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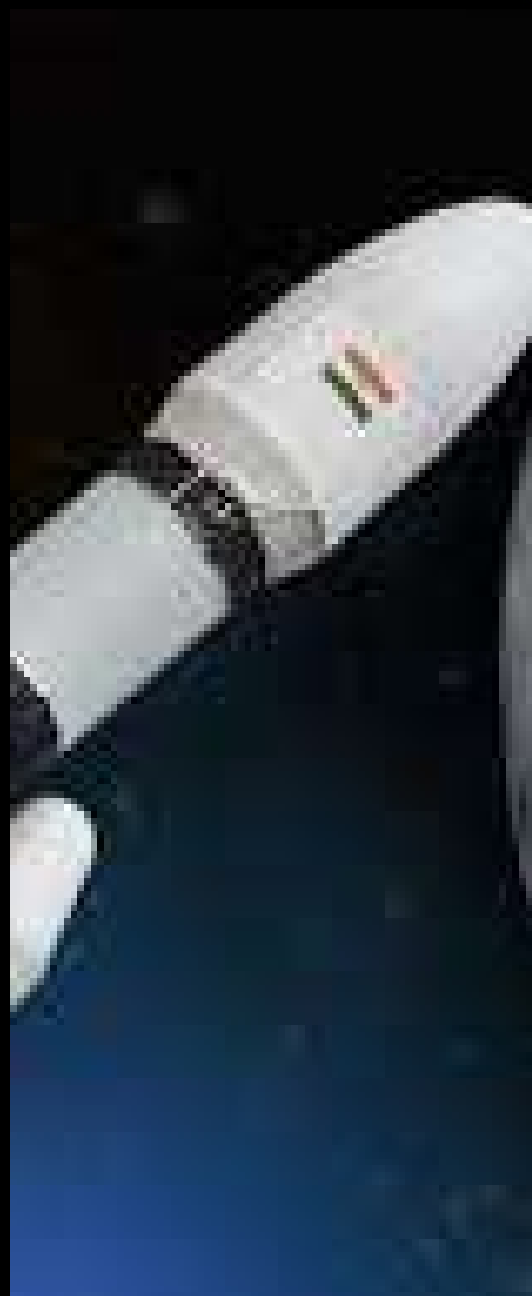

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Is Government double cross on Input credit.

The Curious Transformation of seamless Input Tax Credit (ITC) Mechanism under GST: From Seamless to seamlessly Less

The concept of a seamless Input Tax Credit (ITC) mechanism under GST, which was promised by the government during its implementation, has seemingly turned into a more cumbersome process for claiming ITC. As time has progressed since July 01, 2017, availing ITC in the GST regime has become less smooth due to the introduction of additional procedures.

To avail ITC, businesses now need to follow a tedious process and adhere to specific procedures, such as:

- According to Section 16(2)(c) of the CGST Act, 2017, the ITC claimed in GSTR-3B must match the eligible ITC available in GSTR-2B.

- Circular 170 requires taxpayers to disclose the full ITC available in GSTR-2B in one column of GSTR-3B and then reverse the some value of ITC not accounted for in their books to ensure alignment.

- The introduction of new Rule 88D of the CGST Rules, 2017, mandates that if a person claims excess ITC beyond the percentage prescribed in GSTR-2B, they must explain this to the tax officer by filing a reply in form DRC-01C.

Additionally, businesses need to repeatedly explain the ITC claim during various stages:

- While filing GSTR-9, taxpayers need to reconcile with the value of GSTR -2B as per Table 8 of GSTR-9.
- During the scrutiny of returns, if selected for scrutiny.
- In case of Department GST Audit/Assessment from the department.

The above processes have made the once "seamless credit" system now "less" so. Instead of introducing monthly verifications, the government could consider a yearly review of variance between GSTR-2B and GSTR-3B after November 30. Taxpayers are generally cautious about any excess or short credit compared to GSTR-2B. If excess ITC is availed, businesses can rectify the situation and return the amount with interest, which would save time and effort for both the taxpayers and the government.

Understand Thin Capitalization

Thin capitalization refers to a situation where a company is financed with a high proportion of debt compared to equity. This can result in the company's interest payments on the excessive debt being disproportionately high, which could lead to reduced taxable income and consequently lower tax payments. Many countries implement thin capitalization rules to prevent companies from using excessive debt to manipulate their taxable income.

While thin capitalization rules are often not explicitly covered in Double Taxation Avoidance Agreements (DTAA), they are typically part of domestic tax laws and regulations in individual countries. Some countries may include specific provisions or guidelines on thin capitalization in their tax treaties, particularly in the "Limitation of Benefits" or "Miscellaneous" articles, but it's not a standard practice.

The essence of thin capitalization rules is to restrict the amount of interest that a company can deduct from its taxable income if it has a significant amount of debt in relation to its equity. These rules are put in place to ensure that companies are not artificially reducing their tax liability through excessive interest deductions that stem from loans from related parties, often in low-tax jurisdictions.

Thin capitalization rules may involve setting a maximum debt-to-equity ratio beyond which interest deductions are disallowed or limited. For example, if a country has a thin capitalization ratio of 3:1, it means that for every $1 of equity, the company can have a maximum of $3 in debt to qualify for full interest deductions. If the debt exceeds this threshold, only a portion of the interest expenses might be deductible for tax purposes.

It's important to note that thin capitalization rules can vary significantly from one country to another. Some countries focus solely on the debt-to-equity ratio, while others consider other factors like the purpose of the borrowing, the relationship between the borrower and lender, and the prevailing interest rates in the market.

While DTAA itself may not specifically address thin capitalization, it's crucial for multinational companies to be aware of these rules in both their home country and the country in which they operate. Failure to comply with thin capitalization rules can lead to tax adjustments, penalties, and disputes with tax authorities. Companies engaging in cross-border transactions should seek advice from tax professionals to ensure they understand and comply with the relevant rules and regulations in all jurisdictions involved.

Clarifications from the GST Council

The GST Council has recommended the following clarifications on ISD and cross charge:

1. The ISD mechanism is not mandatory for distributing ITC of common input services procured from third parties to the distinct persons as per the present provisions of GST law.

2. The taxability of internally generated services provided by one distinct person to another distinct person will be clarified in the future.

3. The **GST law may be amended to make the ISD mechanism mandatory prospectively** for distribution of input tax credit of such common input services procured from third parties.

