



A Monthly E-Newsletter

Vol 04 Issue 8

August 2023

# The Bottom Line

## WHAT'S INSIDE

Direct Taxes **2**

Indirect Taxes **3**

Corporate & Allied Laws **4**

CFO Watch & M&A **5**

In the News **6**

Glossary **7**

About Us **8**

## KEY METRICS

### Indices

BSE SENSEX	66,528	2.80% ▲
NSE NIFTY50	19,754	2.94% ▲
NASDAQ Composite	14,346	4.05% ▲
NIKKEI 225	33,172	-0.05% ▼

### Currency

USD/INR	82.24	-0.18% ▼
EURO/INR	90.43	-0.97% ▼
GBP/INR	105.56	-1.21% ▼
JPY/INR	0.58	-1.61% ▼

Note: The month-on-month movement as on July 31, 2023 is represented in percentages  
Source: Yahoo Finance, Investing.com



# DIRECT TAX

## Notifications/Circulars

### Exemption under 56(2)(x) extended to boost relocation to IFSC

The exemption from applicability of section 56(2)(x) of the Act, has now been extended to include the shares/units/interest held by fund management entity, that may be triggered on transfer during relocation of specified entity to IFSC.

*Notification No. 51 dated July 18, 2023*

### Condonation of delay in filing of RoI to claim the benefit u/s 80P

Based on the applications received by co-operative societies, guidelines have been issued by CBDT to the concerned authorities on the manner of dealing with the applications for condonation of delay in filing the RoI for AY 2018-19 to 2022-23, to enable them to claim the benefit of deduction under section 80P of the Act.

*Circular No. 13/2023 dated July 26, 2023*

## Judicial Rulings

### No separate notification required to claim benefit of MFN

The Tribunal, based on coordinate bench rulings, held that protocol is an integral part of the tax treaty, and there is no requirement to separately notify a protocol to a tax treaty to make its provisions effective. Further, it was held that the Assessee correctly deducted tax at the lower rate as per MFN, without the addition of any

surcharge or cess and should not be treated as an Assessee-in-default.

*TDK India Private Limited (Kolkata ITAT)*

### Profit not attributable to PE in case of global loss

The Tribunal, relying on a High Court ruling in case of Nokia solutions, held that Revenue was not justified in attributing profit to Hitachi Japan's Indian PE where it had global losses. It clarified that worldwide net profit margin is to be applied for determining the quantum of the income attributable to the PE and in case of global net loss as per its audited accounts, no profit or income could be attributed to the Assessee in India.

*Hitachi Ltd. (Delhi ITAT)*

### Delay in PF/ESI contributions allowed, in case due date fell on a holiday

The Tribunal held that where Assessee made payment towards contributions of PF and ESI with one day delay as due date prescribed for payment of the same fell on Sunday / gazetted holiday, there was no intention of the Assessee to not make the payment. Considering that the intention of the Assessee was bonafide, the payment made shall be allowable as an expense.

*G.D. Foods and Manufacturing (India) Pvt. Ltd. (Delhi ITAT)*

### Offshore supply not taxable as title transferred outside India

Assessee, a German entity along with its Indian counterpart entered

No separate notification required to claim benefit of MFN

Profit not attributable to PE in case of global loss

Offshore supply not taxable if title transferred outside India

in a contract with Delhi Metro Rail Corporation for supply of train sets. The Tribunal, while allowing the appeal of the Assessee, held that since the aforesaid contract was clearly divisible in terms of the scope of work resulting in transfer of title of the goods outside India, such offshore supply shall not be taxable in India. Further, it was also held that the burden of proof to establish the existence of PE is entirely on revenue and accordingly, where the Indian counterpart rightly offered its income from onshore supply as per the contract, it cannot be regarded as PE for the offshore supply in the absence of any supporting evidence.

*Bombardier Transportation GmbH (Delhi ITAT)*



# INDIRECT TAX

## Circulars / Notifications / Press Releases

### Various notifications/clarifications issued pursuant to recommendations made by GST Council

- **Calculation of interest on excess availment of ITC:** the aggregate balance of ITC under all the heads viz. IGST, CGST and SGST must be taken into consideration for calculation of interest liability.

*Circular No. 192/04/2023-GST dated July 17, 2023*

- **Difference in GSTR-3B and GSTR-2A:** methodology provided for allowability of credit for the differences for the period April 01, 2019 to December 31, 2021.

