



A Monthly E-Newsletter

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# The Bottom Line

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## KEY METRICS

### Indices

BSE SENSEX	57,427	-1.43%	▼
NSE NIFTY50	17,094	-1.84%	▼
NASDAQ Composite	10,576	-11.67%	▼
NIKKEI 225	25,937	-7.13%	▼

### Currency

USD/INR	81.51	-2.54%	▼
EURO/INR	79.87	0.09%	▲
GBP/INR	90.96	1.54%	▲
JPY/INR	0.57	1.38%	▲

Note: The month-on-month movement as on September 30, 2022 is represented in percentages  
Source: Yahoo Finance, Investing.com



# DIRECT TAX

## Notifications/Circulars

### **CBDT issues additional guidelines to withhold tax on 'benefit or perquisite' u/s 194R**

In continuation to its earlier guidelines on deducting tax on payment of benefits/ perquisites, CBDT has now issued additional clarifications on applicability or otherwise in respect of loan settlement transactions, specified reimbursements and issuance of bonus or rights issue, amongst others.

*Circular No. 18 dated September 13, 2022*

### **CBDT notifies ITR-A for filing modified return pursuant to business reorganization**

CBDT has notified a new rule, applicable from November 01, 2022, with respect to facility to file a modified return in cases of business reorganization within six months from end of month in which order of reorganization is received. A new Form ITR-A is to be filed electronically in such cases. The timeline to file a modified return by companies undergoing business reorganization between April 01, 2022 and September 30, 2022, has been extended to March 31, 2023.

*Notification No. 110 dated September 19, 2022 and Order u/s 119 dated September 26, 2022*

## Judicial Rulings

### **Assessee eligible for FTC despite delay in filing Form No. 67 & ITR**

While allowing FTC to the assessee, it was held that filing of Form No. 67 is not a mandatory, but a directory requirement and provisions of Rule 128 do not provide for disallowance

of FTC in case of delay in filing of the same. It was further held that the provisions of the tax treaty overrides the Income Tax Act and FTC should be allowed even if form 67 and ITR is filed belatedly.

*Vinodkumar Lakshmipathi v CIT(A) (Bangalore ITAT)*

### **Fees for Included Services excludes ancillary services that cannot be provided on a standalone basis**

The Tribunal held that the payment to a US based entity for set testing/on-site training is ancillary to the activity of purchase of equipment which cannot be provided on an independent or a standalone basis. Accordingly, the said services do not fall within the purview of 'Fee for Included Services' defined in the India-US DTAA. Consequently, the TDS liability does not arise on such payment.

*Electronics Corporation of India Ltd. v CIT (Hyderabad ITAT)*

### **Interest on Income tax refund is not liable to TDS for Dutch entity by virtue of MFN clause**

Tribunal invoked the MFN clause of India-Netherlands DTAA and held

CBDT issues additional guidelines to withhold tax on 'benefit or perquisite' u/s 194R

CBDT notifies modified return for filing pursuant to business reorganization

Assessee is eligible for FTC despite delay in filing requisite form

that interest on income tax refund is not liable to TDS by virtue of beneficial provision of Article 11 of India-Italy DTAA. It observed that interest on income tax refund is a 'debt claim' from the Government under India-Italy DTAA and the same was exempt from tax. Since, India has entered into DTAA with Italy after Netherlands, by virtue of MFN clause, the beneficial provision of the India-Italy DTAA will be imported into reading the India-Netherlands DTAA.

*Koninklijke Philips N.V v DCIT (Kolkata ITAT)*



# INDIRECT TAX

## Circulars / Notifications

### Prosecution under GST

CBIC has issued various clarifications and guidelines, for launching prosecution under the Central Goods and Services Tax Act, 2017.

*Instruction No. 04/2022-23 [GST- Investigation] dated September 1, 2022*

### Filing of Form TRAN-1/TRAN-2 for transitional credit

In terms of the Order of the Apex Court, guidelines have been issued to file fresh TRAN-1/TRAN-2 or revise that filed earlier. No further editing to be permitted and entire claim to be filed in one consolidated Form and not period-wise. Further, the basis of transitional credit should be kept readily available for verification.

