29-4-2022](#)

Applicability of Safe Harbour Rules 10TD Extended till AY 2022-23

Guidelines for compulsory selection of scrutiny

Apex Court rules exchange loss on forex loan is an allowable expenditure

CBDT issues instructions for implementing SC ruling on validity of re-assessment notices

These rules deemed to be came into force with effect from 01.04.2022. It amends Rule 10 (3B) of Income Tax Rules. It has extended the validity of safe harbour provisions for transfer pricing issues of Rule 10TD till AY 2022-23.

[Notification no 66/2022 dated 17.06.2022](#)



CII for FY 2022-23 is 331

Cost Inflation Index for the FY 2022-23 relevant to AY 2023-24 is 331 for the purpose of computing capital gains.

[Notification No. 62/2022 dated 14th June, 2022](#)

Guidelines for TDS on Perquisites u/s 194R in FAQ form

Section 194R, introduced by Finance Act 2022, and applicable from July 1, 2022, requires a person providing any benefit/perquisite to a resident, exceeding INR 20,000 in a year, arising from the business or profession of such resident, to deduct tax at the rate of 10% subject to certain exceptions. Guidelines have been issued by CBDT providing clarifications on various aspects such as perquisites in form of cash, kind or a capital asset, treatment of discounts, rebates, reimbursements, samples given to influencers, valuation of the benefit/perquisite and inclusion of the period from April to June for purpose of calculating the threshold limit, amongst others.

[Circular no -12 dated 16.06.2022](#)

Judicial rulings

Refund cannot be withheld merely on reasons of probability of additions during assessment

Where assessing officer's order of withholding refund under s. 241A was made without taking into account assessee's financial condition and was based on an estimate of assessee's tax liability which was not founded on rational and cogent grounds, order was set aside by Hon'ble High Court and refund directed to be made.

[Ericsson India Pvt. Ltd. v. ACIT \(Delhi\)](#)

Penalty under s. 272A(1) deleted for non-appearance due to digital notice in year of transition

The Hon'ble ITAT allowed assessee's appeal and deleted penalty under s. 272A(1)(d) for noncompliance with notice issued under s. 142(1).

The basis taken was that assessee did not wilfully ignore the notice and his non-appearance was not deliberate as the notice was issued electronically for the first time when the department was shifting from physical to digital mode.

[Triumph International Finance India Ltd. v. DCIT \(Mum. ITAT\)](#)

Exchange loss on forex loan is an allowable expenditure

The Hon'ble Apex Court allowed assessee's claim for treating exchange loss on forex loan repayment taken for business purpose as revenue expenditure which was erroneously capitalized at the time of filing the return. While placing reliance on the decisions rendered in the case of India Cement as well as Empire Jute,

it also held that s. 43A shall not be applicable in the present case since assessee did not acquire any asset from outside India.

[Wipro Finance Ltd v. CIT \(Supreme Court\)](#)

Refund cannot be withheld merely on reasons of probability of additions during assessment

Apex Court rules exchange loss on forex loan is an allowable expenditure

CBDT issues instructions for implementing SC ruling on validity of re-assessment notices





Reimbursement of salary of expat employees is not taxable as FTS

Bangalore ITAT, based on various rulings and Article 15 of OECD Model Commentary, held that since seconded employees are regarded as employees of the assessee in India, reimbursement of salary expense (on which TDS has also been deducted u/s 192) to overseas entity cannot be regarded as FTS and thus, assessee cannot be held to be assessee in default.

[Goldman Sachs Services Pvt. Ltd v. DCIT \(Bangalore ITAT\)](#)



Reassessment notices issued under the old law deemed to be valid show cause notices under the new law

In a landmark judgment, Hon'ble Apex court has confirmed the CBDT issues instructions for implementing SC ruling on validity of re-assessment notices PAN and Aadhaar

Aadhaar mandatory in case of cash deposits or withdrawals above INR 2 million Reimbursement of salary of expat employees is not taxable as FTS validity of reassessment notices issued by the AO under the provision of old law, beyond the prescribed timelines, deeming them to be valid show cause notices issued u/s 148A(b) of the new law, citing that 'Revenue cannot be made remediless and the object and purpose of reassessment proceedings cannot be frustrated. There appears to be a genuine nonapplication of the amendments as the Revenue may have been under a bonafide belief that the amendments may not yet be enforced'. This was against the judgements passed by various High Courts in favour of the assessee and led to the quashing of more than 9000 writ petitions. It directed the AO to follow the procedure specified u/s 148A(b) of the Act and held that all the defenses available to assessee and rights available to the AO under the new law shall continue to be available