*Circular No. 193/05/2023-GST dated July 17, 2023*

- **GST TCS liability in case of multiple ECOs:** the liability for TCS under different scenarios clarified.

*Circular No. 194/06/2023-GST dated July 17, 2023*

- **Warranty replacement of parts and repair services:** clarifications provided in respect of replacement of parts and / or repair services during warranty and taxability thereof under various scenarios.

*Circular No. 195/07/2023-GST dated July 17, 2023*

- **Share capital held by subsidiary company in parent company:** the activity of holding shares in the subsidiary company per se cannot be treated as supply of services by holding company.

*Circular No. 196/08/2023-GST dated July 17, 2023*

- **Refund related issues:** clarifications provided in respect of refund of ITC based on GSTR-2B from January 2022 onwards, calculation

for adjusted total turnover and eligibility of refund in case of export of goods where realization is beyond prescribed timelines.

*Circular No. 197/09/2023-GST dated July 17, 2023*

- **ISD mechanism v. cross charge to branches:** clarifications provided in respect of common input services and internally generated services and treatment of salaries for valuation for taxability..

*Circular No. 199/11/2023-GST dated July 17, 2023*

## Judicial Rulings

### Mistake in GSTR-1 by supplier:

The recipient of supply cannot be made to suffer due to the supplier's mistake in GSTR-1. The High Court allowed the refund to the recipient wherein, while filing the GSTR-1 return, the supplier reflected the wrong GSTIN on the GST portal due to which the sale invoice was not reflecting in the GSTR-2A of recipient.

*M/s Agrawal and Brothers (Madhya Pradesh High Court)*

### Validity of deficiency memo:

Once a taxpayer has made a claim for refund, the same is required to be processed in accordance with law. If refund is rejected for a reason and the taxpayer prevails before the Appellate Authority, it is not open for the department to desist from processing the claim on technical grounds. Therefore, it is not justified on part of the department to issue a deficiency memo after the taxpayer has succeeded in appeal.

*M/s Advance Systems (Delhi High Court)*

### Various notifications/clarifications issued pursuant to recommendations made by GST Council

Recipient of supply to not suffer due to mistake of supplier

Multiple registrations from same address not permitted under same PAN

### Multiple registration from one place

Where a registered person carries on separate type of businesses from the same place of business within a State, there is no option to obtain separate registration within said State. However, separate registrations can be granted to a person who has multiple places of business in the same State.

*M/s Aesthetik Engineers Pvt Ltd (West Bengal AAR)*

### Book adjustment covered under consideration

Definition of consideration is an inclusive definition which covers any form of payment in its ambit. Therefore, if the payee owes the payer a debt, and accepts reduction in such a debt liability through book adjustment, it shall be regarded as valid consideration for supply.

*M/s Paragon Polymer Products Pvt Ltd (Kerala AAR)*

# CORPORATE & ALLIED LAWS

## Circulars / Notifications

### Merger of multiple User-IDs in MCA21 V-2 portal and deactivation of old User-ID

Members of professional Institutes, viz., The Institute of Chartered Accountants of India, The Institute of Cost Accountants of India and Institute of Company Secretaries of India, who have created multiple User IDs in the V2 portal, have to approach the respective Institutes with their credentials to merge multiple User IDs with the ID created in V3 portal or to deactivate the old User IDs in the V2 portal to create a new ID in V3 portal.

*MCA General Circular No. 07/2023 dated July 12, 2023*

### Online resolution of disputes in the Indian Securities Market

The existing dispute resolution mechanism is being streamlined pursuant to the SEBI (Alternate Dispute Resolution Mechanism) (Amendment) Regulations, 2023 under the aegis of Market Infrastructure Institutions by expanding their scope to harness online conciliation and arbitration for resolution of disputes by establishing a common Online Dispute Resolution Portal.

*Circular No. SEBI/HO/OIAE/OIAE\_IAD-1/P/CIR/2023/131 dated July 31, 2023*

### LEI mandatory for all non-individual FPIs

LEI is a unique code to identify legally distinct entities that engage in financial transactions. Post the global financial crisis, LEI is considered as an important measure to improve the quality and accuracy

of financial data for efficient risk management. It is now mandated that non-individual borrowers having aggregate exposure of over INR 25 crore to obtain LEI code.

