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BASCO BULLETIN

FINANCE

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Helping with Compliance, Securing with Advice



BAS & Co LLP

Kolkata- Ahmedabad-Delhi-Purnea

1. DIRECT TAX

CIRCULARS/NOTIFICATIONS

Electronic Campaign to Address Income Transaction Mismatches

The CBDT has launched an electronic campaign to assist taxpayers in resolving mismatches between the income and transactions reported in the Annual Information Statement (AIS) and those disclosed in Income Tax Returns (ITRs) for the financial years 2023-24 and 2021-22. Informational messages have been sent via SMS and e-mail to taxpayers and non-filers where mismatches have been identified between transactions reported in AIS and the ITRs filed and to take this opportunity to file revised or belated ITRs for FY 2023-24. The last date to file these revised or belated ITRs is December 31, 2024. For cases pertaining to FY 2021-22, taxpayers can file updated ITRs by the limitation date of March 31, 2025.

(Press Release, Dated 17th December 2024)

No TDS on payments to Credit Guarantee Fund Trust for MSEs referred in Sec. 10(46B)

In order to simplify the financial operations of the Credit Guarantee Fund Trust for Micro and Small Enterprises (CGTMSE), the Central Government has issued a notification exempting CGTMSE from tax deduction at source (TDS) on the payments it receives. This exemption will be effective immediately upon its publication in the Official Gazette.

(Notification S.O. 5476(E) [No. 128/2024/F.No. 275/77/2024-IT(B)], DATED 18th December 2024)

Extension of DTVSV payment deadline to 31st Jan, 2025

The CBDT has extended the due date for determining the amount payable under the Vivad Se Vishwas Scheme from 31st December 2024 to 31st January 2025. The extension is applicable for those cases where the declaration is filed on or before 31st January 2025.

(Circular No 20/2024 dated 30th December, 2024)

Electronic Campaign for Income Mismatch

No TDS on payment to trust ref. in 10(46B)

Extension of DTVSV payment deadline

Amendment to Exemption on Infrast. Invest.

Amendment to Exemption on Infrastructure Investment Income for specified persons u/s 10(23FE)

The Central Government has made an amendment to a previous notification under Section 10(23FE) of the Income Tax Act, 1961, which provides exemptions for income generated by specified persons from investments in India, particularly in infrastructure sectors. In this amendment, the Central Government has updated the Harmonised Master List of Infrastructure Sub-sectors which is a comprehensive document that categorizes various infrastructure sectors to streamline investments and policy-making. The Central Government has included new sub-sectors under various categories such as Transport and Logistics and clarifications have been provided for certain existing categories. This amendment aims to provide a clear understanding on the types of infrastructure investments that qualify for tax exemptions.

(Notification S.O. 5347(E) [No. 127/2024/F. No. 500/MISC./S10 (23FE)/FT&TR-II], dated 11th December 2024)



1.1 DIRECT TAX

RECENT CASE LAWS:

Interconnectivity Charges Not Taxable Under India-Oman DTAA

The Tribunal previously determined that interconnectivity charges are chargeable as business profits. However, since the assessee lacked a Permanent Establishment (PE) in India, taxation under Article 7 of the India-Oman DTAA was not applicable.

The assessing officer initially categorized the charges as Royalty, while the Dispute Resolution Panel treated them as Fees for Technical Services (FTS). The Tribunal concluded that the charges did not qualify as either Royalty or FTS and could not be taxed under the residual clause of the DTAA. It further directed an examination of whether these charges might fall under any other relevant treaty Article.

Oman Telecommunications Company SAOG vs. Deputy Commissioner of Income Tax

Relinquishment of Rights in Intangible Assets Considered a Capital Receipt

The High Court upheld the Tribunal's decision, confirming that the amount received under a co-marketing agreement was a capital receipt. It ruled that the payment was compensation for the transfer of capital assets, including patents and technical know-how, as well as the surrender of enduring rights, which impaired the assessee's profit-making capacity.

The Court emphasized that agreements resulting in a permanent loss of income-generating potential should be treated as capital receipts, reinforcing the distinction between revenue and capital receipts based on the nature of rights relinquished.

