

BASCO BULLETIN

CONTENTS:

- Direct Taxation
- Indirect Taxation
- FEMA
- International Taxation
- Compliance Calendar
- About us

Helping with Compliance, Securing with Advice



BAS & Co LLP

Kolkata- Ahmedabad-Delhi

1. DIRECT TAX

CIRCULARS/NOTIFICATIONS

RETURN OF INCOME UNDER SECTION 170A:

As per Rule 12AD modified return of income to be furnished by a successor entity to a business reorganisation, as referred to in section 170A, for an assessment year, shall be filed electronically in the Form ITR-A and verified in the manner specified therein.

The Assessing Officer shall, pass an order modifying the total income of the relevant assessment year determined in such assessment or reassessment, or proceed to complete the assessment or reassessment proceedings, as the case may be, in accordance with the order of the business reorganisation and the modified return so furnished.

The Principal Director-General of Income-tax or Director-General of Income-tax shall specify the procedures, formats and standards for ensuring secure data capture and transmission.

Extension in the due date of filing Form 26Q of the Second Quarter for the F.Y 2022-23:

The due date for filing Form 26Q of the Second Quarter for the F.Y 2022-23 has been extended from 31st October 2022 to 30th November 2022.

Extension in the due date of filing ITR for A.Y 2022-

The due date of filing ITR under section 139(1) for the A.Y 2022-23 has been extended from 31st October 2022 to 7th November 2022.

Extension of the due date of filing Form No.10A:

The due date for filing Form No.10 A required to be filed on or before 30.06.2021 further extended till 25th November 2022.

Condonation of delay in filing of Form No. 9A, Form No. 10, Form No. 10B and Form 10BB for Assessment Year 2018-19 and subsequent years:

Where there is a delay of beyond 365 days up to three years in filing Form No. 9A, Form No. 10, Form 10B and Form 10BB for Assessment Year 2018-19 or for any subsequent Assessment Years, the Pr. Chief Commissioners of Income-tax /Chief Commissioners of Income-tax are authorized to admit such applications of condonation of delay under section 119(2) of the Act and decide on merits.

Further, the Pr. Chief Commissioner / Chief Commissioner of Income-tax, as the case may be, shall preferably dispose of the application within three months of receipt of the application.

RECENT CASE LAWS:

1. Advancement Of General Public Utility Won't Be "Charitable Purpose" For Income Tax Exemption If It Is Done As Business: Supreme Court

Case Title: Assistant Commissioner of Income Tax vs Ahmedabad Urban Development Authority and connected cases.

In a Significant Judgement, Supreme Court has held that entities Created with the objective of advancement of the general public utility cannot seek exemption under the Income Tax Act 1961 Under the head "Charitable Purposes" if they are engaging in any trade, business, commerce or providing any service for any consideration.

2. ITAT Deletes Disallowance u/s 14A Against Toyota As No Exempted Income Was Earned

Case Title: Toyota Tsusho India P. Ltd. Versus The Joint / Deputy Commissioner of Income Tax The Bangalore Bench of the Income Tax Appellate Tribunal (ITAT) has deleted the disallowance under section 14A of the Income Tax Act against Toyota as no exempted income was earned.

3. TDS On NRI Payment: Delhi High Court Rejects Appeal By Revenue-Payment Found As Salary, No Fees

Case Title: PCIT Versus M/s Boeing India Pvt. Ltd.

The Delhi High Court, while upholding the order passed by the Income Tax Appellate Tribunal (ITAT), has held that the provision of TDS on NRI payments under Section 195 of the Income Tax Act has no application once the nature of payment is determined as salary and a deduction has been made under Section 192.

