

A Monthly E-Newsletter

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March 2023

The Bottom Line

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KEY METRICS

Indices

BSE SENSEX	58,962	-0.99%	▼
NSE NIFTY50	17,304	-2.03%	▼
NASDAQ Composite	11,456	-1.11%	▼
NIKKEI 225	27,446	0.43%	▲

Currency

USD/INR	82.64	-1.10%	▼
EURO/INR	87.40	1.56%	▲
GBP/INR	99.33	1.36%	▲
JPY/INR	0.61	3.52%	▲

Note: The month-on-month movement as on February 28, 2023 is represented in percentages
Source: Yahoo Finance, Investing.com



DIRECT TAX

Notifications/Circulars

Centralized Processing of Equalisation Levy Statement Scheme, 2023, notified

CBDT notified a scheme for processing EL Statements for applicable assesseees / e-commerce operators. The scheme provides for the manner of furnishing and processing a valid EL Statement, cases of invalid EL Statements, various timelines and provisions for written or electronic communication instead of personal appearance. The scheme shall come into force from February 7, 2023.

Notification No. 3 dated February 7, 2023

ITR forms for AY 2023-24 notified

Forms for filing Income Tax returns for AY 2023-24 i.e., ITR 1 to ITR 7 have been notified with a few changes which include new schedule for income from transfer of virtual digital assets, separate reporting of turnover from intra-day trading, donation reference number to be mentioned for specified donations, disclosure on opting out of alternative tax regime, additional disclosures by firm in case of change in partnership etc.

Notification No. 4 & 5 dated February 10 and February 14, 2023 respectively

Judicial Rulings

Plea for condonation of delay in filing of ITR by OCI dismissed

Supreme Court held that where the assessee, being a foreign citizen enjoying an OCI status, had filed an ITR in India few years ago and was aware of the process of filing the same, there was no genuine hardship or reasonable cause for late filing of the

return by the assessee. It concurred with the decision of High Court in denying the condonation of delay in filing of return and the request for grant of refund for the relevant year highlighting that ignorance of law is not an excuse.

Puneet Rastogi v. PCCIT (Supreme Court)

Reopening of assessment on a mere change of opinion not justified

Where the revenue passed the assessment order allowing the deduction under section 80P of the Income Tax Act but later reopened the same based on the same details furnished during assessment proceedings, the Court held that reopening of assessment was mere a change of opinion as nothing new was derived and hence, the Order so passed was to be set aside.

Tahnee Heights CHS Ltd. v. ITO (Bombay High Court)



Centralised processing of Equalisation Levy Statement Scheme, 2023, notified

ITR forms for AY 2023-24 notified

Plea for condonation of delay in filing of ITR by OCI dismissed



Disallowing employee's PF/ ESI for delayed deposit is beyond the scope of section 143(1)

Tribunal holds that addition of employee's contribution to the PF and ESI under Section 36(1)(va), where deposit is made after due date of the respective statutes but before due date of filing return under the Act, through adjustment made in intimation under section 143(1) is not permissible. It observes that adjustments on debatable and controversial issues is beyond the scope of section 143(1) and thus the said addition cannot be made under this section.

Paris Elysees India Pvt Ltd v. DCIT (Jaipur Tribunal)

INDIRECT TAX

Circulars / Notifications / Press Releases

Recommendations of GST Council meeting:

Following key changes have been recommended in the 49th GST Council meeting:

- i. Time limit for making application of revocation of cancellation of registration to be increased from 30 days to 90 days.
- ii. Best Judgement Assessment Order deemed to be withdrawn if the relevant returns are filed within 60 days of service of Order. This was earlier 30 days.
- iii. Amnesty scheme to be introduced for specified cases including revocation of registration and waiver / reduction of late fees where specified returns are yet to be filed.
- iv. Rationalization of late fees for filing of Annual Return.
- v. Place of supply for services of transportation of goods, in case where location of supplier or location of recipient is outside India, shall be the location of recipient of service.

Press release dated February 18, 2023

Judicial Rulings

Demand Order post proceedings under Insolvency and Bankruptcy Code, 2016

It is a settled law that, after the initiation of proceedings under the Code and finalization of insolvency resolution plan, all dues of creditors, Corporate, Statutory and others stand extinguished. Hence, no demand can be raised for the period prior to the specified date.