Commissioner of Income Tax-III vs. M/s. Shantha Biotechnics

TOLA overrides Income-tax Act to the extent of relaxing time limit for issue of reassessment notice

The Supreme Court upheld the validity of around 90,000 income tax reassessment notices issued beyond April 1, 2021, under the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (TOLA). TOLA extended deadlines disrupted by the COVID-19 pandemic, allowing reassessment notices due between March 31, 2020, and March 31, 2021, to be issued until June 30, 2021. Despite challenges arguing TOLA could not override the Income Tax Act without amendments, the Court ruled the extensions valid due to the exceptional circumstances.

Rajeev Bansal (Supreme Court)

Tribunal rejects taxability of sales promotion expenses as FTS

The Tribunal ruled in favor of the assessee, concluding that sales and marketing services do not fall within the ambit of Fees for Technical Services (FTS) under the Income Tax Act. It held that such services do not qualify as managerial, technical, or consultancy services, and therefore, cannot be taxed as FTS. The Tribunal also deleted the disallowance related to the non-deduction of tax at source on the sales commission paid by the assessee to its subsidiary and other associated enterprises. In arriving at its decision, the Tribunal relied on previous rulings that had similar factual contexts, which reinforced its conclusion that the payments for sales and marketing services were not subject to tax under the FTS provisions. This judgment further emphasized the distinction between different types of services and clarified the scope of FTS under the law.

Algonomy Software Pvt Ltd (Bangalore ITAT)



2. INDIRECT TAX

CIRCULAR/NOTIFICATIONS

Advisory on E-Way Bill and E- Invoice Systems

Starting from 1st January 2025, the NIC will roll out updated versions of the E-Way Bill and E-Invoice systems to enhance portal security. One new feature is the introduction of Multi Factor Authentication (MFA).

Annual Aggregate Turnover	Mandatory Compliance
Exceeding Rs.20 crores	From 1st January 2025 onwards
Exceeding Rs.5 crores	From 1st February 2025 onwards
All other taxpayers	From 1st April 2025 onwards

Additionally, E-Way Bill generation will be restricted to documents dated within 180 days, and the extension of E-Way Bills will be limited to 360 days from the original generation date.

(GSTN Advisory dated 17th December 2024)

Advisory on mandatory sequential filing of GSTR-7 as per Notification No. 17/2024

Effective from 1st November 2024, GSTR-7 filing will follow a sequential order, starting from the October 2024 tax period. This means that deductors must file their GSTR-7 returns in chronological order. If no deductions were made during a particular month, the deductor is still required to file a Nil return for that month.

(GSTN Advisory dated 4th December 2024)

RECENT CASE LAWS:

Denial of ITC on Mistake while filing annual return

In this case, the Kerala High Court dealt with the issue of the eligibility of Input Tax Credit (ITC) on the grounds of inadvertent mistakes in filing the annual GST return. The petitioner had failed to claim ITC due to an oversight in the filing process. The Court ruled that genuine and inadvertent mistakes in filing GST returns should not result in the denial of ITC, especially when the taxpayer has made a bona fide attempt to comply with the tax provisions. The Court directed that the authorities should provide an opportunity for rectifying such mistakes to ensure the rightful claim of ITC. This case reinforces the principle that taxpayers should not be penalized for honest errors, provided the rectifications are made within a reasonable period and in accordance with the law.

Ancheril Agencies v. State of Kerala (Kerala High Court)

Clubbing of years in Notice

The Karnataka High Court, ruled that clubbing or consolidating multiple assessment years into a single Show Cause Notice (SCN) under Section 74 of the CGST Act is not permissible. The Court emphasized that separate SCNs must be issued for each assessment year, as each year's assessment is distinct. This decision reinforces the need for procedural fairness, ensuring that taxpayers are given the opportunity to address issues for each year individually, in accordance with the provisions of the CGST Act.

Chimney Hills Education Society v. State of Karnataka

Parallel proceedings

Where parallel proceedings are initiated by State and Central GST authorities, authority which first initiated and completed assessment for particular year shall have jurisdiction, precluding other authority from conducting assessment for same period

S. G. Plastic Industries (Allahabad High Court)



Portfolio Investment Scheme for NRIs

Hello, Mr Fema Scientist, one of my close friend, Bob, wants to invest in Indian Stock Market. He is a NRI living in US. Can you explain the portfolio investment scheme for NRI to assist him



Absolutely, Austin. The Portfolio Investment Scheme (PIS) is a great way for NRIs like you to invest in Indian securities. It allows you to buy and sell shares and convertible debentures of Indian companies on recognized stock exchanges.

