

A Monthly E-Newsletter

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The Bottom Line

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KEY METRICS

Indices

BSE SENSEX	56,247	-3.05%	▼
NSE NIFTY50	16,794	-3.15%	▼
NASDAQ Composite	13,751	-3.43%	▼
NIKKEI 225	26,527	-1.76%	▼

Currency

USD/INR	75.49	-1.26%	▼
EURO/INR	84.70	-1.17%	▼
GBP/INR	101.30	-1.10%	▼
JPY/INR	0.66	-1.23%	▼

Note: The month-on-month movement as on February 28, 2022 is represented in percentages
Source: Yahoo Finance, Investing.com



DIRECT TAX

Notifications/Circulars

Applicability of MFN clause in DTAA clarified

It has been clarified that the third country (providing the restricted tax rate or scope) must be an OECD member, both at the time of conclusion of the DTAA with India and at the time of applicability of the MFN clause. Furthermore, the applicability of the MFN clause is subject to notifications issued in this regard. The circular has also carved out exception for the implementation of Court orders in case of taxpayers who have received a favourable decision from any Court on this issue.

Circular No. 03/2022 dated February 03, 2022

Judicial Rulings

Issuance of separate notification for MFN clause overrides provision of section 90(1)

The Tribunal held that once DTAA is notified, all its integral parts, including protocol, get automatically notified and there remains no need to again notify the individual limbs of the DTAA. Further, the CBDT circular specifying the need for issuance of a separate notification for availing benefit of MFN clause overlooks the provision of section 90(1) and the circular is only binding on the tax department and not on the taxpayer. In the instant case, the appeal pertained to AY 2016-17 and it was held that such requirement of issuing notification

cannot be applicable retrospectively hence, the order was passed in favour of the assessee.

Darshan Enterprise v. ACIT (Gujarat High Court)

No deduction under section 37(1) for freebies given by pharma companies to doctors

The Hon'ble Court held that prohibition of acceptance of gifts or freebies by medical practitioners is no less of a prohibition on the part of the giver i.e pharma companies. Accordingly, pharma companies cannot be granted tax benefit for providing such freebies as it is clearly prohibited by law and duly covered under section 37 of the Act.

Apex Laboratories Pvt Ltd. v. DCIT (Supreme Court)

Group Management Fee not held as FTS by invoking MFN Clause

The assessee is a tax resident of Belgium and engaged in the business of providing operational consultancy services to group entities. The services provided constituted both managerial and consultancy services including consultancy of technical nature, thus, were taxable in India under section 9 and as per Article 12 of India-Belgium DTAA. The tribunal invoked MFN clause by applying India-Portugal DTAA to hold that the services rendered by the assessee did not 'make available' technical know-how/skills, thus, not liable to tax as FTS.

Magotteaux International SA v. DCIT (Delhi ITAT)

Applicability of MFN clause in DTAA clarified

No deduction under section 37(1) for freebies given by pharma companies to doctors



INDIRECT TAX

Circulars / Notifications

Applicability of e-invoicing

With effect from April 01, 2022, e-invoicing provisions shall be applicable for registered persons whose aggregate turnover exceeds ₹ 20 crore in any financial year from 2017-18 onwards.

Notification No. 01/2022 - Central Tax dated Feb 24, 2022

Judicial Rulings

Conditions for provisional release of goods

Where tax, interest and penalty has already been paid toward provisional release of confiscated goods, the department should not insist on furnishing the bank guarantee.

M/s AB Traders (Gujarat High Court)

Order passed by higher authority

An officer of lower rank cannot refuse to follow the Order passed by a higher rank officer. In the present case, the Assistant Commissioner (AC) has refused to comply with the Order passed by the Commissioner (Appeals) as if he was sitting in appeal against the said Order. Therefore, the AC was directed to comply with the Orders passed by the Commissioner (Appeals).

M/s Globus Petroadditions Pvt Ltd (Bombay High Court)

Search and seizure

The petitioner cannot be forced to deposit the tax liability as assessed by the officer during the course of search, without following the

procedures as prescribed under Section 74 of the CGST Act. The officer should issue a SCN and the petitioner should be allowed an opportunity to present his case. However without following the aforesaid procedure, the petitioner was forced to deposit the liability as voluntary payment, which is totally illegal, unjust and highhanded.

M/s Dhariwal Products (Rajasthan High Court)

Technical glitches in the portal

The department cannot raise hand in despair saying that it is not possible to correct or take care of the technical glitches. The petitioner has paid tax on the input supplies and therefore, the credit of such taxes is his vested right. Such vested right cannot be defeated on account of any irregularity in the system evolved by the Government.

M/s Bodal Chemicals Ltd (Gujarat High Court)

Service of Notice The GST The GST portal has faced problems on several occasions and steps were taken to correct the issues. Even as on date, there are problems arising out of inter-communication between the State GST and Central GST web portal. Therefore, the department should continue the service of Notice through post or courier with acknowledgment to the petitioner at their place of business and also upload the same on the GST portal.