*Circular No. SEBI / HO/ AFD/ AFD-PoD-2/ CIR/ P/ 2023/0127 dated July 27, 2023*

### SEBI introduces BRSR Core for reporting by listed entities

BRSR Core, which is a subset of BRSR, consists of a set of KPIs under 9 ESG attributes. The BRSR format, post incorporation of new KPIs, will be the new reporting format for listed entities. From FY 2023-24, the top 1,000 listed entities (by market capitalisation), shall make disclosures as per the updated BRSR format, in their Annual reports.

ESG disclosures for the value chain shall be made by listed companies as per BRSR Core, as part of its Annual Report. ESG disclosures for the value chain shall be applicable for the top 250 listed entities (by

SEBI introduces BRSR Core for reporting by listed entities

Online resolution of disputes in the Indian Securities Market

LEI mandatory for all non-individual FPIs

market capitalisation basis) on a comply-or-explain basis from FY 2024-25. Value chain shall cover the top upstream and downstream partners of a listed entity, cumulatively comprising 75% of the value of its purchases / sales respectively.

*Circular No. SEBI/HO/CFD/CFD-SEC-2/P/CIR/2023/122 dated July 12, 2023*



# CFO WATCH

## SEBI Offers Guidance on Material Event disclosures for Listed Entities

### Resignation does not absolve Auditor of onus of reporting fraud: NFRA

#### SEBI provides guidance on disclosures of material events by listed entities

In continuation of SEBI's amendments to listing regulations, it has issued a circular which specifies the details required to be disclosed for the events specified under Part A of Schedule III and the timeline for disclosure of such events. It also provides guidance on when an event information can be said to have occurred and on determination of materiality. The provisions of this circular are applicable from July 15, 2023.

#### Statutory auditors' unwavering responsibility to report fraud or suspected fraud

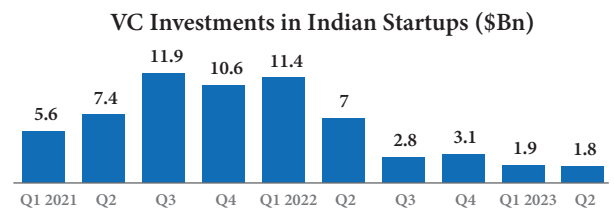
NFRA has emphasized on the responsibility of statutory auditor to report fraud or suspected fraud. It has stated that mere resignation as auditor does not absolve the auditor from its responsibility of reporting of fraud or suspected fraud. In the event of fraud, statutory auditor shall within 2 days of his/her knowledge of the fraud, report it to the board/audit committee and in case no revert is received from the board/audit committee within 45 days, report the same to MCA. Furthermore, he/she shall submit Form ADT-4 to the Central Government even in cases where the statutory auditor is not the first person to identify the fraud/suspected fraud.



# MERGERS & ACQUISITIONS

## Venture capital funding falls sharply in first half of 2023

The Indian startup ecosystem continues to face a challenging funding landscape as we reach the halfway point of 2023. The prevailing global uncertainty, combined with geopolitical and economic fragility, has halted the venture capital investments. In comparison to the \$18.4 billion raised during H1 in 2022, the total value of VC investments barely reached \$4 billion this year.



Q2 2023 has turned out to be the worst quarter in the last three years, highlighting the significant decline in funding. However, despite the funding challenges, H1 2023 witnessed 14 funding rounds exceeding \$100 million, marking a 17 percent increase from H2 2022. In terms of sectors, e-commerce ranked highest in terms of funding, but enterprise tech and software-as-a-service (SaaS) startups have garnered the most term sheets.

Due to the slowdown, investors are conducting the due diligence more rigorously before making investments, focusing on areas from typical finance and legal to technology, HR and business processes, to ensure that the startups have a robust corporate governance framework.

#### Global Outlook

Despite the current situation, funding trend in India aligns with the global decline, mirroring the challenges faced worldwide. However, there is a silver lining as India ranked among the top three funded geographies in H1 2023, trailing only United States and United Kingdom.



## Events/Webinars

### **Launch of Doing Business in India Guide - July 28, 2023**

ASA and Indo-Australian Chamber of Commerce's "Doing Business in India" guide was officially released by Sarah Storey, Chargé d'affaires, Australian High Commission, New Delhi along with Anil Wadhwa, Vice-Chair, IACC, Ajay Sethi, Managing Partner, ASA, and Petula Thomas, CEO, IACC at a function organized at the Australian High Commission, New Delhi. The event was attended by business leaders from across sectors. The Guide provides an overview of the business environment, economic opportunities, and regulatory environment governing business operations.