2. INDIRECT TAX

CIRCULARS/NOTIFICATIONS

Amendments made vide Finance Act 2022 notified: Amendments that were made vide Finance Act 2022 have now been notified with effect from October 01, 2022. The key changes are:

i. Cancellation of registration: GST registration can now be cancelled in the following cases:

§ Composition taxable person - If a return for any financial year is not filed beyond three months from its due date

§ Taxpayers filing monthly returns - If returns are not furnished for a continuous tax period of six months

§ Taxpayers who have opted for the Quarterly Returns with Monthly Payments (QRMP) scheme - If returns are not furnished for two continuous tax periods.

ii. Filing of returns: A registered person shall not be allowed to file a GSTR-1 return for a tax period if the said return has not been filed for any of the previous tax periods.

iii. Return for Non-Resident Taxable Person (NRTP): The return by NRTP is to be filed by the 30th of the subsequent month or within seven days from the expiry of the registration, whichever is earlier.

iv. Input tax credit (ITC): ITC needs to be reversed along with applicable interest if the supplier fails to deposit the tax to the government. However, the same can be re-availed if tax is subsequently paid by the supplier. Further, ITC shall not be admissible if mentioned as such in GSTR-2B generated on the portal.

v. Extended time limit for claim of ITC and issue of credit notes: The claim for ITC in respect of any financial year may now be made up to November 30th of the subsequent financial year. The time limit for the issue of the credit note has been similarly extended.

vi. Rectification of errors: The time limit for rectification of errors in the previous returns filed in respect of a financial year is now November 30th of the subsequent financial year or filing of annual return GSTR-9, whichever is earlier.

vii. Refund: Where any refund is due to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, the officer may withhold payment of the refund until the said person furnishes the return and pays the tax, interest or penalty. Further, the time limit for claim of refund by United Nations Organisations and other specified persons has been extended to two years from the end of the quarter in which supplies were made.

viii. SEZ units: In case of supply to SEZ unit, the time limit to file GST refund, for ITC or for tax paid, shall be two years from the due date of furnishing of GSTR 3B return, in which said supplies for which refund has been filed are included.

Notification No. 18/2022 and 19/2022 - Central Tax dated September 28, 2022

Filing of Form TRAN-1/TRAN-2: In terms of the Order of the Apex Court, guidelines have been issued. The key points are:

i. TRAN-1/TRAN-2 may be filed afresh or that filed earlier may be revised.

ii. Entire claims should be filed in one consolidated Form TRAN-2. Period-wise claim is not to be filed.

iii. All the documents /records/returns/invoices basis which transitional credit has been claimed should be kept readily available for verification by concerned authorities.

iv. Once the Form is submitted on the portal, no further editing shall be permitted.

Circular No. 180/12/2022-GST dated September 09, 2022

Clarification on the time limit for compliances:

Vide Notification No. 18/2022-Central Tax, the timelines of various compliances including availment of credit, the rectification of returns and declaration of credit notes, have been extended and fixed as November 30th of the next financial year or furnishing of annual return, whichever is earlier. It is clarified that these extended timelines shall be applicable to the compliances from FY 2021-22 onwards. Further, no extension of the due date of filing the monthly return for the month of October (due in November) has been made vide aforesaid amendment.

Pre-deposit for filing appeal:

It has been clarified that payments through DRC-03 are not a valid mode of payment for making pre-deposits in relation to appeal matters of Excise and Service Tax. The dedicated CBIC-GST Integrated portal only should be used for making such pre-deposits.

Enforcement action and issuance of recurring Show cause notice (SCN): Following key guidelines have been issued:

i. A taxpayer assigned to State Tax authorities is open to enforcement action by both the authorities i.e. Central and State. In case any authority initiates an enforcement action against an assessee then all the consequential actions relating to the case will lie with the said authority.

ii. Issuance of recurring SCNs does not involve any fresh investigation. Therefore, it is desirable that such further/recurring SCNs are issued by the actual jurisdictional authority, administering the taxpayer.

2.1 INDIRECT TAX

RECENT CASE LAWS:

Rectification in FORM GSTR-1: In case of M/s Mahalaxmi Infra Contract Ltd (Jharkhand High Court)

While filing the GSTR-1 return for the month of March 2019, the petitioner inadvertently mentioned the wrong GSTIN and in the absence of a matching mechanism, it could not rectify the mistake within the time limit prescribed under GST law. However, the High Court directed the department to allow rectification in the return either online or in manual mode, as the said rectification does not impact tax liability, thereby causing any loss to the GST authorities.