Hence, Businesses that currently use cross charge to distribute ITC of common input services will not need to change their practices immediately. However, they should be aware that the ISD mechanism may become mandatory in the future. In light of such recommendation, the Government of India has issued Circular No 199/11/2023- GST dated 17 July 2023 which clarified the following:

- In case where the Head Office ('HO') distributes or wishes to distribute ITC to Branch Offices ('BOs') in respect of such common input services through the ISD mechanism, HO is required to get itself registered mandatorily as an ISD in accordance with Section 24(viii) of the CGST Act
- Distribution of the ITC in respect a common input services procured from a third party can be made by the HO to a BO through ISD mechanism only. Value of supply of services made by a registered Person to a Distinct Person needs to be determined as per Rule 28 of CGST Rules, read with Section 15(4) of CGST Act (i.e. Open Market Value)
- In case where full ITC is eligible to the recipient, then the value declared in the Tax Invoice would be deemed to be the Open Market Value irrespective of the fact whether cost of any particular component of such services (like employee cost etc.), has been included or not in the value
- In case where full ITC is not eligible to the recipient, then the cost of salary of employees of the HO, involved in providing the said services to the BOs, is not mandatorily required to be included while computing the value of such services

Below is the summary on Circular No. 199/11/2023-GST dated: 17th July, 2023 tabulated for easy reference:

Sl no	Issue	Clarification
1	ITC availed by Head office on common input services provided from 3rd party (Attributable to HO and BO both or attributable to one or 2 BO)	1) HO has option to distribute ITC in respect of common services by way of ISD Mechanism However as per current provisions, ISD is not mandatory 2) HO Can issue invoice to BO and BO can claim ITC sub to provisions of Sec 16 and Sec 17 of CGST Act 3) If HO wish to distribute through ISD mechanism then regn of ISD is mandatory and Distribution of the ITC in respect a common input services procured from a third party can be made by the HO to a BO through ISD mechanism only
2	In respect of internally generated services, there may be cases where HO is providing certain services to the BOs	Value of Supply b/w distinct persons needs to be determined as open market value of such supply. Rule 28 clause (a)

	for which full input tax credit is available to the concerned Bos - HO may not be issuing tax invoices to BO - HO may not be considering cost of a particular component such as salary cost of employees involved in providing services while issuing tax invoice Question here is : is it mandatory to issue invoice for internally generated service? Is it mandatory to include salary cost of HO employees **When full ITC is available to BO**	Proviso to Rule 28: where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services (irrespective of the fact whether cost of any particular component of such services, like employee cost etc., has been included or not in the value of the services in the invoice.) Accordingly, in respect of supply of services by HO to BOs, the value of the said supply of services declared in the invoice by HO shall be deemed to be open market value of such services, if the recipient BO is eligible for full input tax credit. **If HO has not issued invoice to BO where full ITC is available to BO, then the value of such services may** **be deemed to be declared as Nil by HO to BO, and may be deemed as open market value in terms of second proviso to rule 28 of CGST Rules.**
3	In respect of internally generated services provided by the HO to BOs, **in cases where full input tax credit is not available to the** **concerned BOs,** whether the cost of salary of employees of the HO involved in providing said services to the BOs, is mandatorily required to be included while computing the taxable value of the said supply of services provided by HO to Bos?	In respect of internally generated services provided by the HO to BOs, the cost of salary of employees of the HO, involved in providing the said services to the Bos **It is not mandatorily required** to be included while computing the taxable value of the supply of such services, even in cases where full input tax credit is not available to the concerned BO.

For reference:

Meaning of Distinct person, ISD Mechanism and Cross charge is as under:

a) Distinct persons Under GST law, entities with separate GST registrations under the same PAN will be treated as distinct persons. This means that two or more branches of the same company that are located in different states would be considered distinct persons. Taxability of supplies between distinct persons Supply between distinct persons is taxable even if there is no consideration involved. This means that if one branch of a company provides services to another branch, the supply would be taxable and GST would be payable.
b) ISD mechanism : The ISD mechanism is a way to distribute ITC of common input services to distinct persons. An ISD is a taxable person who is appointed by a group of distinct persons to distribute ITC of common input services to those persons.
c) Cross charge: Cross charge is a mechanism where a taxable person invoices the supply of goods or services to another distinct person who is part of the same group. The invoice for cross charge is typically issued at a zero rate of tax.

GST on services rendered by Director.

Services by Director to a Body Corporate are liable to tax under RCM.

As per the revenue authorities, any services by Director to a Body Corporate are liable to GST under RCM whereas taxpayers where discharging GST only on those services which were rendered by Director **in his capacity** as Director.

Circular 201/2023 has been issued to clarify that GST under RCM will be applicable only on services rendered by Director in his capacity as Director. Any services rendered by the Director in his personal capacity will not be liable to tax under RCM.

Basis the above clarification, the GST Liability on services rendered by a person who is also a Director of a Company, has been summarized in the below table.

Transaction	In capacity as Director	Liability under GST
Sitting Fee paid to Director	Yes	Liable to tax under RCM
Salary paid to Director	Yes	No GST. Covered under Sch. III - Refer Circular 140/2022 as well
Renting of Commercial Property to the Company	No	Personal Capacity. Liable to tax under FCM
Renting of Residential Property to the Company	No	Liable to tax under RCM - Separate Entry
Technical Services by Director to Company	No	Personal Capacity. Liable to tax under FCM
Legal Services by Advocate Director to Company	No	Personal Capacity - Liable to tax under RCM under Separate Entry
Director Guarantee to Bank	Yes	Not a Service

Few points for consideration

1. While computing the turnover of Director (even for the purpose of computation of threshold exemption from registration) - RCM turnover needs to be included though the tax is being paid by the recipient

2. No clarification has been provided on treatment of Director Guarantee - This is not in the nature of service and hence even if given in the capacity as director, should not be liable to tax.

What is an Onerous Contract?

Indian Accounting Standard (Ind As) 37 defines an onerous contract as a contract in which the unavoidable costs of meeting the obligations under the contract exceed the economic benefits expected to be received under it. The unavoidable costs under a contract reflect the least net cost of exiting from the contract, which is the lower of the cost of fulfilling it and any compensation or penalties arising from failure to fulfil it. In simple words, if the cost to complete a contract is more than its sale proceeds than the Contract is an Onerous Contract. A Contract can become an Onerous Contract at any time. At the time of taking up a Contract, the contract might be profitable but due to certain factors it subsequently becomes a loss making one, thereby it becomes an Onerous Contract.

Accounting for Onerous Contract

If a contract is onerous, the present obligation i.e. the difference between the revenue and unavoidable cost under the contract shall be recognized and measured as a provision. Many contracts (for example, some routine purchase orders) can be cancelled without paying compensation to the other party, and therefore there is no obligation. Other contracts establish both rights and obligations for each of the contracting parties. Where events make such a contract onerous, the contract falls within the scope of Ind AS 37 and a liability exists which is recognized. Executory contracts that are not onerous fall outside the scope of said Standard. Before a separate provision for an onerous contract is established, an entity recognizes any impairment loss that has occurred on assets dedicated to that contract (Ind AS 36).

Illustrations

i. There is a contract to purchase one million units of gas at 20p per unit, giving a contract price of Rs 2,00,000. The current market price for a similar contract is 13p per unit, giving a price of Rs 1,30,000. The gas will be used to generate electricity, which will be sold at a profit. The economic benefits from the contract include the benefits to the entity of using the gas in its business and, because the electricity will be sold at a profit, the contract is not onerous.

ii. in the example (i), if the electricity is sold at a loss, and an overall operating loss is made. All of the gas purchased is used to generate electricity using dedicated assets. First consider whether the assets used to generate electricity are impaired. To the extent that there is still a loss after the assets have been written down, a provision for an onerous contract should be recorded.

iii. In the example (i), if the gas under contract is sold, which it no longer needs, to a third party for 15p per unit (5p below cost). It is determined that it will have to pay Rs 55,000 to exit the purchase contract. The only economic benefit from the purchase contract costing Rs 2,00,000 are the proceeds from the sales contract, which are Rs.1,50,000. Therefore, a provision should be made for the onerous element of Rs. 50,000, being the lower of the cost of fulfilling the contract and the penalty cost of cancellation (Rs 55,000).

iv. In the period ended 31-Dec-2022, an entity has a contract with a third-party supplier. The entity wishes to terminate this contract in 2022-23 because it can enter into a cheaper contract with a new supplier, even though it will still have two years to run. It will incur a charge for terminating the contract. In that case, a provision should be recognized only if the contract is onerous. If the goods received under the supply contract are sold at a profit, the contract is not onerous and provision should not be made in 2021-2022. The termination cost should be recognized as incurred in 2022-2023.