M/s EMC Ltd (Rajasthan High Court)

Provisional attachment of bank account cannot hamper normal business activity

While exercising powers to provisionally attach property including bank accounts, it should be ensured that the normal business activities of the taxpayer are not be hampered.

M/s Smita and Sons Coal Pvt Ltd (Gujarat High Court)

Issuance of SCN is mandatory

As per GST Rules, the Summary of SCN in Form DRC-01 should be issued along with the SCN and is not a substitute of SCN. As the SCN was not issued in the instant case, the impugned Order and the Summary of SCN was quashed by the High Court.

M/s Sidhi Vinayak Enterprises (Jharkhand High Court)

Refund rejection on grounds not covered under SCN

It is settled principle of law that if an allegation or ground is not made at the time of issuance of SCN, the authority cannot go beyond the scope of SCN to create new ground at the later stage of adjudication. Therefore, the impugned Order passed beyond the SCN is liable to be quashed.

M/s CJ Darcl Logistics Ltd (Jharkhand High Court)

Opportunity of being heard

An assessee cannot be denied opportunity of being heard even if he had tick marked the option 'no' against the option of personal hearing, in the reply to SCN, submitted through online mode.

Various recommendations made by GST Council

Provisional attachment not to hamper normal business activities of taxpayer

Refund rejection reasons cannot travel beyond SCN

It is mandatory to afford such opportunity before passing any adverse Order.

M/s Mohan Agencies (Allahabad High Court)

Non-constitution of Appellate Tribunal

The petitioner cannot be deprived of the statutory remedy on account of non-constitution of Appellate Tribunal. If the petitioner has deposited the pre-deposit amount for filing an appeal before the Appellate Tribunal, then balance demand shall remain stayed till disposal of said appeal.

M/s Vihaan Networks Ltd (Patna High Court)



CORPORATE & ALLIED LAWS

Circulars / Notifications

Treatment of unrealised management fee for ARCs consequent to implementation of IndAS

ARC's have been recognising management fee as income even if these have not been realised for more than 180 days. In line with the implementation of IndAS, the RBI has directed ARCs to remove unrealised management fees from net owned funds, while calculating the capital adequacy ratio and amount available for payment of dividend.

RBI/2022-23/182 DOR.ACC.REC. No.104/21.07.001/2022-23 dated February 20, 2023

Extension of time for filing on MCA website version 3.0 without additional fee

In continuation of General Circulars No. 1/2023 dated 09.01.2023 and

03/2023 dated 07.02.2023, MCA further issued a General Circular for extension on time of filing of 47 Company E-forms on MCA version 3.0 without additional fees till March 31, 2023.

General Circular No. 04/2023 dated February 21, 2023

Physical filing of various E-Forms allowed by MCA

MCA has allowed physical filing of below forms with ROC:

- GNL-2 (filing of prospectus related documents and private placement)
- MGT-14 (filing of resolutions relating to prospectus related documents and private placement)
- PAS-3 (allotment of shares)
- SH-8 (letter of offer for buyback of own shares or other securities)
- SH-9 (declaration of solvency)