ITC not permissible on Gift Vouchers

In the case of Myntra Designs Pvt Ltd (AAAR KARNATAKA):

Applicants are not eligible to claim ITC for the vouchers and subscription packages obtained from a third party which are then made available to free of charge to eligible customers customers who participate in the loyalty program . The ITC on sale of such vouchers in the form of Gift vouchers fall precisely under Section 17(5)(h) of the CGST Act, 2017, and is therefore not eligible.

ITC balance in Electronic Credit Ledger can be used for making mandatory pre deposit for filing appeal under GST

Furnishing pre-deposit through cash is not desirable where the taxpayer has accumulated ITC. Although the CBIC, vide Circular No. 171/03/2022-GST on F. No. CBIC-20001/2/2022-GST dated 06 July 2022, had tried to clarify that the pre-deposits for appeal should be allowed to be made through the ECRL, certain appeals formations persisted for making the pre-deposit through the ECL. This decision has come as a welcome relief for all taxpayers in reducing the fund blockage in availing the appeal remedy. This decision may also reduce the writ litigations primarily filed before High Courts for mitigating the pre-deposit requirement and may thereby improve the dispute resolution process overall.

Limitation period for filing refund application In case of M/s Chromotolab and Biotech Solutions (Ahmedabad High Court)

In case of supply of goods to SEZ unit without payment of tax, the period of two years for filing of refund application under Section 54 of the CGST Act, 2017 would be applicable based on date of filing of application on the common portal and not based on the date of submitting printout of application of refund uploaded on common portal. Therefore, if the application is filed on the common portal within period of two years, then it shall be treated as a valid refund application.

Order must be based on discrepancies stated in Notice

In the case of M/s Vadivel Pyrotech Pvt Ltd (Madras High Court)

The assessee was issued a Notice under Form ASMT-10 pointing out certain discrepancies. However, the Order was issued in Form GST DRC-07 on the basis of discrepancies which were completely different from those stated in the Notice. The Order was set aside and the matter was remitted back to officer for redoing the assessment.

3. FEMA

INTRODUCING THE FEMA-SCIENTIST SERIES IN OUR BASCO BULLETIN:



FEMA Scientist, you have to help me. My father wants me to study in Germany and I don't know how to get all the formalities done. Please tell me all the FEMA guidelines.



Oh, you have come to the right place! Let me tell you:

- Under LRS (Liberalised Remittance Scheme) by RBI, you can easily take USD 2,50,000 every financial year.
- You can carry USD 3000 in cash and an international credit card and the transaction you make won't form part of the LRS limit.
- The moment you board your flight to Germany, you will be an NRI and you are required to convert all your savings accounts in India to either NRO or NRE accounts.



I might have to spend more than 250000 USD as tuition fees are on the rise. Also, what if I do a part-time job there and earn some money?



Don't worry, when FEMA Scientist is here. In case, your tuition fees and other expenses exceed USD 250000, then you can submit the estimates to the bank and it may allow you to take extra funds. Also, you can send your excess earnings to India or get them with you. If it is more than USD 10000, then simply declare it to the custom authorities.

BAS & Co can take care of all the required compliances and they also help in dual tax compliances in the home country and foreign country too. Don't forget to reach out to them !!



4. INTERNATIONAL TAXATION

FOREIGN OWNED or CONTROLLED COMPANIES (FOCC)