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

### Amendments made vide Finance Act 2022 notified

Various amendments made vide Finance Act 2022 have now been notified with effect from October 01, 2022. These include provisions for cancellation of registration in specified circumstances, ITC to be reversed if supplier does not deposit tax, extension of time limit for claim of ITC and issue of credit notes or making rectifications upto November 30th of subsequent year, amongst others.

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

## Judicial Rulings

### TRAN-1 and TRAN-2 filing

The Apex Court has granted four weeks extension to GSTN to allow taxpayers to file TRAN-1 and TRAN-2 form. Filing window to start from October 01, 2022.

*M/s Filco Trade Centre Pvt Ltd (Supreme Court of India)*

### Renting of residential dwelling

In case a residential property has been rented by the proprietor of a registered proprietorship firm, who rents it in own personal capacity on own account and for use as own residence and not for use in the course or furtherance of business of the proprietorship firm, then the same shall be exempt from GST and tax is not to be paid by the registered firm under reverse charge mechanism.

*M/s Seema Gupta (Delhi High Court)*

### ITC on gift vouchers

Applicant not eligible to avail ITC on the vouchers and subscription packages procured from a third party which are then made available free of cost to eligible customers participating in the loyalty program. The ITC on disposal of such vouchers by way of gift is squarely covered under Section 17(5)(h) of the CGST Act, 2017, hence ineligible.

*M/s Myntra Designs Pvt Ltd (AAR Karnataka)*

### Levy of Interest

Mere availability of sufficient balance in electronic credit or cash ledger cannot insulate the petitioner

Guidelines issued for launch of prosecution under GST

ITC not permissible in case of gift vouchers

No GST on renting of residential house for personal use

from applicability of interest in case of delayed payment of liability. Unless taxpayer files a return and debits the respective ledgers, the authorities are not expected to assume that the available credits will be set off against the tax liability.

*M/s India Yamaha Motors Pvt Ltd (Madras High Court)*

### Ineligibility of ITC

The goods procured for disbursement in the promotional Scheme to retailers are in the nature of their personal consumption. Therefore, the said credits are ineligible. Further, credits on hotel accommodation & catering services are also not eligible.

*M/s Rodec Pharmaceuticals Pvt Ltd (AAR Uttar Pradesh)*

# CORPORATE & ALLIED LAWS

## Circulars / Notifications

### Definition of 'small company' amended

MCA has amended the thresholds defining a 'small company' easing them further. The threshold for paid-up share capital has been increased from INR 20 to 40 million and for turnover increased from INR 200 to 400 million.

*Notification dated September 15, 2022*

### Companies (Corporate Social Responsibility Policy) Amendment Rules, 2022

Companies (Corporate Social Responsibility Policy) Amendment Rules, 2022 amending the Companies (Corporate Social Responsibility Policy) Rules, 2014 have been notified. The key changes are:

- (i) Reconstitution of the CSR Committee made mandatory wherever the Company has any amount in its Unspent

CSR Account in terms of the provisions of Section 135(6) of the Companies Act, 2013.

- (ii) The CSR thresholds are required to be checked every year to continue the CSR Committee
- (iii) The Board is to ensure that the CSR activities are undertaken by the company or through specified other entities, including an entity established under an Act of Parliament or State Legislature
- (iv) Annual reporting on CSR to be in prescribed format.

