



A Monthly E-Newsletter

Vol 05 Issue 4
April 2024

The Bottom Line

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KEY METRICS

Indices

BSE SENSEX	73,651	1.59%	▲
NSE NIFTY50	22,327	1.57%	▲
NASDAQ Composite	16,379	1.79%	▲
NIKKEI 225	40,168	2.56%	▲

Currency

USD/INR	83.35	-0.55%	▼
Euro/INR	89.91	-0.40%	▼
GBP/INR	105.21	-0.54%	▼
JPY/INR	0.55	0.36%	▲

Note: The month-on-month movement as on March 28, 2024 is represented in percentages
Source: NSE.com, BSE.com, NASDAQ.com, NIKKEI.com, Investing.com



DIRECT TAX

Notifications/Circulars

Royalties & FTS rate under India-Spain DTAA lowered pursuant to MFN

The tax rates on FTS and specific royalty payments under India-Spain DTAA have been lowered from 20 to 10 per cent in accordance with the MFN clause based on the beneficial treatment provided under the India-Germany DTAA. Earlier only royalty payments for the use or right to use of industrial, commercial, or scientific equipment were taxed at 10 per cent.

Notification No.33 dated March 19, 2024

No deduction of tax if payment made to certain IFSC units

IFSC units including banking, finance company, broker dealer, Investment advisor have been exempted from TDS on certain receipts. For instance, income of banking units from interest on ECB, professional fees, referral fees, brokerage income and commission on factoring / forfaiting services have been exempted from TDS.

Notification No.28 dated March 7, 2024

Judicial Rulings

TRC valid proof of Company's residency

The Tribunal held that capital gains on shares acquired before April 1, 2017 are not taxable under India-Mauritius Treaty, since it is evident from the TRC that the assessee is a resident of Mauritius. It also emphasized the validity of the TRC, citing Circular

No.789, and acknowledged the assessee's genuine investor status, supported by SEBI registration and a substantial history of investment in India. It observed that the assessee has documentary evidence and neither the draft nor final order bring on record any conclusive evidence that it is a shell/ conduit entity.

Norwest Venture Partners (Delhi ITAT)

TP adjustment to be made only on Indian PE

The Tribunal ruled that no business profits are attributable to the PE of the assessee in the form of dependent agent in India, as its Indian AE was remunerated at arm's length. It further concluded that where the PE of the assessee has not been remunerated at arm's length price, adjustment can only be made in the transfer pricing assessment of the dependent agent and there could be no addition in the hands of the non-resident assessee.

AB Sciex Pte Ltd (Delhi ITAT)

Mere access to software database neither FTS nor Royalty

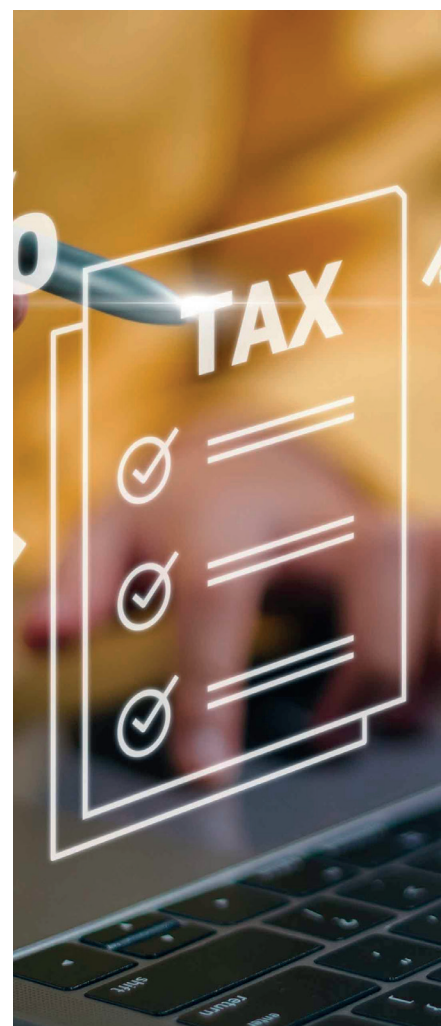
The Tribunal relying on Apex Court's judgement in case of Engineering Analysis and Mumbai Tribunal's ruling in Shell India Market ruled that where the payment was made for grant of access to software databases and there was no transfer of copyright or making available of any technology to recipients, the same shall neither be regarded as FTS nor Royalty.