M/s Pushpam Reality and others (Madras High Court)

Threshold for applicability of e-invoicing now ₹ 20 crore

Lower authority cannot refuse to follow order passed by higher authority

Technical glitches in portal are no reason for denial of tax credit

Composite supplies

The applicant has entered into various contracts for supply of goods and services. Even though there are separate contracts for each supply, the 'cross fall breach clause' settles unambiguously that the said supply is an indivisible composite work contract supply. Consequently, as per Schedule II of the CGST Act, the entire contract shall be regarded as supply of services.

M/s Toshiba JSW Power Systems Pvt Ltd (AAR Uttar Pradesh)



CORPORATE & ALLIED LAWS

Circulars / Notifications

Limited Liability Partnership (Amendment) Rules, 2022

Limited Liability Partnership (Amendment) Rules 2022 were notified repealing the Limited Liability Partnership Rules, 2009 with effect from April 01, 2022. Key provisions under the new Rules are:

- In case of failure to change name of existing LLP in accordance with the directions issued by Ministry within a period of three months, the letters - "ORDNC" (Order of Regional Director Not Complied"), the year of passing of the direction, the serial number and the existing LLPIN of the LLP shall be added to the name of the LLP without any further act or deed by the LLP.
- Adjudication of penalties
- Appeal against order of adjudicating officer and registration of appeal.

Notification No. G.S.R 109(E)/MCA/2021-22/dated February 11, 2022

Further relaxations in levy of additional fees

Waiver of additional fees has been provided for Forms AOC-4, AOC-4 XBRL or AOC-4 Non- XBRL upto March 15, 2022 and Forms MGT-7, MGT-7A upto March 31, 2022.

General Circular No. 01/MCA/2021-22/dated February 14, 2022

Reserve Bank of India

RBI reopens allotment of investment limit under the Voluntary Retention Route (VRR) for Investments by

Foreign Portfolio Investors (FPI). The Reserve Bank of India introduced the VRR for investments by FPIs on March 01, 2019. An amount of ₹ 150,000 crore was offered for investment through VRR in three tranches so far. The investment limit has now been increased to ₹ 250,000 crore. The increased investment limits shall be open for allotment from April 01, 2022 with following conditions:

- The minimum retention period shall be three years.
- Investment limits shall be available 'on tap' and allotted on 'first come, first served' basis.
- The 'tap' shall be kept open till the limit is fully allotted.
- FPIs may apply for investment limits online to Clearing

Further relaxations in levy of additional fees for Forms AOC-4 and MGT-7

Applicability of LLP Amendment Rules, 2022 with effect from April 01, 2022

- Corporation of India Ltd. (CCIL) through their respective custodians.
- CCIL will separately notify the operational details of application process and allotment.

Press Release 1701/RBI/2021-22/ dated February 10, 2022



CFO WATCH

Separation of role of Chairperson and MD/ CEO to be on a voluntary adoption basis

MCA requires companies to furnish a report on CSR for FY 2020-21 by March 31, 2022

Separation of role of Chairperson and MD/ CEO to be on a voluntary basis

SEBI previously approved the proposal of corporate governance committee to separate role of Chairperson and MD/ CEO of listed companies for more balanced governance structure. However, considering representations received from industry bodies expressing the challenges faced, the mandate which was supposed to be effective from April 01, 2022 for listed companies is now on voluntary adoption basis.

Accounting guidelines for preparation of Financial Statements of Mutual Fund Schemes under Ind AS

SEBI has mandated the AMCs to prepare the Financial Statements and Accounts of Mutual Fund Schemes in accordance with Ind AS effective April 01, 2023. Consequently, SEBI has issued certain guidelines:

- Opening Balance Sheet and comparatives as on the date of transition shall be prepared as per the requirements of Ind AS
- Restatement of previous years published historical per unit statistics may not be mandatory for first two years from first time adoption of Ind AS
- Mutual Fund Schemes to clearly state the previous GAAP information not being prepared as per Ind AS along with disclosing the nature of adjustments that are required for compliance with Ind AS.

MCA requires companies to furnish a report on CSR

MCA has issued the Companies (Accounts) Amendment Rules, 2022, whereby every company covered under the provisions of Section 135 (1) of Companies Act, 2013 are now required to furnish a report on CSR in Form CSR-2 for the preceding FY 2020-21, by March 31, 2022.

MERGERS & ACQUISITIONS

Government's divestment plan to spark M&A activity in PSUs

Running loss-making PSUs drains taxpayers money that could otherwise have been spent on various other public welfare schemes. Considering this, Indian Government has decided to privatize all PSUs barring strategic sectors such as atomic energy, defence, power, petroleum, minerals, banking, insurance etc where the government will retain a bare minimum presence.

Given the current geopolitical and market condition, Government of India has revised its disinvestment estimate for FY22 to ₹78,000 crore, down from ₹1.75 lakh crore envisaged in last year budget and has set a target of ₹65,000 crore for FY23. So far in FY22, the total disinvestment proceed is ₹12,030 crore which includes ₹2,700 crore from Air India privatisation and balance ₹9,330 crore through minority stake sale in various CPSEs.