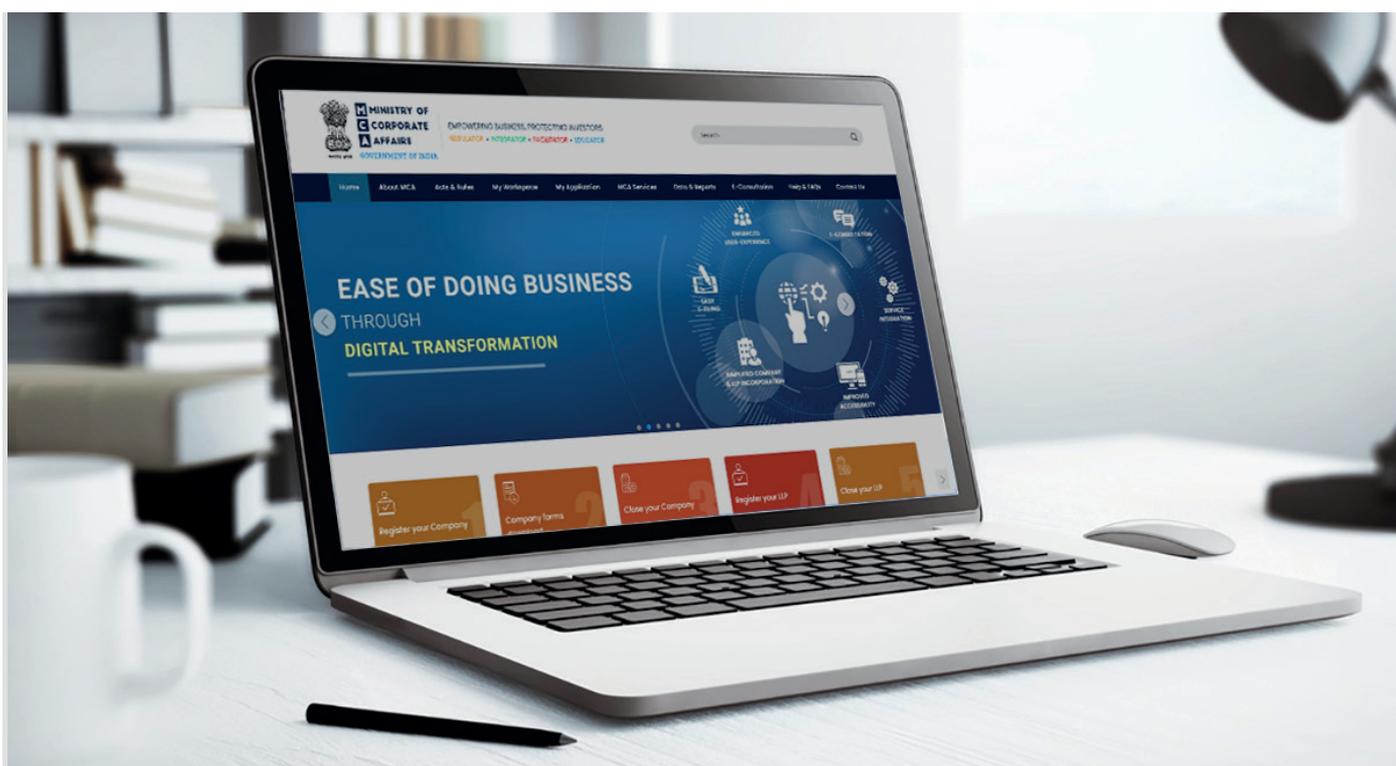
Extension of time for filing on MCA website version 3.0 without additional fee

Physical filing of various E-Forms allowed by MCA

- SH-11 (return in respect of buy-back of securities)

It has been decided that the companies intending to file these forms between 22.02.2023 to 31.03.2023 on the MCA-21 portal may file such forms in physical mode duly signed by the persons concerned as per requirements of the relevant forms, with the concerned registrar, without payment of fee and take acknowledgement thereof.

General Circular No. 05/2023 dated February 22, 2023



CFO WATCH

SEBI notifies crucial amendments concerning non-convertible debentures, buyback & REIT/InvIT norms

Market regulator SEBI has notified key amendments across regulations, which include:

- SEBI (NCS Regulations), 2021: The amendments include expansion of definition of 'green debt security' to include blue, yellow and transition bonds etc., requirement to send notice for recall or redemption prior to maturity of NCS to all eligible holders at least 21 days prior to the date on which such a right is exercisable in prescribed manner, appointment of director in case of default within 1 month from the date of default, period of subscription and regulatory fee to be paid at the time of filing of draft offer document.
- SEBI (Buyback Regulations), 2018: The basis of computation of the limit of buyback and the ratio of the debts to paid-up capital and free reserves has been amended to include based on the standalone or consolidated financial statements, whichever is lower. Other amendments include increase of minimum amount to be utilised for buyback increased from 50 to 75 per cent of the amount earmarked for buyback, revision of limit and time period for completion of buyback, the same not being allowed through stock exchange post April 01, 2025 and revised provisions for disclosure requirements, timelines for public announcement, offer procedure, methodology for acceptance of bids etc. for buyback under book building process.
- SEBI (InvIT) Regulations and SEBI (REIT) Regulations, 2014: The key considerations from the amendment include new definition of independent director and senior management, appointment of an auditor, limited review, obligation and governance requirement of the investment manager/manager, vigil mechanism and report on corporate governance.