- Owned by Non-Residents or Foreign Companies
- Entry into India through Liaison Office, Branch Office, Project Office or Wholly-Owned Subsidiary
- The process of incorporating an FOCC is similar to the incorporation process of a domestic company with some additional requirements, such as having at least one Indian director out of two if the FOCC is a private limited company. Also, The foreign director's documents must be in English and apostille-certified.
- FEMA acts as a stringent watchdog due to foreign investment. Before investing, FEMA provisions should be closely checked such as sectoral caps, entry channels, approved and forbidden industries, and so on. One can't invest in any sector, in any proportion, or in any way they want. From each point of view, there is a comprehensive list of sectors.
- RBI has defined the following 3 routes of investment:
 - Automatic Route: Sectors where 100 % FDI is allowed under automatic route such as the Civil aviation industry
 - Approval Route: Sectors where automatic investment is permitted up to a particular %. Investment beyond such % required prior approval from RBI. Such as Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline where up to 49% investment no approval is required.
 - Prohibited sectors: Sectors where foreign companies are not at all allowed to enter such as Nuclear power.
 - There are various industries that have automatic clearance for a set amount of time before requiring government approval, after which it becomes illegal.

HOW TO SET UP FOCC?

- **Wholly Owned Subsidiary**- Parent Co holds 100% of share capital. Permitted for only those sectors where 100% FDI is allowed, or approval needs to be taken
- **Joint Ventures**- A joint venture is a business model where 2 or more companies agree to put in goods, services, or capital to a particular commercial project. JV is a new project owned by 2 or more companies. Under JV, a new business entity is created, and its participants continue to exist as separate firms. It is helpful for firms where FEMA does not permit 100% FDI.
- **Acquiring stake in Existing Company**- Instead of opening a new company, foreign investors may buy stakes in existing companies as well. For this purpose, any existing shareholder may sell his stake to the foreign company or alternatively, an Indian company may issue new shares to the foreign investors.

4.COMPLIANCE CALENDAR

DUE DATES FOR INCOME TAX:

FILING TDS RETURN FOR THE F.Y. 2022-23:

Q2 (July-Sep'22)-Extended till 30th November 2022 only for Form 26Q)

Q3 (Oct-Dec'22)- 31st January 2023

Q4 (Jan'23- Mar'23)- 31st May 2023

FILING TCS RETURN FOR THE F.Y. 2022-23:

Q2 (July-Sep'22)-Extended till 30th November 2022 only for Form 26Q)

Q3 (Oct-Dec'22)- 15th January 2023

Q4 (Jan'23- Mar'23)- 15th May 2023

Deposit of Advance Tax

Third Instalment: 15th December 2022 (75% of tax liability)

Fourth Instalment: 15th March 2023 (100% of tax liability)

DUE DATES FOR GST:

| S.No | Form | The object of e-form | For the month /Year | Last Date | Remarks |
|------|---------|----------------------|---------------------|------------|---|
| 1 | GSTR-1 | Monthly Return | November,2022 | 11/12/2022 | Not opted for QRMP scheme |
| 2 | GSTR-3B | Monthly Return | November,2022 | 20/12/2022 | Not opted for QRMP scheme |
| 3 | GSTR-6 | Monthly Return | November,2022 | 13/12/2022 | Filed by ISD |
| 4 | GSTR-7 | Monthly Return | November,2022 | 10/12/2022 | Deductor of TDS under GST |
| 5 | GSTR-8 | Monthly Return | November,2022 | 10/12/2022 | E- commerce operators required to collect TCS |
| 6 | GSTR-9 | Annual Return | 2021-22 | 31/12/2022 | Turnover > 2 crs. |
| 7 | GSTR-9C | Annual Return | 2021-22 | 31/12/2022 | Turnover >5 crs. |

4. ABOUT US

BAS & CO LLP

Kolkata

CA Arun Patodia

Email: arun@basco.in

Phone: 033-25587917

Address: Suryadeep , 2nd Floor,
1/IE/6, Rani Harsha Mukhi Road,
Kolkata 700002

Ahmedabad

CA Sumeet Singhanian

Email: sumeet@basco.in

Phone: 7940324670

Address: Dev Aurum, A-702, Anandnagar
Road, Ahmedabad 380015

Delhi

CA Ritika Agarwal

Email: ritika@basco.in

Phone: 9717057567

Address: 804, Pearls Omaxe Building, Netaji
Subhash Place, Delhi-110034

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**

DISCLAIMER

This bulletin is meant for internal circulation and general information purposes only. These information materials are not intended, and must not be taken, as legal advice on any particular set of facts or circumstances.