*Notification dated September 20, 2022*

### Late Submission fees for reporting delays under FEMA

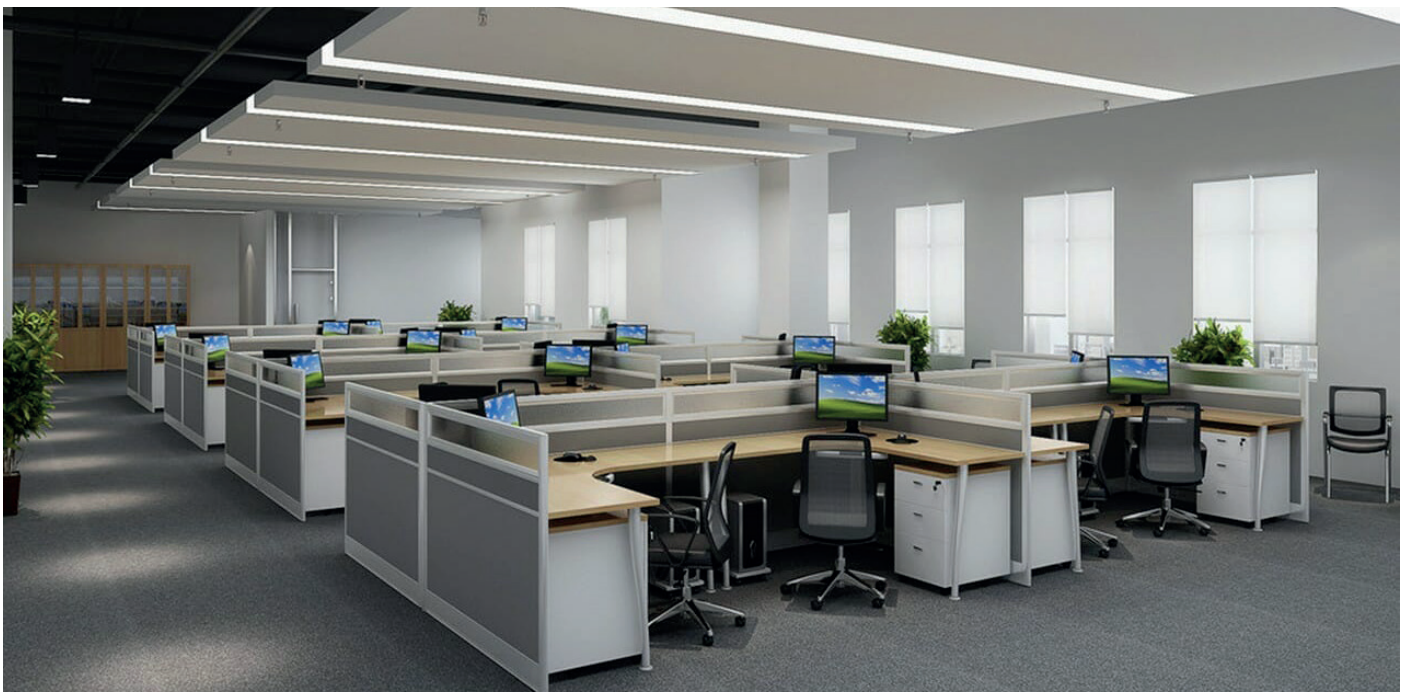
RBI has brought in uniformity in imposition of Late Submission Fee for reporting delays. Basis the type of delays, the late fee amount will be imposed. The key aspects are:

- Fee amount is per return and is limited to a maximum of 100% of the amount involved in delayed reporting
- Facility for opting for late fee is available upto 3 years from the date of reporting / submission
- Such fee must be paid within 30 days of issue of payment advice. The late fee shall not be accepted beyond such date.

*RBI/2022-23/122 A.P. (DIR Series) Circular No. 16 dated September 30, 2022*

Definition of 'small company' amended

CSR Rules notified



## CFO WATCH

Detailed framework on Social Stock Exchange notified

Exposure draft on sustainability assurance engagements

### SEBI issues a detailed framework on SSE

SEBI, in line with its earlier notification, which provided a broad framework for SSE, has now issued a detailed framework. The framework highlights the minimum requirements to be met by a NPO for registration with SSE, minimum Initial Disclosure Requirement for NPOs raising funds through the issuance of Zero Coupon Zero Principal Instruments, annual disclosure by NPOs which have either raised funds through SSE or are registered with SSE, disclosure of Annual Impact Report by all Social Enterprises which have registered or raised funds using SSE.

### ICAI issues an Exposure Draft on sustainability assurance engagements

As per the Exposure Draft, SSAE 3000 - Assurance Engagements on Sustainability Information, would be applicable for attestation of all assurance engagements on sustainability information. The Standard deals with providing reasonable or limited assurance on sustainability information and covers the key aspects of conducting an assurance engagement. SSAE 3000 shall be applicable on voluntary basis for assurance reports of period ending March 31, 2023 and mandatory basis for period ending March 31, 2024. The Exposure Draft is open for comments.



