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# BASCO BULLETIN

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Helping with Compliance, with  Securing Advice



**BAS & Co LLP**

Kolkata- Ahmedabad-Delhi

# 1. DIRECT TAX

## CIRCULARS/NOTIFICATIONS

### Taxable Income from Life Insurance with Higher Premium: Computation Rule Notification

The Finance Act 2023 removed the tax exemption for income from life insurance policies, excluding ULIPs, issued after April 1, 2023, when the premium amount exceeds INR 5 lakhs. A new rule has been introduced to calculate this income, along with detailed guidelines and examples. Importantly, amounts received upon death remain tax-exempt.

### TDS Credit Claim Form Notified

The Finance Act 2023, introduced a new provision enabling taxpayers to claim tax credits when the year of declaring income in their tax return differs from the year of TDS deduction. The CBDT has recently issued rules and Form No. 71 for this purpose. Taxpayers are required to electronically file this form with the Assessing Officer within two years from the end of the fiscal year in which the tax was deducted at source. This rule becomes effective on October 1, 2023.

### Extension of Exemption under Section 56(2)(x) to Promote Relocation to IFSC

The exemption from the application of section 56(2)(x) of the Act has been expanded to encompass shares/units/interest held by a fund management entity. This exemption may be triggered during the transfer when a specified entity relocates to IFSC.

### Preliminary Expenses and Audit Report Forms Notified

Form No. 3AF has been officially introduced for the purpose of reporting preliminary expenses incurred by taxpayers. This form is to be submitted electronically, with a requirement to do so one month prior to the income tax return filing due date. Additionally, a designated form for submitting audit reports related to these expenses has also been made available.

### Safe Harbour Rules extended to AY 2023-24

The applicability of Safe Harbour Rules has been extended to include AY 2023-24 as well.

## RECENT CASE LAWS:

### 1. Delay Allowed for PF/ESI Contributions if due date is a holiday

**Case Title:** M/s G.D Foods and Manufacturing Versus Assistant Director of Income Tax

The Tribunal ruled that when the Assessee made payments for PF and ESI contributions with a one-day delay due to the prescribed payment date falling on a Sunday or a gazetted holiday, there was no intention on the Assessee's part to avoid making the payment. Given the Assessee's genuine intention, the payment made will be considered eligible as an expense.

### 2. Chennai Tax Tribunal's Ruling on Assessee's Share Purchase Scheme

**Case Title:** M/s Cognizant Technology Versus ACIT (ITAT Chennai)

Chennai Tax Tribunal (the Tribunal) in case of M/s. Cognizant Technology Solutions India Pvt. Ltd. vs ACIT ITA No.269/Chny/ 2022 held that purchase of own shares by the Assessee through a court approved scheme is a colourable device meant to evade taxes. The Tribunal noted that the subject share purchase was under section 391-393 of erstwhile Companies Act, 1956 which dealt with compromise or arrangements with creditors and members. The Assessee was aware that "if shares are bought back under specific provision, then, it attracts the additional Income Tax under provisions of Sec.115QA". Further, the tax tribunal observed that the shareholding post implementation of scheme comes to 99.87% with Mauritian entity and accordingly, considered that the entire scheme was nothing but a facade to avoid tax, stating that the dominant and only commercial purpose is to shift the profit base to Mauritius.



## 2. INDIRECT TAX

### CIRCULAR/NOTIFICATIONS

#### Applicability of provisions of Finance Act 2021 and 2023

The provisions of the Finance Acts of 2021 and 2023 are now in effect, as per the specified dates in the notification. These provisions encompass:

i) Option to export with payment of tax has been withdrawn. Now, exports can only be carried out under cover of letter of undertaking without payment of tax

ii) The definition of OIDAR (Online Information Database Access and Retrieval) services has been revised to remove the words "essentially automated and involving minimum human intervention.

iii) Input Tax Credit (ITC) is not available for goods or services used to fulfill CSR obligations. Additionally, when calculating ITC reversal, the value of exempt supply now includes the value of land sales and the supply of warehoused goods to any person before clearance for home consumption.

iv) Individuals engaging in fraudulent transactions for the purpose of passing Input Tax Credit (ITC) without making any supply are not eligible for the option of compounding.

v) Transactions such as merchant trade, high sea sales, and the supply of warehoused goods before home clearance are no longer considered as supplies under GST, with retrospective effect from July 1, 2017.

#### GST Acts amended to cover online gaming

Significant revisions have been enacted in the CGST and IGST Acts. These modifications encompass alterations in the definitions of online gaming, online money gaming, specified actionable claims, and virtual digital assets, as well as amendments to their tax treatment.