There are a few key points to remember.

- First, you need to designate a bank branch in India to handle all your transactions.
- Second, you have to buy and sell through a registered broker on a recognized stock exchange.
- And third, all transactions must be delivery-based, meaning no speculative trading is allowed.

Are there any limits on how much I can invest?

Yes, there are. NRIs under PIS can hold up to 5% of the paid up capital of the company. However, in case of the company in which investment is to be made, the aggregate paid up value of shares purchased by all NRIs cannot exceed 10% of the paid up capital of the company. The aggregate ceiling of 10% can be raised to 24% by passing a special resolution to that effect.

You'll need to pay applicable taxes on any income or capital gains you earn from your investments. However, the specific tax rules may vary depending on your country of residence.

You can also use a power of attorney who can manage your portfolio on your behalf, but they cannot remit funds outside of India.

Okay! Thank you so much.

BAS & Co can take care of all the required compliances regarding FEMA. Don't forget to reach out to them !!

4. INTERNATIONAL TAXATION

Implications of the MFN Clause in the India-Switzerland DTAA: Legal Developments and Future Changes

Understanding the MFN Clause in DTAA: Implications for India and Switzerland

The **Most Favoured Nation (MFN)** clause in Double Taxation Avoidance Agreements (DTAAs) ensures that if one country offers more favorable tax treatment to another, those same benefits automatically extend to the country with the MFN clause. In the context of India and Switzerland, this clause specifically affects tax rates on passive income like dividends, royalties, and technical service fees.

The MFN Clause in the India-Switzerland DTAA

India and Switzerland signed their DTAA on November 2, 1994, aimed at preventing double taxation and promoting economic cooperation. A significant amendment in 2010 introduced the MFN clause, ensuring that if India entered into future treaties with OECD member countries offering reduced tax rates on dividends, royalties, and technical service fees, those benefits would retroactively apply to Switzerland. This provision was vital for Switzerland, as it ensured that reduced tax rates extended to other countries like Lithuania or Colombia would also apply to it.

Legal Developments and the Supreme Court Ruling

In the case of Nestlé SA (Civil Appeal No. 1432/2023), Nestlé sought to claim reduced dividend tax rates under the MFN clause, based on treaties India had with Lithuania and Colombia. However, the Supreme Court of India, in its ruling on October 19, 2023, clarified important points:

1. **Notification Requirement:** India must issue a notification under Section 90 of the Income Tax Act to implement tax treaty benefits. Without this, provisions from other countries' treaties cannot be automatically integrated into India's tax system.
2. **No Automatic Benefit:** Tax benefits from other countries' treaties do not automatically extend to Switzerland. Each treaty requires a formal amendment and notification from India.
3. **OECD Membership Consideration:** New treaty benefits only apply to countries that became OECD members after their DTAA agreements with India.

Unilateral Decree by Switzerland

In August 2021, Switzerland issued a unilateral decree stating a 5% tax rate would apply retroactively from July 2018. However, the Supreme Court ruled that such unilateral actions are not binding on India without mutual agreement, reaffirming the need for formal notification from India.

The Removal of the MFN Clause by Switzerland

On December 11, 2024, Switzerland announced that the MFN clause would no longer apply from January 1, 2025. From this date, Indian tax residents will face a 10% withholding tax on dividends from Switzerland, reverting to the original tax rate. However, Indian residents will continue to benefit from the 5% rate for tax years 2018-2024.

Conclusion

The MFN clause provided Switzerland with favorable tax treatment under India's treaties with OECD countries. However, the Supreme Court's clarifications and Switzerland's decision to remove the MFN clause mark a significant shift. Starting in January 2025, the tax treatment under the India-Switzerland DTAA will return to its original terms, simplifying the tax landscape.

