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BASCO BULLETIN

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Helping with Compliance, Securing with Advice



BAS & Co LLP

Kolkata- Ahmedabad-Delhi

1. DIRECT TAX

CIRCULARS/NOTIFICATIONS

Default Tax Regime: Employer's Standard Practice, unless Employee Requests Otherwise

In order to streamline the process of calculating TDS on salaries, the Central Board of Direct Taxes (CBDT) has provided clarification that employers must collect information from each employee regarding their preferred tax regime. Based on the employee's response, the employer will deduct tax accordingly. However, if the employee does not provide any instruction, the employer will assume that the employee wishes to be taxed under the new regime and will proceed accordingly.

FY 2023-24 Cost Inflation Index Notification

The Cost Inflation Index for FY 2023-24 is provisionally set at 348 by the Central Government for capital gains calculations.

Extension of Due Date for Non-Resident Taxpayers' Electronic Form 10F

In light of the practical challenges faced by designated non-resident taxpayers in electronically filing Form 10F to avail treaty benefits, the CBDT has extended the deadline for electronic submission of the form to September 30, 2023. During this period, manual issuance of the form will be permitted.

CBDT Launches "e-Appeal" Scheme to Expedite Resolution of TDS and TCS Appeals

The CBDT in India has introduced an "e-appeal" scheme to expedite the resolution of appeals concerning TDS and TCS default issues. Under this scheme, the Joint Commissioner (Appeals) has been empowered to dispose of appeals, including the ability to issue show cause notices and impose penalties. The primary objective of this initiative is to address the backlog of pending appeals in a more efficient manner.

Extended Due Date for Furnishing Form 10BD

The CBDT, exercising its power under section 119 of the Act, extends the due date for submitting Form No. 10BD and Form No. 10BE, pertaining to donation statements and certificates for the financial year 2022-23, until 30.06.2023.

RECENT CASE LAWS:

1. ALP determined by ITAT can be subject to scrutiny

Case Title: SAP Labs India Pvt Ltd. Versus ITO

The Tribunal's determination of the arm's length price can be reviewed by the High Court in an appeal under Section 260A of the IT Act. The High Court has the authority to assess whether the applicable guidelines under the Act and the Rules were considered, if the comparability of companies or selection of filters was done appropriately, and if the comparable transactions were adequately taken into account.

2. Tax treaty rate cannot override dividend distribution tax rate as per Income Tax Act

Case Title: Mumbai Versus Total Oil India Pvt Ltd.

The Income Tax Appellate Authority recently ruled that domestic resident companies cannot utilize the DTAA to reduce their liability for Dividend Distribution Tax (DDT). Consequently, non-resident shareholders have the choice to opt for the more beneficial TDS rate under the Income-tax Act or the applicable DTAA.

3. No Need to Examine Foreign Laws While Allowing Exemption u/s 10(23C)

Case Title: Laura Entwistle Versus Union of India

The Bombay High Court held that exemption under section 10(23C)(vi) of the Income Tax Act cannot be denied for an amount received by a Trust solely on the basis that the amount came from a foreign entity. This is particularly true when it can be established that the trust was established exclusively for educational purposes and not for the purpose of earning profits.



2. INDIRECT TAX

CIRCULAR/NOTIFICATIONS

GST Amendments Enacted Through The Finance Act 2023, Key Changes:

i. Option to pay tax under the composition scheme for registered persons supplying goods through E-Commerce Operator - section 10 has been proposed to be amended to allow the registered person supplying goods within the state through E-commerce operator to opt for the composition scheme provided the aggregate turnover in the preceding financial year does not exceeds 50 lakhs.

ii. Input Tax Credit for expenditure related to CSR - Section 17(5) of CGST Act is proposed to be amended to provide that the ITC shall not be available in respect of goods or services or both received by a taxable person, which are used or intended to be used for activities relating to obligations under CSR

iii. Filing of returns - Budget 2023 seeks to restrict the filing of returns/statements under GSTR 1, GSTR 3B GSTR 9 and GSTR 8 to a maximum period of three years from the due date of Filing the relevant return.