SEBI prescribes the methods for achieving MPS

SEBI, in order to provide relaxation in conditions for using non-prescribed methods to achieve MPS compliance, has notified a different method to increase public shareholding through exercise of options and allotment of shares under employee stock option scheme, wherein a dilution of a maximum 2% will be allowed. An additional method stated by the regulator comprises transfer of shares held by the promoter or promoter group to an Exchange Traded Fund managed by a SEBI-registered mutual fund

ICAI issues framework for Social Audit Standards

ICAI has issued framework for social audit standards. This Framework applies to social audit to be conducted by social auditors using the principles given in SASs. The objective of the framework is to provide basic principles and elements in relation to social audit and related guidance on matters relating to preparation of social audit report in accordance with the social auditor's findings based on the procedures performed and evidence obtained.

MERGERS & ACQUISITIONS

The Comeback of Hostile Takeovers

Hostile takeover is a term gaining popularity, but the concept has a long history and indeed, became all the rage in 1980s, where Boards lived in fear of corporate raiders. In 1988, there were almost 160 unsolicited takeover bids for U.S. companies. However, after the late 1980s, unsolicited takeover bids decreased in number and became relatively rare. Although the reasons of this development are manifold, the prolonged bull market for over a decade stands out. The high stock prices made the potential target companies too expensive for their predators.

In India, there have been several instances of hostile takeover bids, however, only few resulted in the change of ownership. Since in most cases, shareholding is concentrated within a few individuals, mostly the promoters, hence the outside bidder finds it difficult to acquire majority stake in the company. Minda Corp's 15.7% share purchase in Pricol is one such deal that sparked hostile takeover buzz recently. However, Pricol has denied any such claims and said that they have put in place multiple measures to fend off any possible hostile takeover attempts.

On the other hand, some successful hostile takeover cases include Raasi Cements's acquisition by Indian Cements in 1998, Mindtree-L&T deal wherein L&T acquired more than 60% of Mindtree's shares in 2019, and the recent takeover, where the Adani Group currently holds a 64.7% stake in NDTV after a contentious battle, as it has been allegedly done against the apparent will of the promoters.

With the new surge of hostile takeovers in the market, defensive tactics including poison pill, white knight, greenmail, crown jewels, and preferred share-purchase rights have become very effective and widely accepted. The best possible way to preclude a hostile takeover attempt is adherence to the best management practices, incentivizing the shareholders and other stakeholders to stay associated with the company, and using a combination of one or more defence strategies.

IN THE NEWS

Events/Webinars

Ajay won “Innovation Leadership” award - February 20, 2023

Ajay Sethi, Founder & Managing Partner of ASA, was recently honored with the ‘Innovation Leadership’ award at the World Innovation Congress event held in Mumbai. This accolade acknowledges his creative problem-solving strategies, innovative ideas of leadership and commitment to fostering a collaborative and productive workplace for all parties.

ASA on Union Budget 2023

We held our annual budget sessions in English, Japanese, and French. Additionally, we partnered with stakeholders to organize seminars across various locations in order to decode the budget, where our panel of experts discussed the key points of India Union Budget 2023 and explored the implications of the proposed policies and changes. The sessions were attended by a diverse group of professionals, including economists, financial analysts and business leaders, who were keen to gain insights into the potential impact of the budget on various sectors of the economy

Budget 2023: Impact & Analysis

February 2, 2023 (English)

Speakers: Ajay Sethi, Managing Partner, Sunil Arora, Joint National Head, Taxation, Sundeep Gupta, Partner, Accounting and Business Support, Indirect Tax, and Himanshu Srivastava, Partner, Business Advisory Services

MUFG: Union Budget 2023 -

February 7, 2023 (Japanese)

Speakers: Ajay Sethi, Managing Partner, Himanshu Srivastava, Partner, Business Advisory Services, along with panelist from SCS Global & MUFG Bank

Decrypting India’s Budget 2023

February 9, 2023 (French)

Speakers: Léa Parmentier, Assistant Manager, French Desk along with panellist from French Embassy in Delhi, TAC Economics, Helma International and Conseillers du Commerce Extérieur de la France.

Indo-American Chamber of Commerce: ‘Analysis of Union Budget 2023’, Bangalore - February 2, 2023

Speakers: D Ramprasad, Practice Head, Jayashree SK, Associate Director, Indirect Tax, and Karthik SS, Associate Director, Taxation.