[Ashish Agarwal v. UOI & Ors. \(SC\)](#)

AO to not presume that the concept of 'beneficial owner' is inbuilt in Article 13

Where AO declined the capital gains exemption to the assessee under Article 13(4) of IndiaMauritius DTAA by lifting the corporate veil and holding that the beneficial owners of shares were in Cayman Islands, the ITAT held that in the absence of specific provision, the concept of beneficial ownership cannot be assumed and directed the AO to re-decide whether the concept of 'beneficial ownership' is inbuilt in Article 13 and, if so, what are the connotations of 'beneficial ownership' in this context.

[Blackstone FP Capital Partners Mauritius V Limited v. DCIT \(Mumbai ITAT\)](#)

Instructions by CBDT to implement SC ruling on validity of reassessments u/s 147

PAN & Aadhar is compulsory in Cash deposit or withdrawal more than INR 20 Lakhs.

Reimbursement of salary of expat employees is not taxable as FTS



Onus not discharged merely relying on opinion of an expert - S. 68

the High Court held that the opinions of expert are, at best, suggestions to an investor. The assessee cannot state that the increase in the price was genuine merely because an expert had issued a buy call or there was news in the media that a particular share shows an upwards trend and it is a good time for buying those shares. The assessee is to be reminded of the doctrine of "caveat emptor". The assessee cannot take shelter under the opinion given by the experts as it is not the expert who has indulged in the transaction, but it is the assessee.

Pr. CIT vs. Swati Bajaj [2022] 139 taxmann.com 352 (Cal. HC)

Validity of order of Reassessment on a company during pendency of CIRP under IBC Code 2016

claims of the Income Tax Department were not considered by the NCLT as appropriate concession in CIRP was not done, while approving the Resolution Plan, the question of abatement of rights of the Income Tax Department cannot be countenanced. In such circumstances, moratorium under IBC, 2016 does not bar the Income Tax Department to re-open assessment and pass any fresh Assessment Order under s. 148 read with s.s 143(3) and 147 of the IT Act, 1961.

Dishnet Wireless Ltd. vs. Asst CIT [2022] 139 taxmann.com 493 (Mad. HC)

Striking of the name of the company u/s. 248 of the Co. Act 2013-Appeal Maintainable

Tribunal held that as per 248(6) of Co. Act, 2013 it is the duty of Registrar to make provision for discharging liability of company before passing an order for struck off u/s 248(5) and if there was any tax due from struck off company, revenue can invoke s. 226(3) or 179 of Act, 1961 for satisfying such tax demands. Since in view of 248(6)/(7) and s. 250 of Act 2013, when revenue had not forgone right to recover tax due on ground of company being struck off by ROC, right of assessee to determine tax liability in due process of law could not be denied by dismissing appeal pending before Tribunal. Thus, certificate of incorporation issued to assessee company could not be treated as cancelled and appeal filed by struck off assessee company would be maintainable.

Dwarka Portfolio Pvt. Ltd. vs. ACIT [2022] 139 taxmann.com 477 (Del. ITAT)

Response to Notice u/s. 148A(b) by email after closing of window by revenue - Submission required to be considered

the window for submissions was disabled on the portal of the department after the date. Later on the petitioner filed the submission by way of e-mail addressed to Assessing Officer as online submission portal was closed by revenue.

High Court held that since the submission of assessee was available on record when Assessing Officer passed impugned order under s. 148A(d), the same was required to be considered by Assessing Officer and impugned order passed along with reopening notice was to be set aside.

Meenu Chaufla vs. ITO [2022] 139 taxmann.com 170 (Del. HC.)

High Court held that as per Clauses 6.2 and 7.1 of Board's Circular dated 11.05.2022, if a case does not fall under Clause

Instructions by CBDT to implement SC ruling on validity of reassessments u/s 147

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Reimbursement of salary of expat employees is not taxable as FTS

(b) of sub-s.(i) of s. 149 for AYs 2013-14, 2014-15 and 2015-16 (where income of an assessee escaping assessment to tax is less than Rs. 50 Lakhs-) and notice has not been issued under the instruction under the amended provisions of s. 149, then proceedings under amended provisions cannot be initiated. Impugned notice under s. 148 issued on 01.04.2021 for Assessment Year 2014-15 and impugned notice dated 13.01.2022 under s. 144 and reassessment order dated 13.01.2022 under s. 147 read with s. 144B passed were quashed.