Tax Implication on Onerous Contract Expense

Onerous Contract expense is a provision created to safeguard against anticipated future losses. The Provision is created based on estimates of expected future revenue and the cost to be incurred for earning such revenue hence the provision so created is allowable as an expenditure. This has been confirmed and upheld by the Court in various rulings details given below:

- Rotork Controls India P. Ltd. (2009) 314 ITR 62 (SC)
- ACIT v. LG Electronics India P. Ltd, 24 ITR 634 (Delhi ITAT)

Note on Amendment to TCS Provision vide Circular No 10/2023 dated 30-Jun-2023

The Central Board of Direct Taxes(“**CBDT**”) has issued Circular No. 10/2023 dated 30-Jun-2023 in order to remove difficulty in implementation of changes relating to Tax Collection at Source (TCS) on Liberalized Remittance Scheme (“**LRS**”) and on purchase of overseas tour program package(“**OTPP**”) has provided the following clarification and relief:

1. In the case of the Overseas Tour Program package, the TCS rate would be 5% up to Rupees 7 lakhs and post which it will be 20%.
2. In case of any LRS remittances abroad, there will be no TCS up to 7 Lakhs post which applicable TCS rate would be 20%.
3. International Credit card payments are outside the purview of LRS payments until further notification.
4. The Change in TCS rate would be effective from October 1st, 2023.
5. The existing TCS rates shall prevail till September 30th, 2023. (for rates refer the table at the end).

Further Clarification is provided in relation to the RBI Purpose code to be used, if the remittance is for Education/Medical Treatment:

1. In case of remittance for the purpose of education the purpose code to be used is
   - **S0305** – Travel for Education(Includes Fees & hostel Expenses)
   - **S1107** – for payment of fees for correspondence courses.
2. In case of remittance for the purpose of medical treatment the purpose code to be used is
   - **S0304** – Travel for Medical Treatment abroad (includes medical services, other healthcare, food, accommodation and local transport transactions.)
   - **S1108** – For payment of health services rendered remotely or onsite (that is no travel by service recipient is involved). It includes services from hospitals, doctors, nurses, paramedical and similar services, etc.

It is also clarified as to what constitutes OTPP. To qualify as an OTPP, the package should include at least **2** of the following:

- International travel ticket,
- Hotel accommodation (with or without food)/boarding/lodging,
- Any other expenditure of similar nature or in relation thereto.

Therefore, it is clarified that purchase of only international ticket or only hotel accommodation is not OTPP, outside the purview of TCS. Also Clarification has been provided that payment through forex card falls within the purview of LRS.

In view of the above clarification, the levy of TCS till September 30th , 2023 and thereafter is tabulated below for easy reference:

Nature of payment	Amount of Payment	TCS rate till 30-Sep-2023	TCS rate from 01-Oct-2023
LRS for Education financed by loan	Up to Rs. 7 Lakhs	0.00%	0.00%
	Above Rs. 7 Lakhs	0.5%	0.5%
LRS for Medical treatment/education (other than financed by loan)	Up to Rs. 7 Lakhs	0.00%	0.00%
	Above Rs. 7 Lakhs	5.00%	5.00%
LRS for other purposes	Upto Rs. 7 Lakhs	0.00%	0.00%
	Above Rs. 7 Lakhs	5.00%	20.00%
Purchase of Overseas tour program package	Up to Rs. 7 Lakhs	5.00%	5.00%
	Above Rs. 7 Lakhs	5.00%	20.00%

New tab on the GST portal

"Rule- 86B compliance"

The GST portal has rolled out a significant update with the introduction of Rule 86B compliance, aimed at strengthening tax adherence and promoting responsible tax management.

Under this new rule, a registered person whose value of taxable supply, other than exempt supply and zero-rated supply, in a month exceeds fifty lakh rupees must adhere to specific guidelines when discharging their output tax liability.

As per Rule 86B, registered businesses can utilize the Electronic Credit Ledger (ECL) to pay up to 99% of their total output tax liability. This provision empowers businesses to make the most of their Input Tax Credit (ITC) benefits, thereby encouraging proper utilization of tax credits to offset tax dues.

However, the remaining 1% of the tax liability must be paid through cash ledgers. This minor cash payment ensures that businesses maintain a level of cash contribution towards their tax obligations, fostering a balanced and disciplined tax approach.

It's important to note that exceptions to Rule 86B do exist. The compliance rule does not apply in certain situations, and registered persons are exempted from this requirement under the following scenarios:

1) Cases where the registered person* has paid more than Rs. 1 lakh as income tax in each of the last two financial years**.

*

Registered person includes:-
a) The registered person,
b) Proprietor, karta or Managing Director of the registered person,
c) Any of the partners or whole time directors or any other person as the case may be.

**

Last Two financial years to be taken for which the time limit to file return of income under subsection (1) of section 139 of the said Act has expired.

2) Businesses classified as government departments, local authorities, or statutory bodies.

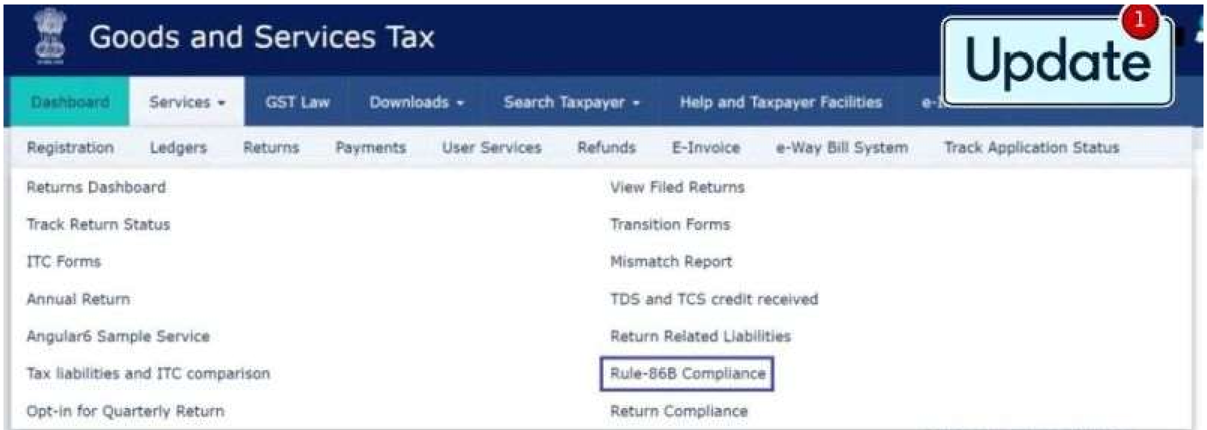
3) Registered persons who have received a refund exceeding Rs. 1 lakh in the preceding financial year on account of accumulated ITC and inverted tax structure.