Shell International B.V (Ahmedabad ITAT)

FTS rate under India-Spain DTAA lowered pursuant to MFN

No deduction of tax if payment made to certain IFSC units

Mere access to software database neither FTS nor Royalty



INDIRECT TAX

Circulars / Notifications / Press Releases

Procedure for undertaking enforcement activities

Guidelines have been issued for maintaining ease of doing business while engaging in investigation with regular taxpayers. GST authorities are now required to follow the guidelines and seek necessary approvals before initiating any investigation proceedings against the taxpayers.

Instruction No. 01/2023-24-GST (Inv.) dated March 30, 2024

Judicial Rulings

ITC claim in GSTR-9 valid

ITC cannot be rejected solely on the ground that the taxpayer has not claimed the same in GSTR-3B return. If the same has been reflected and claimed in GSTR-9 return, it will be allowed.

M/s Sri Shanmuga Hardware Electricals (Madras High Court)

Validity of service of SCN

Uploading of SCN under category 'Additional notices' instead of 'Notices' not sufficient intimation to the taxpayer.

M/s Anhad Impex (Delhi High Court)

Uploading of Notice on the GST portal shall not be sufficient. The authorities should simultaneously serve the notice through registered post or speed post.

M/s Abitha Timber Traders (Madras High Court)

Inconsistency between SCN and Order

The liability determined in the Order cannot be higher than that stated in the SCN. The Order was quashed and matter remanded for reconsideration.

M/s Quess Corp Ltd (Madras High Court)

Denial of refund claim

When the department has allowed refund for a specific period basis a particular set of facts, then in absence of any change in the circumstances and the facts, it is not justified on part of department to deny subsequent refund claims.

M/s Samsung India Electronics Pvt Ltd (Allahabad High Court)

Payment of pre-deposit for filing appeal

Electronic Credit Ledger can be utilized for the payment of pre-deposit.

M/s Shiv Crackers (Gujarat High Court)

Limitation of filing application for appeal

The appeal filed cannot be said to be barred by limitation, if after making all the submissions online within the timelines provided under GST law, the taxpayer could not physically submit the certified copy of the Order appealed against within 7 days to the department.

M/s Reva Giant Impex LLP (New Delhi High Court)

Procedure for undertaking enforcement activities prescribed

ITC claim in GSTR-9 valid

Validity of service of SCN determined



CORPORATE & ALLIED LAWS

Circulars / Notifications

SEBI settlement scheme: illiquid stock option traders

SEBI has announced the introduction of a third Settlement Scheme aimed at resolving trading irregularities in the illiquid stock options segment of the Bombay Stock Exchange. The scheme would provide a settlement opportunity to all the entities that have executed reversal trades in the stock options in the period between April 1, 2014 and September 30, 2015. By availing this scheme, entities can expedite the conclusion of proceedings and avoid prolonged legal processes and associated expenses. The Scheme will be operational from March 11, 2024 to May 10, 2024 unless extended

SEBI Public Notice dated March 06, 2024

Framework for recognising SROs for regulated entities of RBI

RBI has issued an omnibus framework for recognising SROs for regulated entities of RBI. The SROs shall frame necessary best practices within the regulatory environment prescribed by RBI for voluntary adoption by the regulated entities of RBI. The omnibus framework prescribes the broad objectives, functions, eligibility criteria, governance standards, membership criteria and other terms and conditions to be followed by SROs for grant of RBI registration.

RBI Notification dated March 21, 2024

Revised parameters for QSBs

In order to further instill confidence in the securities market through compliance and monitoring requirements of stock brokers, SEBI has further enhanced the existing parameters for designating a stock broker as a QSB. Revised

SEBI settlement scheme: illiquid stock option traders

Framework for recognising SROs for regulated entities of RBI

Revised parameters for QSBs

procedures have been laid down and enforcement of the revised parameters will be in a staggered manner.