Ajay Bhandari vs. Union of India WT No. 347 of 2022 - Order dated 17-5-2022 (All. HC) - itatonline.org

Remarks: it is also possible to use the ratio of the judgment for cases covered by the first proviso to s. 149 for A.Y. 2013-14 and 2014-15 where the income chargeable may even be more than Rs. 50 Lakhs. Referral fee paid to dentists by company in the business of extra

S. 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013– Exemption provided by the s. – Compensation Not subjected to deduction of tax

the HC relied on the judgment of the Hon. SC in the case of Bal krishnan v. Union of India [2017] 80 taxmann.com 84 (SC), where the Apex Court had held that merely because the compensation amount is agreed upon would not change the character of acquisition from that of compulsory acquisition to the voluntary sale. The High Court also took cognisance of Circular No. 36 of 2016 dated 25-10-2016 issued by the CBDT clarifying that the compensation received in respect of award or agreement which has been exempted from levy of income tax vide s. 96 of the Act, 2013 shall not be taxable under the provisions of the Income-tax Act. As per s. 96 of the said Act no income tax or duty shall be levied on any award or agreement made under the Act except under s. 46. s. 46 would not be attracted in the present case as s. 46 applies to the specified persons. In view of that, as the exemption under s. 96 would squarely apply, no income tax can be levied in the present matter for the amount of compensation. Accordingly, the respondent could not have deducted the amount of tax from the amount of compensation paid to the petitioner

Seema Jagdish Patil vs. National Hi-Speed Rail Corporation Ltd. [2022] 139 taxmann.com 249 (Bom. HC)

Section 56(2)(viib) – Valuation of Shares for the purpose of the section – Relevant facts need to be considered

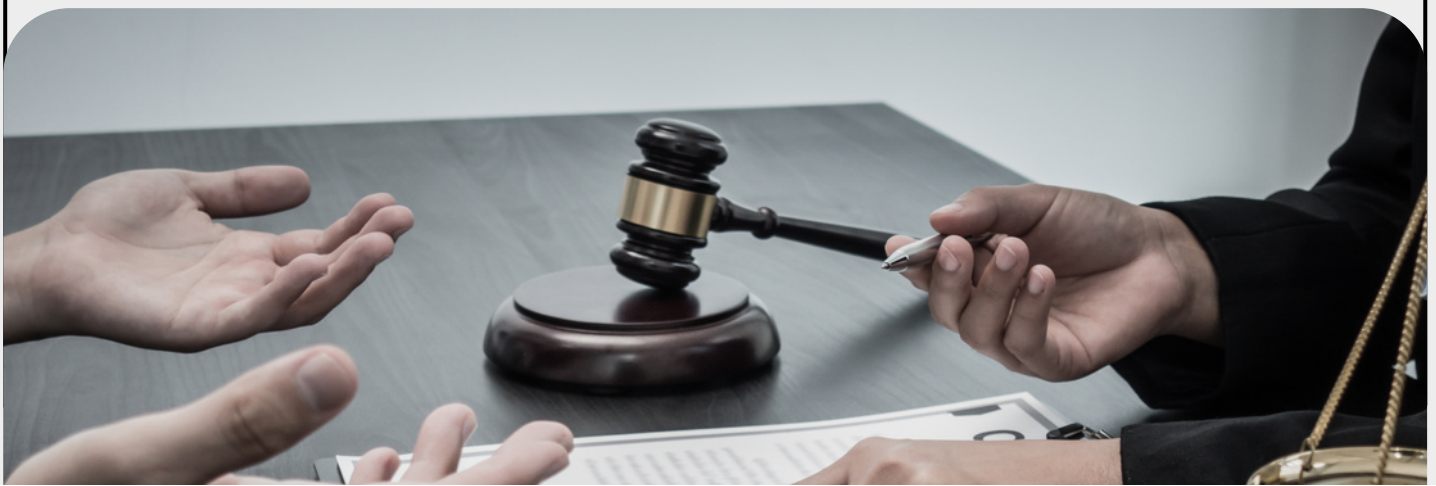
Instructions by CBDT to implement SC ruling on validity of reassessments u/s 147

PAN & Aadhar is compulsory in Cash deposit or withdrawal more than INR 20 Lakhs.