4) Where GST Paid in cash cumulatively for more than 1% of Total Output Liability till latest Tax Period:-

Example:

In Financial Year 2022-23, upto the month of June 2023, a person has paid GST in cash of Rs 3 Lakh out of Total Output Liability of Rs 1 Crore (i.e. 3% till June 2023). During the month of July 2023, GST output Liability is Rs 15 Lakh. Now his total payment in cash is Rs 3 Lakh out of Rs 115 Lakh liability {i.e. (3L/115L*100)= 2.60%} which is still more than 1% of Total output liability. Here, the person can settle all his liability of Rs 15 Lakh of July 2023 with Input Tax Credits.

These exceptions have been incorporated to ensure that genuine taxpayers and entities with substantial tax contributions are not unduly burdened by the rule. By exempting specific categories, the government aims to strike a balance between encouraging tax compliance and acknowledging the unique circumstances of certain businesses.



Rule 88C & 88D

Two new provisions have been added to the CGST Rules to keep a check on

(1) Rule 88C - Difference between outward supplies reported in GSTR 1 when compared with GSTR 3B
(2) Rule 88D - Difference between ITC reported in GSTR 3B when compared with system generated GSTR 2B

We have compared both these provisions in the below table

Criteria	88C	88D
Trigger Point	Difference in Outward Supply - Liability declared in Form GSTR 1 exceeds the tax payable in Form GSTR 3B by such amount and such %age	Difference in ITC claimed - Credit availed in Form GSTR 3B exceeds the credit as per auto generated statement in Form GSTR 2B
Such Amount and Such %age	Not prescribed	Not prescribed
Communication by Department	Part A - GST DRC - 01B	Part A - GST DRC - 01C
Communication by	Upload on the Portal + E-mail	Upload on the Portal + E-mail
Response Time	7 Days	7 Days
Response to be filed in	Part B - GST DRC - 01B	Part B - GST DRC - 01C
Options available	1. Pay the Difference 2. Explain the difference 3. Partial payment and explain the balance	1. Pay the Difference 2. Explain the difference 3. Partial payment and explain the balance
If no response / unsatisfactory response	1. **Recovery of Tax under Section 79 + Liability posted in Electronic Liability Ledger**	1. SCN under Section 73 / 74
Impact on Filing of Returns / Access to GST Portal	1. Not allowed in File returns in Form GSTR 1 2. Rule 59 - Once GSTR 1 not filed, GSTR 3B filing gets blocked 3. Rule 138E - If GSTR 1 not filed for two consecutive tax periods, E Way Bill facility gets blocked 4. Rule 21A - Suspension of Registration	1. Not allowed in File returns in Form GSTR 1 2. Rule 59 - Once GSTR 1 not filed, GSTR 3B filing gets blocked 3. Rule 138E - If GSTR 1 not filed for two consecutive tax periods, E Way Bill facility gets blocked 4. Rule 21A - Suspension of Registration

Direct Tax update

- Non-resident Indians (NRIs) and Overseas Citizenship of India (OCIs) have raised concerns regarding their PANs becoming inoperative, despite being exempted from linking PAN with Aadhaar. In view of concern raised, Income tax department has clarified vide their Twitter handle that they should file a letter with their Jurisdictional AO informing him/her about the residential status along with proof for the same so that the PAN records can be updated and their PAN 's can be met operative again. It is further clarified that return of income can be filed with inoperative PAN. Only refund due and interest thereon will not be issued. Also TDS will be applicable at higher rate.

- ICAI issues exposure draft on amendment to IndAS 12 on income taxes. It requires disclosure of quantitative and qualitative information on exposure to Pillar Two in annual reporting period beginning on or after 1 April 2023. This information does not have to reflect all the specific requirements of the Pillar Two legislation and can be provided in the form of an indicative range. To the extent information is not known or reasonably estimable, an entity shall instead disclose a statement to that effect and disclose information about the entity's progress in assessing its exposure. This requirement, coupled with the fact that more than 50 countries are in different phases of implementing Pillar Two, would require an Indian in-scope MNE to start analyzing the impact of Pillar Two now and be prepared to be.

- CBDT has released a Notification to extend applicability of Safe Harbour Rules under Rule 10TD of Income-tax Rules to AY 2023-24. The said notification clarifies that this amendment is effective from 1st day of April, 2023 and applies to AY 2023-24 relevant to previous year 2022-23

- The Finance Act, 2023 brought in an amendment for the purposes of calculation of "perquisite" with regard to the value of rent-free or concessional accommodation provided to an employee, by his employer. Accordingly, CBDT has modified Rule 3 of the Income-tax Rules, 1961 to provide for the same.

  The categorisation and the limits of cities and population have now been based on the 2011 census as against the 2001 census earlier. The revised limits of population are 40 lakh in place of 25 lakh and 15 lakh in place of 10 lakh. The earlier perquisite rates of 15%, 10% and 7.5% of the salary have now been reduced to 10%, 7.5% and 5% of the salary respectively in the amended Rule. This is summarised as under:

Previous Categorisation and Rates		New Categorisation and Rates	
Population	**Perquisite Rate**	**Population**	**Perquisite Rate**
More than 25 lakh	15%	More than 40 lakh	10%
Between 10 lakh and 25 lakh	10%	Between 15 lakh and 40 lakh	7.5%
Less than 10 lakh	7.5%	Less than 15 lakh	5%

The Rule has also been further rationalised so as to compute a fair tax implication of the same accommodation being occupied by an employee for more than one previous year.

Rules effective from September 1, 2023.

- New Functionality for "Challan Correction" by Income Tax India
  Path: Dashboard > Services > Challan Correction
  Using this Functionality you can Change Assesment Year, Major Head and Minor Head for Advance Tax, Self-Assessment Tax and Demand Payment as Regular Assessment Tax for Challan pertaining to A.Y. 2020-21 onwards

- The Income Tax Department has released the Form 10B utility on August 24, 2023. "Audit Report under clause (b) of the tenth proviso to section 10(23C) and section 12A(1)(b)(ii) of the Income-tax Act,1961, in the case of a fund or trust or institution or any university or other educational institution or any hospital or other medical institution." The Utility can be accessed at: https://lnkd.in/dAw8hA6Z

- Form 10B & 10BB filing due date extended to 31st October 23. Accordingly, trusts' ITR filing date extended to 30th November 23.

- The Central Board of Direct Taxes (CBDT) notified the exemption from capital gains tax any unit of investment trust; a unit of a scheme; and a unit of an ETF launched under the International Financial Services Centres Authority (Fund Management) Regulations, 2022.

IN-Direct Tax update

- If there is a mismatch between liabilities reported in GSTR-1 & GSTR-3B filed for a tax period, the department has issued an advisory dated 29th June,2023 enabling the facility in Form DRC-01B. The gist of the advisory is as follows :

  If liability reported in GSTR-1 exceeds that reported in GSTR-3B, the taxpayer will receive an intimation in Form DRC-01B via SMS and e-mail for such difference. The taxpayer has two options

(a) pay the differential liability via DRC-03
(b) or state your reasons for such a difference.