### **ASA is now recognized as "Team France Export Solution" for India July 27, 2023**

ASA is now recognized as "Team France Export Solution" for India.

With this collaboration, French SMEs and mid-sized companies will benefit from tailored commercial anchoring services in the dynamic Indian market.

### **National Convention on Mergers and Acquisitions - July 21, 2023**

Sandeep Balooja, Senior Member Advisor Board, ASA, moderated the session on "Accelerating towards Mobility Diversity" during the National Convention on Mergers and Acquisitions by ACMA and shared perspectives on joint ventures and technological license agreements based on his significant expertise in the automobile industry. He emphasized the significance of creating enduring relationships and gaining clients' confidence for successful transaction closures.

### **Overcoming common challenges faced during digital transformation**

July 25, 2023

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

This article discusses the concept of digital transformation and its importance in today's fast-paced business environment. It highlights the challenges organizations face during digital transformation, such as the lack of a clear strategy, resistance to change, siloed data/systems, cybersecurity risks, and lack of agility.

### **Recovery of PF of international workers - July 11, 2023**

*Author:* Pankaj Aneja, Executive Partner, Taxation and Lea Parmentier, Assistant Manager, French Desk

Are you an expat facing the challenges of recovering your Provident Fund balance in India? This article will answer your questions and help you overcome obstacles to recover your PF with ease.

# GLOSSARY



## AY

Assessment Year

## BRSR

Business Responsibility and Sustainability Report

## CBDT

Central Board of Direct Taxes

## ECO

E-commerce Operators

## ESIC

Employees' State Insurance Corporation

## FPI

Foreign Portfolio Investor

## FY

Financial Year

## GST

Goods & Services Tax

## IFSC

International Financial Services Centre

## ISD

Input Service Distributor

## ITAT

Income Tax Appellate Tribunal

## ITC

Input Tax Credit

## LEI

Legal Entity Identifier

## MCA

Ministry of Corporate Affairs

## MFN

Most Favoured Nation

## NFRA

National Financial Reporting Authority

## PAN

Permanent Account Number

## PE

Permanent Establishment

## PF

Provident Fund

## RoI

Return of Income

## SEBI

Securities and Exchange Board of India

## TCS

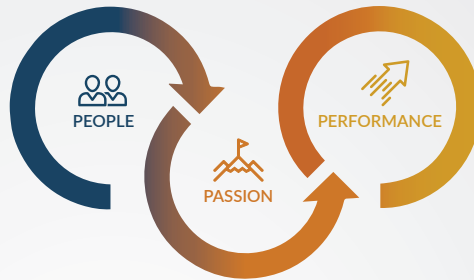
Tax Collected at Source



We value your feedback. Please send us your comments and suggestions at [editorial@asa.in](mailto:editorial@asa.in)

# ABOUT US

A full services firm of corporate strategists, accountants, tax advisory experts and financial and marketing analysts.



## SERVICES

- Accounting and Business Support
- Assurance
- Business Advisory
- Digital Automation and Transformation
- Risk Advisory
- Taxation
- Transaction Advisory

Well structured teams with domain specialization are guided by leaders who possess expertise and experience and are present PAN India to ensure excellent client service.



[www.asa.in](http://www.asa.in)

<b>1000 in-house</b> PROFESSIONALS	<b>6000</b> CLIENTS
<b>60 +</b> LOCATIONS	<b>35 DIRECTORS</b> AND ADVISORS
<b>32 YEARS</b> OF EXPERIENCE	

DIRECTOR LED OFFICES IN 8 KEY LOCATIONS ACROSS INDIA

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



*Disclaimer: This publication has been jointly prepared by ASA & Associates LLP and ASA Corporate Catalyst India Pvt Ltd. We have taken all steps to ensure that the information in this document has been obtained from reliable sources and is accurate. However, this document is not intended to give legal, tax, accounting or other professional guidance. We recommend appropriate advice be taken prior to initiating action on specific issues.*



## 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

**International Affiliates**  
Algeria, Argentina, Australia, Austria,  
Belgium, Brazil, Bulgaria, Canada, China,  
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