Reimbursement of salary of expat employees is not taxable as FTS

On appeal by the revenue, the Tribunal noted that the assessing officer had fallen in error in not considering objectively facts and circumstances of case as reflected in joint ventures agreement between resident and non-resident entity which showed that project costs of assessee was to be funded in ratio of non-resident entity paying 40 per cent of project cost and resident entity paying 60 per cent of project cost.

Dy. CIT vs. Mais India Medical Devices Pvt. Ltd. [2022] 139 taxmann.com 94 (Del. Trib.)



Indirect Tax

Notifications / Circulars

Recovery proceedings for difference in GSTR-1 and GSTR-3B

SOPs have been issued by CBIC as interim measure till such time a Scrutiny Module for online scrutiny of returns is made available. The key features are:

- Where the return filed by a registered person is selected for scrutiny, the officer shall scrutinize the same and in case of any discrepancy, he shall issue a notice in Form GST ASMT-10.
- The registered person may accept the discrepancy and pay the tax, interest arising out of such discrepancy or furnish an explanation in Form GST ASMT-11.
- Where the explanation furnished by the registered person is found to be acceptable, the officer shall conclude the case in Form GST ASMT-12. Otherwise, the officer can start proceeding against the registered person under Section 73 or 74 of the CGST Act, 2017.

[Instruction No. 02/2022-GST dated March 22, 2022](#)

Extension of return filing dates

Due to technical issues at the GST portal, the due date of filing GSTR3B returns for the month of April 2022 has been extended till May 24, 2022. Taxpayers opting for QRMP scheme may make payment in challan PMT-06 till May 27, 2022.

[Notification No. 05/2022 and 06/2022-Central Tax dated May 17, 2022](#)

Recovery of tax during search, inspection or investigation

Recovery of taxes can be made only after following due legal process of issuance of notice and subsequent confirmation of demand by issuance of order. Therefore, there may not arise any

situation where the recovery of tax due has to be made by the tax officer from the taxpayer during the course of search, inspection or investigation. However, the taxpayer can make the payment voluntarily through Form DRC-03.

[Instruction No. 01/2022-23 \(GST - Investigation\) dated May 25, 2022](#)

Procedure for refund sanction and post-audit of refund claims

Guidelines have been issued for refund sanction and post-audit of refund claims to provide for mandatory uploading of a detailed Speaking Order containing all the necessary details mentioned under the instruction for each refund type. Further, all refund Orders sanctioning/ rejecting refund claims amounting to INR 100,000 or more shall be subject to post-audit by the post-audit cell.

[Instruction No. 03/2022-GST dated June 14, 2022](#)

Extension of levy of Compensation Cess

The levy of Compensation Cess on specified goods and / or services, as initially imposed for 5 years upto June 30, 2022, has now been extended by another 4 years. Now the Cess shall be levied and collected upto June 30, 2026.

[Notification No. 1/2022-Compensation Cess dated June 24, 2022](#)

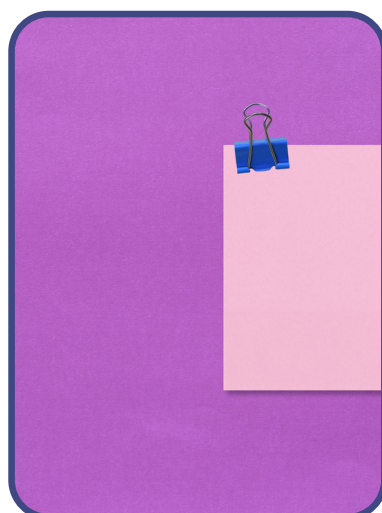
Cases getting timebarred on March 31, 2022 excluded from the Faceless Assessment regime

Circular issued for TDS on salary under s. 192 for FY 2021-22

CBDT notifies e-Dispute Resolution Scheme, 2022

Recommendations of 47th GST Council meeting: Various recommendations have been made by the Council in its 47th meeting, including:

- Extension of limitation period for filing of refund claims expiring between March 01, 2020 to Feb 28, 2022 including for issuance of demand/Order in respect of erroneous refunds. Limitation for issue of SCN u/s 73 of CGST Act for FY 2017-18 in terms of issuance of Order in respect of demands linked with due date of annual return, extended till September 30, 2023
- Waiver of requirement of mandatory registration for person supplying goods through e-commerce operator
- Exemption of IGST on import of goods under AA/EPCG/EOU scheme to be continued





- Annual Return in Form GSTR9/9A for FY 2021-22 to be filed only by taxpayers having aggregate turnover exceeding INR 20 million • No requirement to reverse ITC for exempted supply of Duty Credit Scrips by the exporters
- Withdrawal of GST exemption on various services including renting of residential dwelling to business entities (registered persons)
- Hotel accommodation priced upto INR 1,000 per day to be taxed at 12%. Room Rent (excluding ICU) exceeding INR 5,000 per day per patient charged by the hospital to be taxed at 5% without ITC.
- To remove the inverted duty structure, the rates of various goods and services has been rationalized.