  If no reply has been furnished or no payment has been made within 7 days of receipt of DRC-01B or if the proper officer rejects the reasons mentioned by the taxpayer, then the differential liability will be recovered according to the provisions of Section 79 of the CGST Act,2017 without issuing SCN under section 73/74 of the CGST Act,2017

- The Central Board of Indirect Taxes and Customs (CBIC) enabled the Online facility for Taxpayers to track the status of refund application in real time.

- Until 30-Sep-2023 : Supplies to SEZ units or developers are considered as 'Zero rated supplies' under Section 16 of the IGST Act, allowing suppliers to avoid paying IGST upfront. Effective from October 1, 2023: The Finance Act, 2021 (Section 123) brought a significant change, limiting zero-rated supplies to only those supplies which are intended for 'authorized operations' within SEZs.

- GST Circular 196/08/2023-GST has finally cleared the air on taxability of shares held in Subsidiary Company by the Holding Company. The Circular treats the said activity as transaction in securities and therefore has clarified to be outside the purview of GST. Reading up till here seemed beneficial to the taxpayers but the Circular at the end states that "It cannot be said that a service is being provided by the holding company to the subsidiary company, solely on the basis that there is a SAC entry '997171' in the scheme of classification of services....". By including this statement, the activity of a holding company in its subsidiary by virtue of holding majority of the equity is not made completely free from any GST implications.

- A new “Electronic Credit and Re-claimed Statement” is introduced on the GST portal to help taxpayers in tracking their ITC that has been reversed in table 4B(2) (temporary reversals, for e.g., reversal on account of non-payment to suppliers within 180 days) and thereafter re-claimed in table 4D(1) and 4A(5).

- NIC issues advisory on new time limit for reporting of invoices on the Invoice Registration Portal

- Ministry of Finance regarding constitution of State Benches of the Goods and Services Tax Appellate Tribunal (GSTAT). Government has notified a list of 31 State Benches constituted across different States and Union Territories

Trade update

- EPF Interest Rate @8.15 % declared by Govt. of India.

- SEZ Instruction No. 113 dated July 13, 2023 : SEZ units will not be required to submit physical copies of invoices and SOFTEX. Any documents (including invoices) required from the SEZ units for verification purposes, can be obtained electronically from the SEZ Unit. In exceptional cases, where a detailed verification is required to be carried out, physical copies of documents can be insisted upon, on a case to case basis.

- Customs Notification No. 23/2023 issued today by Ministry of Commerce and Industry vide which Government has placed restriction on import of laptops, tablets, personal computers, servers, etc. falling under HSN 8741 except for certain use cases.
  Given that the import of such goods are now restricted, Importers would need to obtain a valid license before their import by filing ANF-2M. However, the restriction would not be applicable in following case:

1. Imports made under Baggage Rules
2. Import of **ONE** laptop, tablet, personal computer, etc. through post or courier
3. Import of 20 units per consignment for the purpose of R&D, Testing, Benchmarking and evaluation, repair and re-export and product development is allowed on the condition that the said goods would not be sold.
4. If such laptops, tablets, etc. are imported as an essential part of Capital goods.

- Both listed and unlisted Indian companies can list their shares directly on foreign exchanges at the International Financial Services Centre

- The Employees' Provident Fund Organisation (EPFO) issued a circular on 23 August 2023 notifying the Standard Operating Procedure (SOP) on processing the joint declarations for updating the member profile on the EPFO online portal

Direct tax case laws.

- Bangalore ITAT in the case of Allstate India held that Interest Income Received On Temporary FDs Is Eligible For Exemption

- Bangalore ITAT in the case of Sandeep Patwari & Subhsankar Chakraborty held that Form 67 is not mandatory but directory & procedural & foreign tax credit is a substantive right and procedural obligation cannot deny substantive right. Similar views provided by Delhi ITAT in the case of Neha Kappor & by Ahmedabad ITAT in the case of Manoj Kaushikprasad Jingar.

- Section 80 of the Income-tax Act, 1961 (IT Act) restricts the carry forward of losses under the head 'Capital Gains' and 'Profit and Gains from Business or Profession' if the return of loss is not filed within the time limit. It may so happen that after filing the original tax return within the timeline, the revised tax return may contain losses. Whether such a loss can be carried forward? In this regard, recently Delhi Tax Tribunal has held that Long term capital loss cannot be allowed to be carried forward if a fresh claim is made by way of filing a revised tax return

- The Delhi Bench of the Income Tax Appellate Tribunal (Hon'ble ITAT) has ruled in the case of BLP Vayu (Project-1) Private Limited that the provisions of section 56(2)(viib) of the Income Tax Act, 1961 do not apply to the allotment of shares at a premium to a wholly-owned holding company. The Hon'ble ITAT held that the transaction of allotment of shares at a premium between a holding company and its subsidiary company when seen holistically, there is no benefit derived by the taxpayer by issue of shares at certain premium notwithstanding that the share premium exceeds the FMV. The objective of the provisions of section 56(2)(viib) is to prevent unlawful gains by the issuing company in the guise of capital receipts. The purpose of treating an unjustified premium charged on the issue of shares as taxable income under section 56(2)(viib) is entirely inapplicable to transactions between a holding company and its subsidiary company, where no income can be said to accrue to the ultimate beneficiary, i.e., the holding company. Accordingly, the chargeability of deemed income arising from transactions between holding and subsidiary or vice versa, militates against the solemn object of section 56(2)(viib).

- The Hyderabad Tax Tribunal observed that the foreign assignment allowance was topped up to the employee's travel currency card by IBM India. Since this allowance was regarding services performed outside India, the accrual thereof happens outside India and hence, such income cannot be taxed in India in the hands of employee.

- ITAT Delhi in the case of GNG Ltd held that advance written off is not allowable as deduction u/s 36(1)(vii) but allowable as deduction u/s 37(1).

- The Supreme Court in the case of Lachmandas Mathuradas vs. CIT (2002) 254 ITR 799 (SC) held that interest on arrears or on outstanding balance of sales tax is compensatory in nature and would be allowable as deduction in computing profits of a business.

- ITAT Delhi in case of Luxor held that The impugned quarrel has now been well settled by the Hon'ble Supreme Court in the case of Mahindra and Mahindra held Section 41 (1) does not apply since waiver of loan does not amount to cessation of trading liability. It is a matter of record that the Respondent has not claimed any deduction under Section 36 (1) (iii) of the IT Act qua the payment of interest in any previous year.

- The FDI guidelines treat CCDs as equity for the purposes of reporting to the Reserve Bank of India. The tax department argues that CCDs should be treated as shares because RBI treats these instruments at par with equity. However, The Bangalore Bench of the Income-tax Appellate Tribunal (ITAT) in the case of CAE

Flight Training (India) Pvt. Ltd.[ITA No. 2060/Bang/2016] has ruled that compulsorily convertible debentures (CCDs) are to be regarded as debt, and not equity, for the purpose of the Income-tax Act.

- In the case of Damco India, the Mumbai ITAT held that section 219 of the Act also mandates that the credit of advance tax shall be given to the assessee in the regular assessment and should not be denied.