Indo-American Chamber of Commerce: ‘Analysis of Union Budget, Chennai’ - February 3, 2023

Speakers: K Venkatraman, National Head, Taxation and G. Viswanathan, Director, Accounting & Business Support

Indo-German Chamber of Commerce: Union Budget 2023 - February 3, 2023

Speakers: Sunil Arora, Joint National Head, Taxation, D Ramprasad, Practice Head, Vinay KS, Partner, Assurance, Jayashree SK, Associate Director, Indirect Tax, and Karthik SS, Associate Director, Taxation

‘Pragathi - Grooming the professionals for the next decade’

February 09, 2023

Speakers: Rajiv Krishnan, MD and CEO, Ma Foi, Harish HV, Managing Partner, ECube Investment Advisors, Dr Apoorva, Expert, Mental Health & Emotional Well-being; **From ASA:** D Ramprasad, Practice Head, Sunil Bhumralkar, Director, Vinay KS, Partner, Assurance, Jayashree SK, Associate Director, Indirect Tax and Karthik SS, Associate Director, Taxation

We organised a session for our staff aimed at upskilling the professionals to meet the new regulatory requirements and be equipped enough to adapt to the technical developments.

Articles

Indian Economy: The Bright Star - Budget Synopsis - February 1, 2023

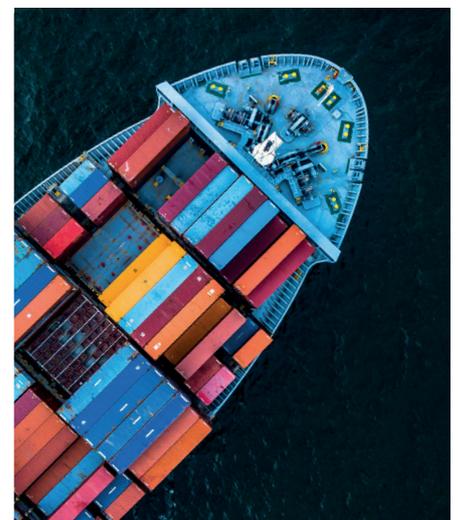
Author: Ajay Sethi, Managing Partner.

Last year, the closing line of our foreword was that the growing Indian economy needed only COVID to behave. It did. This time we have the Ukraine war. In spite of that, the economy is firing from all cylinders. Given the building stability, focus was required on infrastructure, foreign investment, and rationalizing regulatory compliances. This article gives a synopsis for the India Budget 2023 for recent policy changes and proposals for direct and indirect taxes, impact and economic indicators.

The Seismic Faultline in GST - Input Tax Credit - February 23, 2023

Author: Sundeep Gupta, Partner, Accounting and Business Support, Indirect Tax and Adya Sharma, Senior, Accounting and Business Support, Indirect Tax

The article presented an insightful analysis on the complex issue of input tax credits in GST and the tax credit value chain being a not-so-seamless one. Published in Taxmann, it sheds light on the seismic faultline in GST and provides valuable guidance for businesses navigating this terrain



GLOSSARY



ARC

Asset
Reconstruction
Companies

AY

Assessment Year

CBDT

Central Board of
Direct Taxes

EL

Equalization Levy

GST

Goods & Services
Tax

ICAI

Institute of
Chartered
Accountants of
India

InvIT

Infrastructure
Investment Trust

ITR

Income Tax Return

MCA

Ministry of
Corporate Affairs

MPS

Minimum Public
Shareholding

NCS

Non-convertible
Securities

OCI

Overseas
Citizenship of India

RBI

Reserve Bank of
India

REIT

Real Estate
Investment Trust

ROC

Registrar of
Companies

SAS

Social Audit
Standards

SCN

Show Cause Notice

SEBI

Securities and
Exchange Board of
India

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18 INDIAN LOCATIONS AND 6 FOREIGN DESKS COMBINED WITH INTERNATIONAL AFFILIATIONS ENSURES GLOBAL STANDARDS WITH REGIONAL EXPERTISE



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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

National Affiliates
 Bhubaneswar, Chandigarh, Pune and
 Vishakhapatnam

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 Denmark, Egypt, France, Finland, Germany,
 Hong Kong, Hungary, Israel, Italy, Japan,
 Luxembourg, Malaysia, Mexico, Morocco,
 New Zealand, Netherlands, Norway, Poland,
 Portugal, Romania, Saudi Arabia, Singapore,
 South Africa, Spain, Switzerland, Sweden,
 Thailand, Tunisia, Turkey, UAE, UK, USA,
 Vietnam