#### Mera Bill Mera Adhikar (MBMA) Scheme

GSTN has developed and launched a mobile application and a web portal for MBMA scheme. It has been implemented from September 01, 2023, initially in 6 States and is aimed at reducing tax evasion by encouraging culture of seeking bills for

#### Various Notifications Regarding Supplies through ECO (E-commerce Operators)"

The requirement for mandatory registration for individuals making supplies through E-commerce Operators (ECOs) has been eliminated, contingent upon the fulfillment of conditions outlined in the Notification. Composition dealers must exercise certain precautions when making supplies through ECOs. Additionally, ECOs are obligated to ensure the adherence to specified conditions when permitting supplies through their portal.

#### Exemption from filing annual return GSTR-9

Registered individuals with an aggregate turnover of up to two crore rupees in the financial year 2022-23 are granted an exemption from filing the annual return GSTR-9 for this fiscal year.





## 2.1 INDIRECT TAX

### RECENT CASE LAWS:

#### Unpaid Tax by Seller and ITC

##### (M/s. Aastha Enterprises Vs. State of Bihar)

The Patna High Court held that ITC is in the nature of a benefit/concession and not a right extended to the assessee under the statutory scheme. The ITC to purchasing dealer will depend not only upon the collection by the seller but also the due payment by the seller to the Government and the burden of proof lies with the assessee to substantiate that the tax collected has been paid to the government by the supplier

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#### Investment advisory services to foreign companies qualifies as export of service

##### (M/s. Cube Highways and Transportation Assets Advisor Private Limited v. Assistant Commissioner CGST Division)

The Hon'ble Delhi High Court held that, the advisory services were treated as 'export of services' under service tax and the assessee was not treated as 'Intermediary' under the Finance Act, 1994 ("the Finance Act") and since, the definition of 'Intermediary' is similar to the definition under Sub-section (13) of Section 2 of the Integrated Goods and Services Tax Act, 2017 ("the IGST Act") therefore the advisory services to be treated as export of service.

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#### Taxpayer made to suffer due to a supplier's error in GSTIN reporting (Agrawal And Brothers Vs Union Of India)

The person receiving goods or services should not be penalized for the supplier's error in GSTR-1. The High Court granted a refund to the recipient when the supplier mistakenly entered the incorrect GSTIN on the GST portal while filing their GSTR-1 return. This mistake caused the sales invoice to not appear in the recipient's GSTR-2A.

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#### No automatic reversal of ITC from the buyer upon non-payment of tax by the supplier

##### (Suncraft Energy Pvt Ltd Vs. Assistant Commissioner)

No automatic reversal of Input Tax Credit (ITC) from the buyer if the seller fails to pay taxes. In case of seller default, the recovery will be initiated from the seller. The recipient should only reverse ITC in exceptional situations, such as when the supplier is missing, and not as a standard practice.

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# 3. FEMA

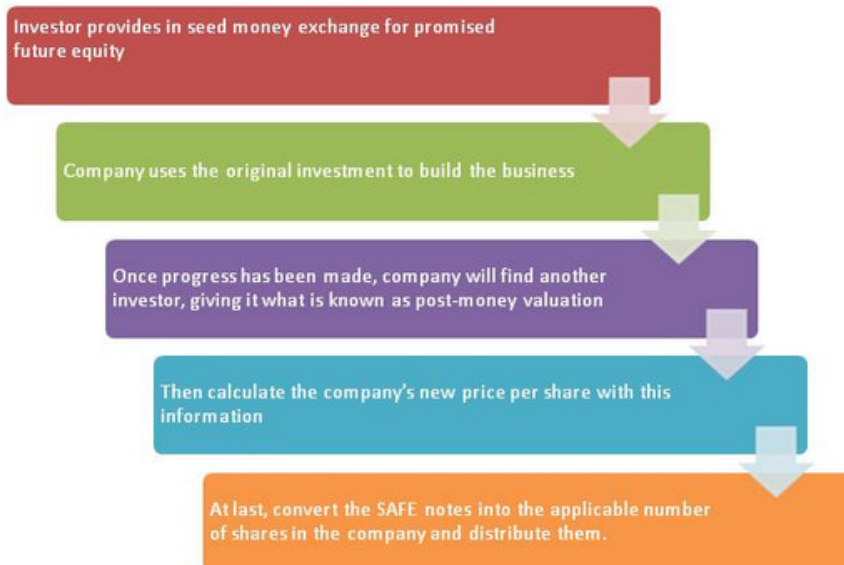
## SAFE Notes



*Hello FEMA scientist, I need your help.....*

*My father has been investing in foreign companies since last 3 years. One of my uncle suggested him to invest in Start-ups as they give higher returns. So he is considering to invest in Clockwork Tech Inc., a tech based startup in US. However, we came to know that they are issuing Safe Notes instead of Equity Shares and we are not aware about the same . Can you please help me?*