- ITAT Delhi in the case of Saif Ii-Se Investments Mauritius Limited held that a tax residency certificate is sufficient and valid proof for taking the India-Mauritius double tax treaty benefits.

- In the case of Olam Exports, Kerela High court held that the assessee could not have been taxed anything more than what it had received & hence tax on actual income received.

- In the case of Sarva Capital LLC it was held that the converted CCPS sold after April 1, 2017, will be given the India-Mauritius tax treaty benefits. There was ambiguity on the sale of CCPS since it was perceived that the sale of only equity shares can get grandfathering benefits. The tribunal held that the treaty mentions the word "shares" and it includes all kinds of shares (be it CCPS).

- Bombay High Court in the case of Music Broadcast held that payment made for premature termination of Advertising Sale Agreement is revenue expenditure.

- Delhi High Court in Matrix Cellular International Services Private Limited held that change in the MAM (MOST APPROPRIATE METHOD) can be resorted to provided the MAM used earlier does not result in proper determination of arm's length price ('ALP'). The ultimate aim of a transfer pricing exercise is to examine whether a price/margin arising from an international transaction with an Associated Enterprise is at ALP or not. Therefore assessment authorities/appellate courts or even the Assessee can resort to a change in the MAM during the stage of assessment/appeal provided they are able to demonstrate that such a change will produce better or more appropriate ALP determination basis the facts of the case.

- Delhi ITAT in the case of Jindal Stainless Ltd held that recovery of 20% of tax demand from the intimation order from tax refund is not valid.

- In the case of Pelican Tobacco India , Delhi ITAT held that Addition under Section 41(1) of the Income Tax Act, 1961 should not be invoked since the assessee had acknowledged liability and reflected the same in its books of Account.

- The buyback of shares done by Cognizant Technology Solutions India Pvt. Ltd. for around 2,300 million USD has been treated as a dividend by the Chennai tax tribunal and eventually subject to dividend distribution tax of around 338 million USD

- Delhi High Court in the case of Indus Tower has stayed the operation of an Intimation Order u/s 143(1)(a) wherein an exorbitant addition of Rs. 12,284 crores with the corresponding demand of Rs 3,573 crores has been raised.

- The ITAT noted that Section 44ADA of the Income Tax Act applies to individuals engaged in specific professions, and the assessee did not possess the necessary qualifications for any of these professions as specified in the Act. Therefore, the provisions of Section 44ADA did not apply to the assessee's case. Case: Shri Vishnu Dattatraya Ponkshe v. CPC Bengaluru, ITA No. 1570/Mum/2023.

- Recently, the Delhi High Court clarified tax demand criteria, distinguishing 'total tax' per the assessment order from 'net tax' stated in tax notices. If tax officers collect over 20% of the 'total tax,' the excess can be refunded with interest. In a specific case where the 'total tax' was 44 crore, and the taxpayer sought a refund of 16.2 crore due to exceeding the 20% threshold, this decision is viewed as beneficial, aiding businesses in recovering funds held by tax authorities in the guise of tax demand

INdirect tax case laws.

- Tribunal in the case of ***M.N. Dastur & Company Pvt. Ltd. v. CST, (ST Appeal 75128 of 2017),*** held that compensation received for termination of an agreement is not a consideration and hence, not exigible to Service Tax ('ST')

- Salary Is Out of The Purview Of Service Tax & hence Mumbai CESTAT Quashes Service Tax Demand Against Kellogg.

- The Supreme Court in Commissioner of Central Excise and Service Tax v. M/s Reliance Industries Ltd. [Civil Appeal No. 6033 of 2009] held that the assessee was bonafide and has correctly discharged duty liability by relying on the CESTAT decision even though the same was later overturned by the Hon'ble Supreme Court

- The Department has withdrawn its Civil Appeal no. 2372 of 2021 before Supreme Court in terms of Board Circular dtd. 28.02.2023. This Appeal was filed by Department against decision dated 22.12.2020 whereby Service Tax demand was set aside by CESTAT, New Delhi, on Liquidated Damage & Penal Charges under Declared Service u/s 66E(e). The issue now stands concluded in favour of Assessee

- Gujarat HC held that refund application can be filed for the same period again when refund for the same period has been sanctioned earlier. (Shree Renuka Sugars Ltd)

- Favorable judgment on ITC mismatch notices. Hon'ble Calcutta HC holds that issuance of demand notice on recipient of service on account of mismatch in GSTR 2A and GSTR 3B ITC cannot be sustained *without any investigation being done at the end of the supplier whose Invoices are not reflecting in GSTR 2A and that allegation of non payment of tax by supplier and denial of ITC u/s 16(2)(c) of the Act cannot be made without any investigation of the supplier in question*. The Court has put reliance on the judgment of the Hon'ble Supreme Court in Bharti Airtel as well as Arise India Ltd to hold the above. Same was further confirmed by Kerala HC in the case of Diya Agencies. However, Patna High Court ('HC') decision in case of *Aastha Enterprises v. State of Bihar* wherein it is held that the recipient cannot claim Input Tax Credit ('ITC') where its supplier has not paid GST to the Government.

- The Madurai Bench Of Madras High Court in case of M/s Tvl.Raja Stores (in W.P.(MD).No.15291 of 2023) has held that GST Audit under Section 65 can not be carried out by the Department after cancellation of Registration by the Department. However, it has been held that the Department can carry out assessment and raise demand under Section 73/74

Understand Tax Sparing under DTAA.

As globalization continues to shape the world economy, cross-border transactions and international investments are the new normal. However, with such opportunities come the complexities of dealing with taxation in multiple jurisdictions. To address this issue and promote international trade, countries enter into Double Taxation Avoidance Agreements (DTAA). Among the various provisions within these agreements, "Tax Sparing" stands out as an essential concept that merits exploration and understanding. This article aims to provide a comprehensive guide to Tax Sparing, its significance, implications, and how businesses can benefit from it.

1. What is Tax Sparing?

Tax Sparing is a provision present in certain Double Taxation Avoidance Agreements. The primary objective of tax sparing is to encourage foreign investment by offering tax incentives in the taxpayer's home country for income that would have been taxed in the foreign country but was exempted or reduced due to specific incentives, exemptions, or tax holidays. Essentially, it "spares" the taxpayer from being taxed twice on the same income. An example of the reduced tax rate can be Section 194LC or 194LD of the Indian Income Tax Act,1961 which used to provide for a reduced rate of 4% / 5% in certain situations for non - residents.

2. How Tax Sparing Works:

When a taxpayer generates income in a foreign country that qualifies for tax benefits under the host country's laws, the home country, as per the DTAA, may choose to grant tax credits or exemptions for the taxes that would have been paid in the foreign country. This ensures that the taxpayer receives the intended benefit of the foreign country's tax incentives while still being compliant with their home country's tax regulations. Let's understand it through an example where a Mauritius tax resident has subscribed to Non - Convertible Debentures in India and is eligible to receive interest on such NCDs. Section 194LC or 194LD provides for a reduced rate of taxation at the rate of 5.46% (including surcharge and cess). Where India - Mauritius treaty provides for a tax rate of 7.5% on such interest. Now, in this case the taxpayer is eligible for tax sparing on the difference between 7.5% and 5.46% in Mauritius in addition to the foreign tax credit of taxes withheld in India.