Such changes in rates shall be effective from July 18, 2022. These recommendations shall come into effect from the date of issue of their respective Notifications.

[Press release dated June 29, 2022](#)

Judicial rulings

Speaking Order to consider issues raised by taxpayer

In the present case, the officer has passed the impugned Order without considering the judgement relied on and issues raised by the petitioner in its reply filed against the SCN. The Order is just a copy-paste of the reason recorded in the SCN and it is not sustainable under law.

[M/s Diksha Greens Ltd \(Calcutta High Court\)](#)

Opportunity of being heard

When an adverse decision is contemplated against any person, it becomes mandatory to provide an opportunity of being heard to such person, even though the said person has not requested for the same.

[M/s Bharat Mint and Allied Chemicals \(Allahabad High Court\)](#)

Issuance of SCN

Before passing an Order of demand under Section 74 of the CGST Act, it is mandatory to provide the SCN under Form DRC-01. However, in the present case, the Order of demand has been issued without issuing the said Notice. Consequently, the impugned Order has been quashed.

[M/s V.R.S. Traders \(Madras High Court\)](#)

ITC on demo cars

In the very first run, the demo cars lose the character of a new motor vehicle. These vehicles are not meant for 'further supply as such' but are first put to specified uses and then disposed off after prolonged use. Therefore, the ITC in relation to these vehicle remains restricted under Section 17(5) of the CGST Act.

[M/s BMW India Pvt Ltd \(AAAR Haryana\)](#)

Taxability of related party transactions

The applicant is a partner in a firm and he has provided his personal property to the partnership firm on free of cost basis for carrying on the business. In terms of Schedule I of the CGST Act, the property of the partner being rented out to the partnership firm is a supply under GST even if provided without consideration and consequently, it shall be subject to tax under GST.

[M/s Shanmuga Durai \(AAR Tamil Nadu\)](#)

Speaking Order to consider issues raised by taxpayer

Taxability of related party transactions

ITC on demo cars



Revenue warned for passing vague order of cancellation of registration

The taxpayer was issued a SCN for cancellation of registration. The taxpayer approached the Court and it was held that the SCN was bereft of any material particulars or information and it was difficult for the taxpayer to respond to the same. The Court expected the officer to issue a fresh SCN containing all particulars and information so that it could have been appropriately responded to by the taxpayer. However, the officer proceeded to cancel the registration without issue of any fresh SCN. The Court came down heavily on this order and said "henceforth if this court comes across any such vague order or SCN duly signed by him, then that will be his last day in the office".

[M/s Vahanvati Steels \(Gujarat High Court\)](#)

ITC on promotional rewards is ineligible

The gifts or rewards given without consideration even though they were given for sales promotion do not qualify as inputs for the purpose of credit. Further, the rewards are also in the nature of personal consumption. Hence ITC in relation to such goods or services shall not be eligible.

[M/s GRB Dairy Foods Pvt Ltd \(AAAR Tamil Nadu\)](#)

Intermediary services

The activity carried on is identification of vendors who can manufacture the tools as per design provided by overseas OEM. Further, the activity includes explaining and working with the said vendors for manufacture of tools. Consequently, the activities shall be considered as intermediary services.

[M/s Precision Camshafts Ltd \(AAR Maharashtra\)](#)

Detention and seizure of goods

The petitioner could not furnish the original tax invoices at the stage of interception of goods and at the physical verification. Later at the stage of show cause notice, all such invoices were submitted to the department for verification. Thereafter, it was for the department to conduct proper enquiry to prove that the tax invoices submitted by the petitioner were bogus. However, without initiating such enquiry, the department proceeded with the issuance of seizure Order. Accordingly, the impugned Order has been set aside.