*Yes sure! Safe Notes(Simple Agreement for future Equity) is a type of deferred equity legal contract that entitles investors to receive a company's equity securities contingent upon certain events such as subsequent rounds of funding. They also became popular because they do not accrue interest while outstanding and have no maturity date.*



***But but but....., Overseas direct investment (ODI) can be done only in Equity share capital and SAFE notes does not come in the definition of equity share capital. Therefore, your father can not invest in SAFE notes of foreign country.***

***Reach out to BAS & Co. LLP for matters regarding FEMA.***

Thanks a bunch, Mr. FEMA scientist. I appreciate your help.



# 4. INTERNATIONAL TAXATION

## International Taxation - OECD

The OECD, or the Organisation for Economic Co-operation and Development, plays a prominent role in international taxation. It is an international organization consisting of 38 member countries that cooperate on various economic and policy issues. In the context of international taxation, the OECD has taken a lead in developing and promoting standards and guidelines for countries to follow. This is achieved through the work of the OECD's Committee on Fiscal Affairs (CFA).

The OECD is known for its efforts in combating tax evasion, tax avoidance, and ensuring that international tax rules are fair and effective. Some key initiatives and documents related to international taxation developed by the OECD include:

### 1. **Base Erosion and Profit Shifting (BEPS) Project**:

This comprehensive initiative addresses issues like transfer pricing, hybrid mismatches, and harmful tax practices. It aims to prevent multinational corporations from exploiting gaps and mismatches in tax rules to minimize their tax obligations.

### 2. **Common Reporting Standard (CRS)**:

The CRS is a global standard for the automatic exchange of financial account information between tax authorities. It helps in identifying and combating offshore tax evasion.

### 3. **Double Taxation Conventions and Model Tax Treaties**:

The OECD provides model conventions and guidelines for bilateral tax treaties, which help countries negotiate tax agreements to avoid double taxation and prevent tax evasion.

### 4. **Transfer Pricing Guidelines**:

The OECD offers guidance on transfer pricing rules to ensure that related entities price their transactions fairly, avoiding profit shifting.

### 5. **Country-by-Country Reporting**:

The OECD has developed a framework for multinational corporations to report key financial and tax-related information in each country they operate in, enhancing transparency.

The OECD's work in international taxation serves as a reference and a framework for many countries around the world. It promotes collaboration to create a more transparent and fair international tax



# 5.COMPLIANCE CALENDAR

## DUE DATES FOR INCOME TAX:

### **FILING TDS RETURN FOR THE F.Y. 2023-24:**

Q2 (July-Sep'2023)- 31st October 2023

Q3 (Oct'23- Dec'23)- 31st January 2024

Q4 (Jan'24-Mar'24)- 31st May 2024

### **FILING TCS RETURN FOR THE F.Y. 2023-24:**

Q2 (July-Sep'2023)- 15th October 2023

Q3 (Oct-Dec'23)- 15th January 2024

Q4 (Jan'24-Mar'24)- 15th May 2024

### **Deposit of Advance Tax**

Second Instalment: 15th September 2023 (45% of tax liability)

Third Installment: 15th December 2023 (75% of tax liability)

## DUE DATES FOR GST Returns

S.No	Form	The object of e-form	For the month/year	Last Date	Remarks
1	GSTR-1	Monthly Return	September, 2023	11th October, 2023	Not opted for QRMP Scheme
		Quarterly Return	September, 2023	13th October,2023	Opted for QRMP Scheme
2	GSTR-3B	Monthly Return	September, 2023	20th October, 2023	Not opted for QRMP Scheme
3	GSTR-6	Monthly Return	September, 2023	13th October, 2023	Filed by ISD
4	GSTR-7	Monthly Return	September, 2023	10th October, 2023	Deductor of TDS under GST
5	GSTR-8	Monthly Return	September, 2023	10th October, 2023	E-commerce operators required to collect TCS
6	GSTR-9	Annual Return	2022-23	31st December,2023	Turnover > 2crs.
7	GSTR-9C	Annual Return	2022-23	31st December,2023	Turnover > 5crs.

## 6. ABOUT US

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## ABOUT THE FIRM

With 25 years of experience in the industry, BAS & Co LLP continues to deliver high-quality performance to its clients. The growing team of young professionals with dynamic approaches will surely carve more paths for the firm in the coming future.

## SERVICES

- Audit
- Direct Tax
- Indirect TAX
- Secretarial
- FEMA
- International tax

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