3. Significance of Tax Sparing:

Tax Sparing plays a vital role in attracting foreign investment and fostering economic cooperation between countries, specially for the developing countries. It provides a competitive advantage to investors by making cross-border ventures more financially viable. This provision reduces the overall tax burden on taxpayers engaged in international transactions and encourages them to explore investment opportunities in foreign jurisdictions.

4. Challenges and Limitations:

While Tax Sparing offers numerous advantages, its implementation can be complex with inherent challenges. One significant obstacle is ensuring a seamless coordination between tax authorities in different countries. Additionally, not all DTAA agreements include Tax Sparing provisions, limiting its applicability to specific cases. Furthermore, the interpretation and application of this provision can vary, leading to potential disputes and uncertainties.

5. Leveraging Tax Sparing for Businesses:

For businesses with international operations, understanding the provisions of Tax Sparing is crucial. By carefully structuring their investments and operations, businesses can maximize their benefits under DTAAs and reduce their overall tax liability. However, this requires a deep understanding of the tax laws in both the home and foreign countries, as well as expert guidance to navigate the complexities.

Conclusion:

Tax Sparing under Double Taxation Avoidance Agreements is a valuable tool for businesses engaged in cross-border activities. By providing tax incentives and reducing the risk of double taxation, Tax Sparing encourages foreign investment and promotes economic growth. Nevertheless, businesses must approach this provision with caution and seek professional advice to ensure compliance and optimize their tax position effectively. As the global economy continues to evolve, understanding Tax Sparing will remain crucial for navigating the complexities of international taxation and fostering a conducive environment for international trade and investments.

Understand Sec 43B of Income Tax Act.

- expenses deductible only on actual payment:

A. As per Sec 43B of the Income Tax Act, certain expenses as indicated below are deductible only when actually paid by the assessee:

1. Taxes, Duties, and Fees: Any sum payable as tax, duty, cess, or fees by any name under any law.

2. Contributions to provident funds, superannuation funds, gratuity funds, or other welfare funds for employees.
3. Any sum payable as bonus and commission to an employee.

4. Any interest payable on loans or borrowings from public financial institutions, Central or State Government, or NBFC (applicable from assessment Year 2024-25) declared by the Central Government.
5. Any interest payable on loans or advances from scheduled banks or cooperative banks.
6. Any sum payable to an employee for unused leave.

7. Any sum payable to the Indian Railways for the use of assets.

8. Any amount paid late under section 15 of the Micro, Small and Medium Enterprises Development Act. (applicable from assessment Year 2024-25)

Some selected case laws on Sec 43B:

1. Full Bench of Hon. Supreme Court has held in the case of Checkmate Services P. Ltd. vs CIT 3614 (2022) (09) (SC) that belated deposit of employees' contribution are not deductible under section 43B, if paid beyond the time prescribed under the relevant Act.

2. Hon Supreme Court in the case of M.M. Aqua Technologies Ltd. v CIT [2021] 129 taxmann 145 (SC), has held that issue of debentures against the outstanding interest liability as final discharge of liability would be treated as actual payment of interest and such amount need not to be disallowed under Section 43B.

3. Interest due on payment of Municipal Tax of property is not considered as tax, hence it will not be disallowed section 43B. (CIT vs. Orient Bewarages Ltd., (2000) 164CTR (Kolkata) 529.

4. Allahabad High Court has held, in the case of CIT vs. Sinyaovi Industries Ltd.,(2014) 111 DTR (Allahabad) 274 that interest on excise duty is extended liability and it will not be allowed and section 43b will apply.

5. Electricity duty is not falling within the preview of section 43B, hence if paid after due date, is an admissible expenses. (CIT vs. Urja Vikas Nigam Ltd. (2011)322 ITR 579(guj).

Understand article 7 of DTAA

Article 7 of Double Taxation Avoidance Agreements (DTAA) is a fundamental provision that addresses the taxation of business profits in cross-border transactions. While it serves as a cornerstone of international tax treaties, it's important to critically evaluate its strengths and limitations to understand its effectiveness in achieving its intended goals.

Strengths:

1. Allocation of Taxing Rights: Article 7 provides a clear framework for allocating taxing rights between the source country (where the profits arise) and the residence country (where the enterprise is based). This helps prevent double taxation and provides a sense of predictability for businesses.

2. Permanent Establishment Definition: The concept of Permanent Establishment (PE) is pivotal in determining the right to tax business profits. Article 7 provides guidelines for defining a PE, which is essential for preventing profit shifting and ensuring that profits are taxed where substantial business activities occur.

3. Arm's Length Principle: The adoption of the arm's length principle for profit attribution, as outlined in Article 7, aligns with international transfer pricing standards. This principle promotes fairness in pricing transactions between related entities, reducing the potential for artificial profit manipulation.

4. Dispute Resolution: Article 7, by establishing clear rules for profit allocation, helps prevent disputes between tax authorities of different countries. The mechanism for resolving such disputes through mutual agreement procedures contributes to maintaining a stable and cooperative international tax environment.

Limitations:

1. Outdated Definitions: The rapid evolution of business models and technology has led to challenges in applying traditional concepts like the PE definition outlined in Article 7. Newer business models, such as digital services, often don't fit neatly into the existing PE framework, leading to tax avoidance opportunities.

2. Complex Profit Attribution: While the arm's length principle is a valuable concept, its practical application can be complex and subjective. Determining what constitutes an "independent and separate entity" for profit allocation purposes can be challenging, especially in cases where intangible assets or unique functions are involved.

3. Lack of Uniformity: Despite attempts to standardize principles through organizations like the OECD, the interpretation and application of Article 7 can vary from one jurisdiction to another. This lack of uniformity can lead to inconsistencies and potential double taxation or under-taxation scenarios.

4. Profit Shifting Challenges: Multinational enterprises often have intricate structures that allow them to shift profits to low-tax jurisdictions, exploiting gaps in Article 7 and other provisions. The requirement of substantial physical presence for a PE may not adequately capture the economic reality of modern business operations.

Valuation rules for supplies made in online gaming and casinos

This Tax Alert summarizes the recent Notification[1 issued by Central Board of Indirect Taxes and Customs (CBIC), amending Central Goods and Services Tax Rules, 2017 (CGST Rules).

Earlier, Parliament had passed bills to amend the Central Goods and Services Tax Act, 2017 (CGST Act) and the Integrated Goods and Services Tax Act, 2017 (IGST Act) for taxability of supplies made in casinos, horse racing and online gaming[2].

Vide present Notification, Rule 31B and 31C are being inserted in the CGST Rules to provide for value of supply in case of online gaming and casinos as follows:

- Value of supplies made in online gaming (including supply of actionable claims in online money gaming) shall be the total amount paid, payable or deposited with the supplier in money or money's worth, including virtual digital assets, by or on behalf of the player.
- Value of supply of actionable claims in casinos shall be the total amount paid or payable for (i) purchase of tokens, chips, coins or tickets for use in casino, or (ii) participating in any event.
- Any amount returned or refunded by the supplier to the player for any reason, including player not using the amount paid or deposited with the supplier for participating in any event, or towards return of tokens, chips, coins or tickets in case of casino, shall not be deductible from the value of supplies made in online money gaming or casino.