[M/s A.S. Enterprise \(Allahabad High Court\)](#)

Optional transport facility to employees is taxable

Where the transport facility was provided by employer on optional basis, it would be beyond the realm of contractual obligation of employment agreement. Consequently, it shall be liable to GST beyond the value of INR 50,000, which is the threshold value for gifts to employees.

[M/s Beumer India Pvt Ltd \(AAAR Haryana\)](#)

Liquidated damages / penalties are taxable

Contract for supply of service of extraction of coal also has clause for recovery of penalty and liquidated damages for lapses on the part of supplier viz. delay in performance of contract. Such receipts are consideration towards tolerating an act or a situation arising out of a contractual obligation and shall be taxable under GST

[M/s The Singareni Collieries Co. Ltd. \(Telangana AAR\)](#)

Revenue warned for passing vague order of cancellation of registration

Optional transport facility to employees is taxable

ITC on promotional rewards is ineligible



Service tax applicable on reimbursement of salaries of seconded expats

The Apex Court has held that where an overseas group company is sending its employees on secondment to its Indian subsidiary / group company, it is taxable in India under the erstwhile Service Tax as "supply of manpower". Tax is to be paid by the Indian company on reverse charge basis on the amount paid by it to the overseas group company on the debit note towards the salaries / other amounts paid to the seconded employee overseas. It is important to note that the Apex Court has taken this view even though the seconded employees work under the direction and control of the Indian company and the fact that they are retained on the payroll of the overseas group company only for social security purposes of that country.

M/s Northern Operating Systems Pvt Ltd
(SC)

Levy of IGST on ocean freight

While importing goods, the importer is liable to pay IGST on composite supply comprising of supply of goods and supply of services of transportation, insurance etc. in a CIF contract. Therefore, a separate levy on reverse charge for the supply of services shall be in violation of Section 8 of the CGST Act. Hence, the levy of IGST on ocean freight on CIF contracts is ultra vires the levy provisions of IGST Act.

M/s Mohit Minerals Pvt Ltd (SC)

Supply of software

The software supplied by the applicant is a pre-developed or pre-designed software and made available through the use of encryption keys. Hence, it qualifies all the conditions that are required to be covered under the definition of goods.

Transfer as a going concern

The applicant intends to sell part of its business unit as a whole, with all assets and liabilities to the purchaser. The transfer shall be regarded as a supply of services and it shall be eligible for exemption only if the business unit has been transferred as a going concern. To qualify as a going concern, the business must not have intention or necessity of liquidation or of curtailing materially the scale of the operations.

M/s Cosmic Ferro Alloys Ltd (West Bengal
AAR)

Sales target incentive received by resellers

Where the transport facility was provided by employer on optional basis, it would be beyond the realm of contractual obligation of employment agreement. Consequently, it shall be liable to GST beyond the value of INR 50,000, which is the threshold value for gifts to employees.

M/s Beumer India Pvt Ltd (AAAR Haryana)

Liquidated damages / penalties are taxable

The distributors import the products of Intel and the reseller buys it from them. The resellers receive incentive on achieving their sales targets directly from Intel. It was held that such incentive shall be a supply and cannot be termed as trade discount since the amount is not received from the distributor. Further, as there is no supply by Intel to the reseller, the incentive cannot again be considered as trade discount.

M/s MEK Peripherals India Pvt Ltd
(Maharashtra AAR)

Revenue warned for passing vague order of cancellation of registration

Optional transport facility to employees is taxable

ITC on promotional rewards is ineligible



Taxability of Liaison Office

FEMA and GST Acts are entirely different as is the meaning of the term “business” in the two Acts. Any activity which is not business as per RBI can be construed as business under GST. The order of the AAR was modified and the services rendered by Liaison Office to Head Office were taxable under GST.

M/s Dubai Chamber of Commerce & Industry - Liaison Office (Maharashtra AAR)

Transfer of business under same PAN

Application was made to determine whether transfer of business by way of merger of two GST registrations or distinct persons was exempt under GST. It was held that change in constitution of business is essential for the transfer to be considered for transfer as a going concern and would be taxable.

M/s Crystal Crop Protection Ltd (AAR Maharashtra)

Negative blocking of electronic credit ledger

The department cannot opt for negative blocking of electronic credit ledger where the claimed fraudulent credit has already been utilized by the assessee.

M/s S.S. Enterprises (Calcutta High Court)

Issuance of SCN

As per provisions of CGST Act, 2017, the SCN for a particular course of action can be either issued under Section 73 (other than fraud or misstatement) or Section 74 (fraud or misstatement) of the said Act. Once the SCN is issued and adjudicated under Section 74, no notice can be issued for the same cause under Section 73 of the Act.