iv. ITC Reversal - Supply of custom bonded warehoused goods before clearance for home consumption' to be included for the purposes of computing the value of exempt supplies for the purpose of reversal of ITC under Rules 42 & 43 of the CGST Rules, 2017. ITC will have to be reversed on goods and/or services exclusively or commonly used or intended to be used for the supply of goods while they are still in custom bonded warehouse

v. Removal of confusion regarding the availability of exemption from GST registration under Section 23 - Earlier, a person who was exclusively engaged in making exempt supplies was still required to obtain GST registration due to mandatory registration under section 24 (e.g., in the case of RCM). As per the proposed change, if registration is not required under Section 23, there is no need to obtain registration irrespective of any mandatory requirement in terms of other provisions.

vi. Revocation of cancellation of registration - A new Section 131A has been inserted in the CGST Act, 2017 removing the time period of 30 days as well as the proviso for extension. Further, the amendment gives reference to the CGST Rules for the time period and conditions for revocation of cancellation of GST registration.

Deferment of Implementation of Time Limit on Reporting Old e-invoices

The GST department has deferred the time limit of 7 days to report the old e-invoices on the e-invoice IRP portals by three months. New implementation date is yet to be announced.

Notification of 6th Phase of e-invoicing

CBIC notified the 6th phase of e-invoicing under which taxpayers with Rs. 5 crores+ turnover in any financial year from 2017-18 shall issue e-invoice w.e.f 1st August 2023

Introduction of Amnesty Scheme for Non Filers

i. For GSTR- 4: If Composition taxpayers who has failed to furnish the return in FORM GSTR-4 for the period from July, 2017 to March 2022 and files the return during 1st April, 2023 to 30th June, 2023 then the late fee will be restricted to Rs. 500 per year.

ii. For GSTR- 9: The taxpayers who have not filled the GSTR- 9 from the FY 2017-18 to 2021-22, can file the GSTR- 9 from 1st April 2023 to 30th June 2023 by paying a maximum of Rs. 20,000 as late fees. The department will waive off the amount of late fees which is in excess of Rs. 20,000.



2.1 INDIRECT TAX

RECENT CASE LAWS:

Refund for ITC Cannot Be Denied on Mere Suspicion

In the case of M/s Balaji Exim Versus Commissioner, CGST and ORS

The allegations of any fake credit availed cannot be a ground for rejecting the refund applications unless it is established that the applicant has not received the goods or paid for them.

GST Applicability on Liquidated Damages

AP Power Development Co. LTD (GST AAR Andhra Pradesh)

Liquidated damages received by a service receiver from a service provider for not meeting terms of contract would attract 18% GST in certain cases. Earlier, Circular No. 178/10/2022 dated August 3 2022 stated that liquidated damages are mere flow of money from a party that caused a breach of contract to a party that suffered loss due to such breach, and hence do not constitute consideration of supply and are not taxable. AAR(Authority for Advance Ruling) said the circular was not universal and absolute.

No ITC in The Absence of Proof of Genuineness of Transaction and Physical Movement of Goods

In the case of The State of Karnataka Versus M/s Ecom Gill Coffee Trading Pvt Ltd.

To claim ITC, genuine transaction and physical movement of goods are crucial prerequisites. These requirements can only be validated by providing the seller's name and address, vehicle details for goods delivery, tax invoice, payment particulars, and more. Simply presenting an invoice and/or making a payment by cheque is inadequate and does not suffice as proof of the ITC claim's authenticity. Although this ruling pertains to the former VAT system in Karnataka, it may also impact transactions under the GST framework.