## MERGERS & ACQUISITIONS

Startups face heat in funding winter

Funding for Indian startups, especially late-stage funding, is drying up. Only \$2.92 billion have been raised by startups in April and May 2022, versus \$4.07 billion in the same period last year. While the overall funding dropped 28%, late-stage funding plummeted 54%. As per the venture intelligence data, funding of \$100 million and above dropped from 29% to 18% in Q2 on a quarter-on-quarter basis. By value, deal value was down from \$6.7 billion in March quarter to \$3.6 bn in the following quarter for that ticket size.

Since COVID, availability of cheap capital and rise in digital adoption had made funding easily available at higher valuations. The current market scenario has made it difficult for the highly valued startups to raise capital as investor sentiments reversed from being exuberant to being cautious. Investors are prizing profitability over sheer growth amid ongoing macroeconomic headwinds. One such example was TPG walking away from Good Glamm's fund raise valuing the loss-making unicorn at an exuberant value of \$1.5 billion. Some other marquee startups which have struggled to raise capital recently are Acko, ecommerce platform Meesho, and business-to-business ecommerce firm Udaan.

The decline in funding is attributed to market slowdown and economic volatility on account of the Russia Ukraine war and Fed hiking interest rates to tame inflation, which has led to the capital becoming hard to come by. VC sentiment has turned conservative, and they are now negotiating valuations, asking tough questions about profitability and, in some cases, preferring follow-on rounds to taking new bets.

The funding winter is predicted to last between 12-24 months. Even though the industry has been seeing a funding slowdown lately, it has helped in normalising the frantic valuations and ticket sizes being raised by startups in 2021. Investors see this as a sign of sanity returning to the market and predict that stronger, sustainable businesses will emerge from here.



# IN THE NEWS



## News/Webinars

### **ASA announces an MoU with the Indo-Australian Chamber of Commerce** - September 29, 2022

ASA has announced an MoU with the Indo-Australian Chamber of Commerce whereby ASA will author a Doing Business in India Guide specifically for Australian corporates and support their India growth plans. The MoU was signed by Ms Petula Thomas, CEO, Indo-Australia Chamber of Commerce and Mr Ajay Sethi, Managing Partner, ASA.

### **CXOs New Dilemmas – Frauds, Regulatory Risks, Weakened Controls** - September 14, 2022

*Speakers:* Richard Rekhy, Former CEO, KPMG, Ravi Shingari, Group Head, Accounts and Tax, Apollo Tyres Ltd, Gaurav Bhatia, Executive Partner, Assurance, ASA, Jayesh Jain, CFO, Hero FinCorp Ltd (a Hero Group Company), Ravi Vishwanath, Group CFO, Qness Corp Ltd

Dynamic changes in the work environment, be it work from home or hybrid models, new developments in technology, or additional regulatory compliances, have exposed organizations to various risks leading to CXOs being in a constant dilemma. With these thoughts, ASA organized a panel discussion on “CXOs New Dilemmas- Frauds, Regulatory Risks, Weakened Controls”. In the session,

our panel experts shared their thoughts on new kinds of risks that an organization is exposed to and steps to manage such risks.

### **ASA welcomed new partners to its Risk Advisory Practice** - September 05, 2022

ASA welcomed Akhilesh Thakur, Jugal Agarwala, and Bhushan Sharma into the partnership as National Head, Risk Advisory, Partner, Risk Advisory and Executive Partner, Risk Advisory, respectively.

**Akhilesh** brings with him over 20 years of experience and expertise in Risk Advisory, including internal audit, enterprise risk management, financial process improvement, development of accounting policies & procedures, and finance function stabilization. He has been leading several cost reductions, revenue optimization and operational consulting assignments for Indian as well as multinational organizations across industries. He is in the Board of Governors of The Institute of Internal Auditors (IIA) India as well as the Bombay Chapter and was the past president of their Bombay Chapter.