5. IPO ADVISORY SERVICES

BASCO: Preparing for the IPO Journey

-----Pre IPO-----

Pre IPO Planning

- ▶ Evaluate fund raise, Strategy formulation, identification and business positioning, Growth strategy. EBITDA improvement
- ▶ IPO readiness - gap analysis, roadmap
- ▶ Enhance corporate presentations

Capital and Tax structuring

- ▶ Corporate restructuring, optimise Cap- Table
- ▶ Evaluate tax efficient exit mechanism for OFS
 - ▶ SEBI compliant ESOP Scheme
- ▶ Succession planning

Governance, systems and controls

- ▶ Early planning for Board of Directors, Committees
- ▶ Establish robust IFC, ERM & overall systems/controls
 - ▶ Accelerate financial reporting
- ▶ Secretarial Healthcheck & Remediations

Financial reporting and Dataroom

- ▶ Financial reporting and ESG considerations
 - ▶ Benchmarking and identification of KPIs
 - ▶ Appoint auditor of repute and internal audit
- ▶ Build a comprehensive dataroom

-----Kick-off to listing-----

IPO execution

- ▶ Share market insights on role of intermediaries and accelerate timelines
- ▶ Execution support, be a single point contact for intermediaries
 - ▶ 3 years restated financials, advise on SEBI ICDR, LODR regulations

IPO execution (2)

- ▶ Expedite quarterly consolidated financial reporting/close process
- ▶ Enhance governance and implementation of 20+ policies/charters
- ▶ Structured approach to manage Insider Trading, RPT compliances / STX disclosures
- ▶ Support in interactions with Independent CA, chartered engineer, other agencies

Strategic insights

- ▶ Value creation through independent insights and investor feedback
- ▶ Analysis of use of proceeds and selling shareholder engagement
- ▶ Financial modeling
- ▶ Investor perception study

Post-IPO framework

- ▶ Conduct Board/KMP/SMP/employee orientation sessions
- ▶ Assist in setting up post-IPO compliance framework, calendar, SOPs
- ▶ Develop CG & CSR report, Business Responsibility and Sustainability report

-----Post listing-----

Investor relationship and sustainability

- ▶ Enhance IR strategy
 - ▶ Target specific investors, analysts to effectively communicate performance
 - ▶ ESG reporting, sustainability initiatives and diversity and inclusion

Digital / Other considerations

- ▶ Deploy digital tools (e.g. compliance management, dashboards, reporting)
- ▶ Continuous secretarial support (incl Board, shareholders' meetings, filings, SE intimations etc.)
- ▶ Periodic compliance reviews

6. SPECIAL NOTE!

Dear All,
Warm Greetings!!

We are pleased to inform you about an important update that we have received regarding our empanelment with NSE. As per the recent circular, merchant bankers are now required to appoint a Concurrent Auditor for the verification of the allotment process in SME IPOs. This is in line with Regulation 268(4) of the SEBI Issue of Capital and Disclosure Requirements (ICDR) Regulations, 2018, aimed at ensuring transparency in the allotment mechanism.

We want to share that our firm is eligible and empaneled as Concurrent Auditor by Merchant Bankers for this process. The circular mandates that the audit should verify adherence to regulations and confirm that allocation has been made by the Registrar and Transfer Agent (RTA) based on the random number generation by the Exchange system.

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7. COMPLIANCE CALENDAR

DUE DATES FOR INCOME TAX:

FILING TDS RETURN FOR THE F.Y. 2024-25:

Q3 (Oct'24- Dec'24)- 31st January 2025

Q4 (Jan'25- Mar'25)- 31st May 2025

FILING TCS RETURN FOR THE F.Y. 2024-25:

Q3 (Oct'24- Dec'24)- 15th January 2025

Q4 (Jan'25- Mar'25)- 15th May 2025

Deposit of Advance Tax:

Fourt Installment: 15th March 2025
(100% 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/ Quarterly Return	December, 2024	13th/15th Jan, 2025	Normal/ QRMP
2	GSTR-3B	Monthly Return	December, 2024	22nd/24th Jan, 2025	Normal/ QRMP
3	GSTR-6	Monthly Return	December, 2024	15th Jan, 2025	Filed by ISD
4	GSTR-7	Monthly Return	December, 2024	12th Jan, 2025	Deductor of TDS under GST
5	GSTR-8	Monthly Return	December, 2024	12th Jan, 2025	E-commerce operators required to collect TCS
6	GSTR-9	Annual Return	2024-25	31st December, 2025	Turnover>2 crore
7	GSTR-9C	Annual Return	2024-25	31st December, 2025	Turnover>5 crore

8. ABOUT US

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ABOUT THE FIRM

With 27 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
- IPO Advisory

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