Circular No. SEBI/HO /MIRSD/MIRSD-PoD-1/P/CIR/2024/14 dated March 11, 2024



CFO WATCH

SEBI reforms streamline compliance, enhance IPO regulations

SEC mandates climate related disclosures for all registrants, including foreign private issuers

SEBI implements key reforms to enhance compliance

SEBI announced significant amendments aimed at enhancing ease of doing business for listed companies and entities planning IPOs/fundraising. Key changes include:

- 1. Facilitating ease of doing business** - Determining market capitalization based on a six-month average, extending the timeline for filling KMP vacancies to six months, reducing the prior intimation timeline for board meetings to two working days, and increasing the maximum gap between Risk Management Committee meetings to 210 days.
- 2. Uniform approach to verify market rumors** - SEBI mandates using unaffected prices for transactions if rumours are confirmed within 24 hours. Promoters, directors, and senior management must respond promptly to verify rumours. Unverified media info will not be considered 'generally available'.
- 3. IPOs/fund raising** – The amendments remove the one percent deposit requirement for issuers, allow non-individual shareholders with over five percent post-offer equity to contribute to MPC without being promoters, consider Compulsorily Convertible Securities equity shares for computation of MPC, mandate fresh filings for Offer for Sale based either issue size in Indian Rupee or number of shares, and reduce bid/offer closing date extensions for force majeure events to one working day.

SEC issues climate-related disclosure rules

SEC implemented the final rule, "Enhancement and Standardization of Climate-Related Disclosures for Investors", necessitating registrants, including foreign private issuers, to divulge comprehensive climate-related data in their registration statements and periodic reports. This rule aims to offer investors complete and actionable insights into the impacts of climate-related risks on registrants, thereby enhancing the consistency, comparability, and reliability of climate-related information.

ICAI issues FAQs regarding use of accounting software with audit trails

Since April 1, 2023, Rule 11(g) mandates auditors to comment on the use of accounting software with audit trails. A recent implementation guide by AASB, revised on February 12, 2024, covers FAQs on various scenarios, including defining books of account, applicability, use of specialists, implications of non-operational audit trails, reporting on software outside India and the need for accessible audit trails in India.



MERGERS & ACQUISITIONS

India's M&A Landscape: Poised for Takeoff in 2024 and Beyond

The Indian as well as global M&A activity witnessed a downfall in 2023. According to Bloomberg report, the deal value in India plunged by 63% to \$71 billion in 2023 from a record high of \$192 billion in 2022. The decline was largely attributable to several geo-political factors including a sluggish global economy, high interest rates and several international conflicts.

Despite some uncertainties such as upcoming elections and global economic conditions, the Indian M&A market is expected to witness a rebound in 2024 owing to factors such as continued economic growth, favorable government policies, and strong pipeline of deal activity, with a major focus on following sectors:

- **Technology-** M&A landscape in technology sector is gaining momentum owing to the increased awareness of AI since it gives a competitive edge to companies. Additionally, companies leveraging AI technologies often command higher valuations due to their potential for disruptive innovation.
- **Energy-** According to McKinsey report, global energy and materials accounted for the largest share i.e.

26% of M&A activity in 2023. Supported by the government's proactive initiatives to promote clean energy, deal activity is expected to accelerate in 2024 as companies strive to achieve their sustainability goals.

- **Automotives-** M&A activity in the Automotives sector is expected to see a modest growth in 2024 owing to liberal government incentives and OEMs consolidating businesses to transform from internal combustion engines to EV segment.
- **Space-** With the new liberalized FDI norms by the central government, M&A activity is expected to surge as international companies seek partnerships and market access.
- **Financial Services-** Large-scale consolidations and regulatory shifts may cause increase in M&A activity this year.

While the upcoming elections and budget might create uncertainty along with a temporary wait-and-see approach, the upcoming year is expected to have opportunities for strategic partnerships and market expansion, painting a positive picture for M&A trajectory.



IN THE NEWS

ASA key member of FICCI's high-end business delegation to Japan - March 11-12, 2024

Ajay Sethi, Managing Partner and Himanshu Srivastava, Director, Business Advisory Services participated in the 2 days FICCI Trade, Technology, and Investment Mission to Japan in Tokyo. Ajay met the METI Minister, Mr Ken Saito, as a part of core group.

During the 2-day mission, Ajay was involved in several significant engagements. He spoke about the Indian SME sector, discussed opportunities for Japanese SMEs in India, and launched ASA's "Doing Business in India" guide in Nihongo at the Indian Embassy in Tokyo. Additionally, he emphasized the importance of establishing resilient and flexible global supply chains and highlighted India's role as a trusted partner to Japan during the plenary session of the 47th Joint Meeting of the India-Japan Business Cooperation Committee which was organized in collaboration with the Japan Chamber of Commerce and Industry and attended by over 300 people.