**Jugal** has over 16 years of experience working with the Big 4 and other renowned organizations in the field of Risk Advisory. He has worked

with multi-functional teams evaluating processes and identifying risks and opportunities to reduce operational costs. His experience includes Internal Audits, DAS Audit, Operational Reviews, Preparation of SOPs, Business Consulting, and Internal Financial Control (IFC).

**Bhushan** has over 15 years of experience working with the Big 4 and other renowned organizations in the field of Forensic & Client Centric Risk Advisory. Bhushan is an expert in white collar crime investigations, Anti-Trust matters, advising clients on proactive fraud deterrence, dispute & integrity representation for Multilateral Funding Institutions, Investigations for Indian Bankruptcy Code matters, etc. He has conducted fraud investigations in relation to management concerns, whistleblowing for critical operations of MNCs and Indian companies

### **Election for Governing Council of IFCCI’** – September 26, 2022

Sunil Arora, Partner, Taxation, was re-elected as a member of the Governing Council of IFCCI’ for a period of 3 years. The objective of the Council is to formulate plans and policies to increase business cooperation for the Indo-French community.

# GLOSSARY



## **CBDT**

Central Board of Direct Taxes

## **CBIC**

Central Board of Indirect Tax and Customs

## **CSR**

Corporate Social Responsibility

## **DTAA**

Double Taxation Avoidance Agreement

## **FTC**

Foreign Tax Credit

## **FEMA**

Foreign Exchange Management Act

## **ICAI**

Institute of Chartered Accountants of India

## **IFCCI**

Indo-French Chamber of Commerce & Industry

## **ITC**

Input Tax Credit

## **ITR**

Income Tax Return

## **MCA**

Ministry of Corporate Affairs

## **MNC**

Multi-National Company

## **MFN**

Most Favoured Nation

## **MoU**

Memorandum of Understanding

## **NPO**

Non-Profit Organization

## **RBI**

Reserve Bank of India

## **SEBI**

Securities and Exchange Board of India

## **SSE**

Social Stock Exchange

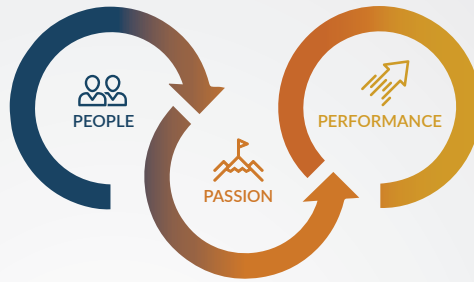
## **TDS**

Tax Deducted at Source

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# ABOUT US

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## ASA Corporate Catalyst India

**New Delhi (Corporate Office)**  
Aurobindo Tower  
81/1 Third Floor Adchini  
Aurobindo Marg  
New Delhi 110 017 INDIA  
T +91 11 4100 9999

**Ahmedabad**  
306 - B, Pinnacle Business Park  
Corporate Road, Prahlad Nagar  
Ahmedabad, 380 015 INDIA  
T + 91 79 4891 5409

**Bengaluru**  
53/B, LOLS Citadel Level 2 & 3  
1st Main Road, 3rd Phase  
Sarakki Industrial Layout  
J P Nagar, Bengaluru – 560078  
T +91 80 4907 9600

**Chennai**  
Unit No. 709 & 710,  
7th Floor 'Beta Wing'  
Raheja Towers, New Number 177  
Anna Salai, Chennai 600 002 INDIA  
T +91 44 4904 8200

**Gurgaon**  
Times Square Fourth Floor  
Block B, Sushant Lok 1  
Gurgaon 122 002 INDIA  
T +91 124 4333 100

**Hyderabad**  
Vasavi's MPM Grand  
11th Floor, Unit No 1204  
Yella Reddy Guda Road, Ameerpet  
Hyderabad Telangana 500 073 INDIA  
T +91 40 2776 0423

**Kochi**  
Pioneer Tower  
207-208 Second Floor, Marine Drive  
Kochi 682 031 INDIA  
T +91 484 410 9999

**Mumbai**  
Lotus Corporate Park  
D-401, CTS No.185/A  
Graham Firth Compound  
Western Express Highway  
Goregaon (East)  
Mumbai 400 063 INDIA  
T +91 22 4921 4000

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