In order to facilitate the process and show its commitment, Union Cabinet has approved the proposal to allow 100 percent FDI in public sector refiners in a bid to facilitate the sale of 52.98% stake in Bharat Petroleum Corporation Limited (BPCL) and allowed foreign direct investors to buy up to 20 percent of LIC's shares through an automatic route.

Successful Divestments in FY22

Name of PSU	Name of Buyer	Enterprise Value
Air India	Tata sons	₹ 18,000 crore
Neelachal Ispat Nigam Limited	Tata Steel Long Products	₹ 12,100 crore

Government has a strong pipeline for PSUs which will go through divestment and possible M&A in FY23. Some of the names include BPCL, Shipping Corporation of India etc. While some of these will see a public offering as in case of planned IPO of LIC, some smaller ones like Pawan Hans etc might be sold outrightly to strategic buyers. Government has always been behind meeting its divestment target historically, however the pace has picked up after successful sale of Air India to Tata sons. We expect the M&A action to continue for strategic Government assets during next fiscal year.



IN THE NEWS



Webinars for Clients

Budget 2022 – Reading the Fine Print

February 4, 2022

Speaker: K Venkatraman, National Head, Taxation, Sunil Arora, Partner, Taxation, Sundeep Gupta, Partner, Accounting & Business Support and Indirect Tax, Himanshu Srivastava, Partner, Business Advisory

We hosted our annual budget webinar for our clients where we looked at the impact of the budget proposals on corporates in India. Our partners highlighted key direct and indirect tax proposals and their impact as well as key policy changes proposed and their impact on companies in India.

Other Webinars

UKIBC: Union Budget 2022

February 2, 2022

Speakers: Himanshu Srivastava, Partner, Business Advisory

Himanshu was invited by UKIBC to speak at their virtual round table on the Union Budget 2022. The discussion covered the impact of the budget announcements, the

course it sets for 2022, and resulting opportunities for the UK-India business and trade.

BBG Delhi Women's Leadership Series

February 17, 2022

Speakers: Kim Collaco, Executive Director, Enterprise Strategy

Kim interviewed Mrs. Deepa Wadhwa, (Former Ambassador of India to Japan, Sweden and Qatar and Board Member at ASA) for the second edition of the British Business Group Delhi's, Women's Leadership Series. The discussion covered her career, the life of an Ambassador, challenges and advice to future leaders.

India's Budget highlights & incentives for Make in India and Invest in India

February 22, 2022

Speakers: Himanshu Srivastava, Partner, Business Advisory

Himanshu was invited by Invest India and the India New Zealand Business Council to speak at their session on India's Budget highlights & incentives for Make in India and Invest in India. He gave an overview

of the budget and highlighted several key changes and their impact on foreign companies looking to enter India as well as participated in the panel discussion that followed.

Articles

Key to Strategic Decision Making – Data Analytics

February 22, 2022

Author: Manuj Dua, Associate Director, Digital Automation and Transformation

This article covers the benefits of data analytics and their impact on strategic decision making including how data drives solutions and how to use it.

Impact of RBI Circular on Audit Quality of Banks and NBFCs

February 25, 2022

Author: Parveen Kumar, National Head, Assurance

Published in ET CFO, the article looked at the impact of RBI's recent Circular on Audit Quality of banks and NBFCs. In the article, he looked at the impact of various aspects of the circular as well as certain issues that remained unaddressed by it.

GLOSSARY



ACIT

Assistant
Commissioner of
Income Tax

CSR

Corporate Social
Responsibility

GST

Goods &
Services Tax

MCA

Ministry of
Corporate Affairs

PSU

Public Sector
Units

AMC

Asset Management
Company

DCIT

Deputy
Commissioner of
Income Tax

IND AS

Indian
Accounting
Standard

MD

Managing Director

RBI

Reserve Bank of
India

AY

Assessment Year

DTAA

Double Taxation
Avoidance Agreement

IPO

Initial Public
Offer

MFN

Most Favoured
Nation

SCN

Show Cause Notice

CBDT

Central Board of
Direct Taxes

FDI

Foreign Direct
Investment

ITAT

Income Tax
Appellate
Tribunal

NBFC

Non-Banking
Financial Company

SEBI

Securities and
Exchange Board of
India

CGST Act

Central Goods &
Services Tax Act,
2017

FTS

Foreign Direct
Investment

LIC

Life Insurance
Corporation

OECD

Organisation for
Economic Co-
operation and
Development

CEO

Chief Executive
Officer

FY

Financial Year

LLP

Limited Liability
Partnership

CPSEs

Central
Public Sector
Enterprises

GAAP

Generally
Accepted
Accounting
Principles

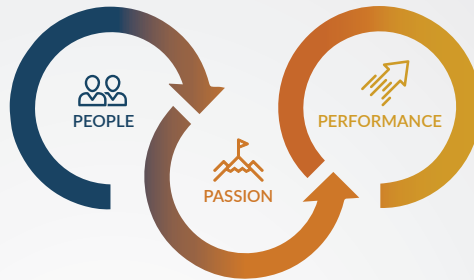
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