Webinar on Auditor's Responsibilities Relating to Fraud and Evaluation of Misstatements identified during the Audit organized by AASB of ICAI - March 13, 2024

Nitin Gupta, Partner, Assurance and Gaurav Bhatia, Executive Partner, Risk Advisory were invited for joint webinar on this critical aspect of auditing. They shared their understanding on financial frauds and practical experiences on auditor's responsibilities relating to fraud covering identification of fraud risk factors and specific audit procedures to address those risks.

Webinar on ISD vs Cross charge under GST & Complexities in TDS/TCS March 14, 2024

Subroto Bose, Partner, Accounting and Business Support, and Vipul Kumar Gupta, Executive Partner, Accounting and Business Support discussed the key differences between ISD and cross-charging for common inputs under GST in this webinar. The discussion emphasized recent developments

in the ISD definition following the changes made in Union Budget 2024. Additionally, they explored practical challenges in implementing the newly introduced TDS/TCS sections for complex transactions, offering valuable insights for navigating these intricacies.

GST Implications for Seconded Employees in India March 15, 2024

Author: Léa Parmentier, French Desk

This article highlights a Supreme Court ruling and subsequent CBIC guidelines, stressing the complexity of tax determinations in such cases and the ongoing need for clarity in multinational employee taxation. The complexities of indirect tax, particularly in the context of seconded employees in India, have taken centre stage with the ruling of the Apex Court. The application of GST to the secondment of employees has emerged as a focal point of discussion, resulting in show cause notices being issued to several multinational companies operating in India.

GLOSSARY

AASB

Auditing and Assurance Standard Board

AI

Artificial Intelligence

CBIC

Central Board of Indirect Taxes & Customs

DTAA

Double Taxation Avoidance Agreement

EV

Electrical Vehicle

FAQ

Frequently Asked Questions

FDI

Foreign Direct Investment

FTS

Fee for Technical Services

GST

Goods & Services Tax

ICAI

Institute of Chartered Accountants of India

IFSC

International Financial Services Centre

IPO

Initial Public Offer

ISD

Input Service Distributor

JDA

Joint Development Agreement

ITC

Input Tax Credit

KYC

Know Your Customer

KMP

Key Managerial Personnel

M&A

Mergers & Acquisitions

MFN

Most Favoured Nation

MPC

Minimum Promoters' Contribution

OEM

Original Equipment Manufacturer

PE

Permanent Establishment

QSB

Qualified Stock Broker

RBI

Reserve Bank of India

SCN

Show Cause Notice

SEBI

Securities and Exchange Board of India

SEC

Securities and Exchange Commission, USA

SME

Small & Medium Enterprise

SRO

Self Regulatory Organisation

TCS

Tax Collected at Source

TDS

Tax Deducted at Source

TP

Transfer Pricing

TRC

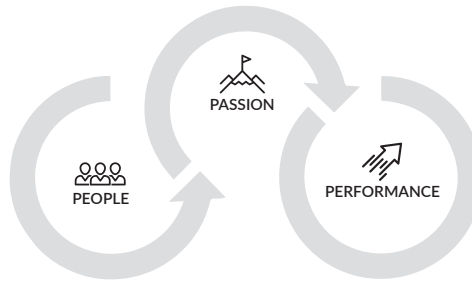
Tax Residency Certificate

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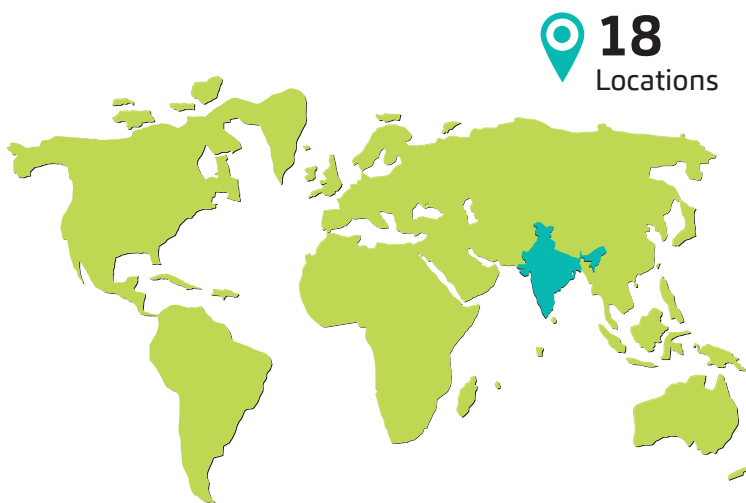
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Territories



\$5.2bn
Turnover



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