M/s Abhishek Gumber (Delhi High Court)

Transfer of business under same PAN

Negative blocking of electronic credit ledger

Issuance of SCN



Corporate & Allied Laws

Notifications / Circulars

Limited Liability Partnership (Amendment) Rules, 2022

Limited Liability Partnership (Second Amendment) Rules, 2022 were notified amending the Limited Liability Partnership Rules, 2009. Key amendments are:

- In form FiLLip (incorporation form), application for allotment of DPIN can be made for five individuals. Earlier it was allowed for two individuals only.
- The certificate of incorporation of LLP issued by Registrar, shall also mention PAN and TAN issued by Income Tax Department.
- In general, the statement of accounts and solvency shall be signed by designated partners. However, in case where the corporate insolvency resolution process or liquidation has been initiated against the LLP, it may be signed by interim resolution professional or resolution professional or liquidator or LLP administrator.
- The annual return of LLP (having turnover upto 5 crores rupees and contribution upto 50 lakh rupees), against whom corporate insolvency resolution process or liquidation has been initiated, may be signed by interim resolution professional or resolution professional or liquidator or LLP administrator and no certification shall be required by a designated partner.

Reserve Bank of India

RBI has released "Master Direction - Reserve Bank of India (Regulatory Framework for Microfinance Loans) Directions, 2022" on March 14, 2022 with effect from April 01, 2022, in

order to regulate the framework of Microfinance Loans. Key provisions under the new directions are: • These directions will be applicable to all following entities ("hereafter referred to as REs"):

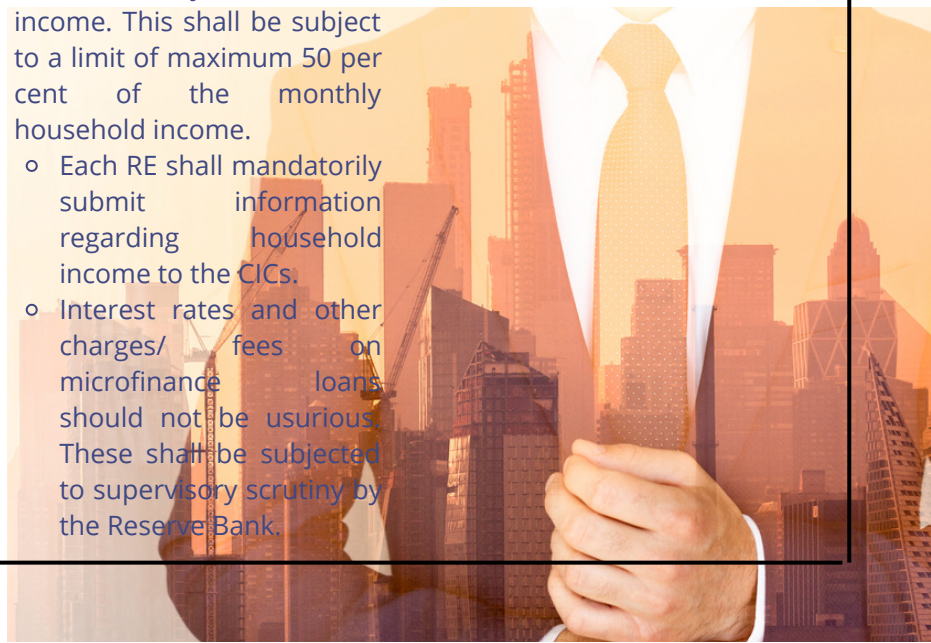
- All Commercial Banks (including Small Finance Banks, Local Area Banks, and Regional Rural Banks) excluding Payments Banks;
- All Primary (Urban) Cooperative Banks/ State Cooperative Banks/ District Central Co-operative Banks; and
- All Non-Banking Financial Companies (including Microfinance Institutions and Housing Finance Companies).
 - A microfinance loan has been defined as a collateral-free loan given to a household having annual household income up to ₹3,00,000.
 - Each REs shall have a board approved policy for:
 - the pricing of microfinance loans;
 - the assessment of household income;
 - the limit on the outflows on account of repayment of monthly loan obligations of a household as a percentage of the monthly household income. This shall be subject to a limit of maximum 50 per cent of the monthly household income.
 - Each RE shall mandatorily submit information regarding household income to the CICs.
 - Interest rates and other charges/ fees on microfinance loans should not be usurious. These shall be subjected to supervisory scrutiny by the Reserve Bank.