Deeming Fiction: 70:30 Formula for Construction Service & Land Cost Attribution

In the case of Avinga Properties Pvt Ltd Versus State Tax Officer

The methodology outlined in Notification No.11/2017-Central Tax (Rate) dated June 28, 2017, regarding construction services and the separation of costs between land and construction services, will be utilized in cases where the taxpayer is unable to provide the required bifurcation. Therefore, it is an option available to the taxpayer rather than a mandatory requirement



3. FEMA

INTRODUCING THE FEMA-SCIENTIST SERIES IN OUR BASCO BULLETIN:



Hey there, Mr. FEMA scientist! Hope you're doing well. I need your help regarding a buyback situation in my dad's Indian company. Some shareholders are NRIs and FIIs, and my dad wants to buy back shares. Can he do it under FEMA provisions?



Hey, I'm good! Sure thing, let me give you the lowdown. Yes, it is allowed. Here's the deal: The buyback of shares from foreign investors falls under the automatic route, so no prior permission from FIPB or RBI is required.

Awesome! So, we don't have to worry about compliance and can go ahead with the buyback freely, right?



Hold up! While it's under the automatic route, there are still some compliance requirements to consider:

- 1. The company must be eligible for automatic route investment under the FDI policy, meaning it can't be in the restricted sector.*
- 2. Financial service sectors like banks, insurance, and NBFCs are excluded.*
- 3. You'll need to file Form FC-TRS with the Authorized Dealer, along with relevant annexures.*
- 4. Make sure to adhere to the pricing guidelines specified by the RBI.*

Register on the FIRMS/SMF Portal and then file Form FC-TRS within 60 days from the date of transfer. Be mindful of the deadline, as late submission fees may apply.

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



No problem at all. Glad I could assist you. Feel free to reach out if you have any more questions or need further guidance.

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

4. INTERNATIONAL TAXATION

20% TCS on Foreign Remittance Transactions under LRS

Before the Budget 2023, for foreign equity investments under the Liberalised Remittance Scheme, the TCS was levied at the rate of 5% for remittances exceeding Rs 7 Lacs. However, the budget has suggested changes in the TCS structure.

From 1st July 2023, for foreign remittances for Foreign equity investment under LRS and the purchase of overseas tour programs, the TCS rates will increase to 20% without any threshold limit from the formerly applicable rate of 5% above 7 lakh.

Impact of New TCS Changes on Foreign Remittance Transactions:

Cases	Type of Remittance	Current Rate of TCS	Proposed Rate of TCS
Case 1	For the purpose of education (education loan from any financial institution)	0.5% of the amount or the aggregate of the amounts in excess of Rs 7 Lakh	No Change
Case 2	For the purpose of education, other than use case 1 (mentioned above)	5% of the amount or the aggregate of the amounts in excess of Rs. 7 Lakh	No Change
Case 3	Overseas Tour Package	5% without any threshold limit	20% without any threshold limit
Case 4	Any other case	5% of the amount or the aggregate of the amounts in excess of Rs. 7 Lakh	20% without threshold

5.COMPLIANCE CALENDAR

DUE DATES FOR INCOME TAX:

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

- Q1 (April-June'2023)-31st July 2023
- Q2 (July-Sep'2023)- 31st October 2023
- Q3 (Oct'23- Dec'23)- 31st January 2024

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

- Q1 (Apr-June'2023) - 15th July 2023
- Q2 (July-Sep'2023)- 15th October 2023
- Q3 (Oct-Dec'23)- 15th January 2024

Deposit of Advance Tax

- First Instalment: 15th June 2023 (15% of tax liability)
- Third Instalment: 15th September 2023 (45% 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	June, 2023	11th July, 2023	Not opted for QRMP Scheme
		Quarterly Return	June, 2023	13th July, 2023	Opted for QRMP Scheme
2	GSTR-3B	Monthly Return	June, 2023	20th July, 2023	Not opted for QRMP Scheme
3	GSTR-6	Monthly Return	June, 2023	13th July, 2023	Filed by ISD
4	GSTR-7	Monthly Return	June, 2023	10th July, 2023	Deductor of TDS under GST
5	GSTR-8	Monthly Return	June, 2023	10th July, 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

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