MCA Amends LLP Rules, 2019

Regulatory framework for microfinance loans

- Each RE shall disclose pricing related information to a prospective borrower in a standardized simplified factsheet. •
- The definition of 'qualifying assets' of NBFC-MFIs is now being aligned with the definition of 'microfinance loans'. The minimum requirement of microfinance loans for NBFCMFIs also stands revised to 75 per cent of the total assets.

Notification No. RBI/DOR/2021- 22/89 dated March 14, 2022



LEI for Borrowers

LEI stand extended to Primary (Urban) Co-operative Banks and NBFCs. Non-individual borrowers enjoying aggregate exposure of INR 50 million and above from banks and financial institutions shall be required to obtain LEI codes as per the timelines given below. Borrowers who fail to obtain LEI codes shall not be sanctioned any new exposure nor shall they be granted renewal/enhancement of any existing exposure. Departments/Agencies of Central and State Governments shall be exempted.

Total Exposure (fund & non-fund based)	LEI to be obtained on or before
Above INR 250 million	April 30, 2023
Above INR 100 million and upto 250 million	April 30, 2024
Above INR 50 million and up to INR 100 million	April 30, 2025

Notification No. RBI/2022-23/34
 DOR.CRE REC. 28/21.04. 048/2022-23
 dated April 21, 2022

Regulatory restriction on loans and advances to specified persons by NBFCs

These shall be applicable to NBFC - Middle Layer (ML) and NBFC - Upper Layer (UL), effective October 01, 2022:

- Loans and advances to Directors: Unless sanctioned by the Board of Directors/Committee of Directors, NBFCs shall not grant loans and advances aggregating INR 50 million and above to:
 - their directors, including Chairman/Managing Director, or their relatives
 - any firm in which any of their directors or their relatives is interested as a partner, manager, employee, or guarantor
 - any company in which any of their directors, or their relatives is interested as a major shareholder, director, manager, employee, or guarantor.
- Loans and advances to Senior Officers: In the case of granting loans and advances to the senior officers:
 - These shall be reported to the Board
 - No sanction of any credit facility to a relative of the senior officer incharge, or part of a Committee, responsible for such sanction. Such sanction to be done by the next higher sanctioning authority under the delegation of powers.

MCA Amends LLP Rules, 2019

Regulatory framework for microfinance loans

- Guidelines applicable to NBFC – BL: NBFCs shall have a Board approved policy on grant of loans to directors, senior officers and relatives of directors and to entities where directors or their relatives have major shareholding. The Board approved policy shall include a threshold beyond which loans to above mentioned persons shall be reported to the Board

Notification No. RBI/2022- 23/29
 DOR.CRE.REC. No.25/03.10.001/2022-23 dated April 19, 2022



Relaxation in paying additional fees in case of delay in filing Annual Return form by LLPs

In view of transition from Version - 2 of MCA-21 to Version - 3 and in continuation of MCA General Circular No. 04/2022 dated May 27, 2022, the Ministry has decided to further extend the timeline and allow LLP's to file e-Form-11 for the FY 2021-22 without paying additional fees up to July 15, 2022

[General Circular No. 07/2022 dated June 29, 2022](#)

Additional processes introduced for voluntary removal of name from the Register of Companies

The Ministry has amended the process for voluntary removal of name of Company from the Register of Companies. The key changes are:

- The Registrar shall examine the application made in Form STK-2 and may call for further information or find such application or any document therewith is defective or incomplete in any respect. Applicant shall be informed to remove the defect within 15 days and re-submit the Form, failing which, the Form shall be treated as invalid.

- The Registrar shall examine the application made in Form STK-2 and may call for further information or find such application or any document therewith is defective or incomplete in any respect. Applicant shall be informed to remove the defect within 15 days and re-submit the Form, failing which, the Form shall be treated as invalid. • If even after re-submission, the Form or document is still found defective or incomplete in any respect by the Registrar, a further time of 15 days to remove such defects may be given, failing which the Registrar shall treat the Form as invalid in the electronic record and shall inform the applicant, accordingly
- Any re-submission of the application made prior to the commencement of these new rules shall not be counted for the purposes of reckoning the maximum number of resubmissions of such Form.

[Notification dated June 09, 2022](#)



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