An Explanation is also being inserted to clarify that for the purpose of Rule 31B and 31C, any amount received by the player on winning any event, which is not withdrawn and is used for playing in a further event, shall not be considered as amount paid or deposited with the supplier.

These Rules shall come into force on a date as may be notified by the Central Government.

Comments:

- As discussed in the 51st GST Council Meeting, the Rules are likely to be made effective from 1 October 2023 along with the relevant provisions of the CGST Act.
- Levy of GST even in case where the player does not participate in the game or event after depositing the money, may negatively impact the industry.
- Industry may need to evaluate the legality of the Rules w.r.t. reduction in taxable value through issuance of credit note where the player withdraws the money by returning the chips etc.
- Government may prescribe separate provisions regarding time of supply of actionable claims involved in online money gaming and casinos.

[1] Notification No. 45/2023 – Central Tax dated 6 September 2023
[2] Refer our alert *"Parliament passes bills amending GST law for taxability of supplies in casinos, horse racing and online gaming*" dated 14 August 2023

Few thoughts on new Rule 31B

The new Rule 31B changes the very plank of GST valuation from 'transaction value' to 'deposit value' for online gaming platforms and betting websites. Sharing few thoughts on the new rule, which might necessitate changes in the algorithms and promotional strategies used by the platforms.

1. Is there room for netting down.

The value is "total amount paid or payable to or deposited with the supplier by way of money or money's worth, including virtual digital assets". Does it mean if the player deposits 100, GST is 28 (100*.28) or 21.875 (100/1.28*.28). Facially, netting down looks difficult, but a historical cue from Section 115-O of the Income Tax Act, 1961 offers room for interpretation.

2. It's now beneficial to replace cash deposit bonus with upfront bonus

The most popular customer attraction is post-deposit bonus offered by the gaming platforms [GP]. If a player deposits 500, he gets 100 as playable bonus, thus the cost for GP is 400. Now that the liability shifts on deposit amount, offering upfront bonus (GST 112 (400*.28)] rather than post-deposit bonus [GST 140 (500*.28)] would lead to lesser GST outlay. Of-course this is only a timing difference in grand scheme of things.

3. Taxability of 'free playable cash'?

The phrase used is 'total amount paid or payable or to be deposited'. But does it have the room to cover the 'free playable cash' offered by the betting websites as promotion. On a facial reading, it should not be subject to tax, for the player has neither deposited nor has paid nor it is payable.

4. Opportunity in third party tie ups

If, free playable cash is not taxable, the GPs could tie up with other e-commerce sellers. For every purchase of Mobile phone of 10,000 [GST 1,800], the player gets free playable cash of 1,000, leading to GST arbitrage of 100 [1,000*(.28-.18)]. 'With the assumption' that GP will invoice 1,000 as promotional services to e- commerce seller.

5. The new system warrants change in withdrawal limits set by the GP

Some betting websites offers free 'playable cash', allowing players to play games and earn. If the player plays sufficient number of games, the 'playable cash' gets converted to 'withdrawable cash' (say 200). But since a player can only withdraw subject to a minimum threshold (say 500), he adds his own cash (300) so as to reach the limit (500). In this case, the objective of the depositing cash is not to play, but to only reach the withdrawal threshold, but due to the deficient rule, it would lead to illegitimate GST collection [84 (300*.28)].

TDS deducted in wrong FY can be corrected from Oct 1 onwards

CBDT has just issued Notification No. 73/2023 on August 30, 2023, and it's a game-changer for tax payers. Let's break down the key points you need to know:

📌 New Rule 134: CBDT has introduced Rule 134 pursuant to Section 155(20), which was recently brought in by the Finance Act, 2023. This rule addresses a crucial aspect of claiming tax credit for deductions at source.

📌 Form No. 71: To apply under Section 155(20), you'll need to use Form No. 71. This form is central to the process and should be your first step.

📌 Submission Process: Form No. 71 must be submitted to PDGIT (Systems), the DGIT (Systems), or an authorized person designated by them. Ensure you follow the prescribed submission channels.

📌 Electronic Submission: You have the option to furnish Form No. 71 electronically. It can be submitted using either a Digital Signature Certificate (DSC) or an Electronic Verification Code (EVC), depending on how you are filing your return.

📌 Procedures and Policies: PDGIT (Systems) and the DGIT (Systems) are responsible for specifying the procedures for submitting Form No. 71. They will also formulate security, archival, and retrieval policies to safeguard your forms.

📌 Forwarding to the AO: PDGIT (Systems), DGIT (Systems), or their authorized representatives will forward Form No. 71 to the Assessing Officer (AO).

📌 Effective Date: This new Rule 134 will come into force from October 1, 2023.

Example: Imagine you earned FD interest of Rs 1 lakh in FY 2022-23 (AY 2023-24), and the bank mistakenly deducted TDS in FY 2023-24 (AY 2024-25).

The result?
You can't claim TDS credit in FY 2023-24 (AY 2024-25) for an income that was actually taxable in FY 2022-23 unless rectified by the bank.

But here comes to Form 71: starting from October 1, 2023, you can skip the bank visit and directly contact the income tax department using this form.

This form works wonders for resolving TDS mismatches from previous financial years, providing a lifeline to countless taxpayers who have faced this predicament.

Understand Make Available Concept

The "Make Available Clause" is a concept often found in Double Taxation Avoidance Agreements (DTAAs), also known as tax treaties, between countries. DTAAs are bilateral agreements negotiated between two countries to prevent double taxation of income earned by residents of one country in the other country. These treaties provide rules for allocating taxing rights over different types of income, such as dividends, interest, royalties, and capital gains, to ensure that taxpayers are not subjected to double taxation.

The Make Available Clause is primarily associated with the taxation of certain types of income, such as pensions and social security benefits. It is designed to clarify which country has the right to tax these specific types of income. Here's how it generally works:

1. Primary Right to Tax: The Make Available Clause typically grants the primary right to tax pensions and social security benefits to the country of residence of the recipient. In other words, the country where the individual resides usually has the first claim to tax this income.

2. Secondary Right to Tax: However, the Make Available Clause may also allow the country of source (the country where the income originates) to tax such income but with certain limitations. The key limitation is that the country of source can only tax the income if it is "made available" for taxation in the country of residence.

3. "Made Available" Requirement: The "made available" requirement means that the country of source can only tax the income if the recipient has the option to receive or access the pension or social security benefits in the country of residence. In other words, if the income is not accessible or available in the country of residence, the country of source cannot tax it.

4. Avoiding Double Taxation: The Make Available Clause is crucial in preventing double taxation because it ensures that the income is taxed in either the country of residence or the country of source, but not both. This helps taxpayers avoid being taxed twice on the same income.

5. Country-Specific Provisions: The specific language and provisions of the Make Available Clause may vary from one DTAA to another. Some treaties may have more detailed requirements or exceptions, so it's important to refer to the specific treaty text for precise information.

It's essential for individuals who receive pensions or social security benefits and have connections to multiple countries to review the relevant DTAA between those countries to determine how their income will be taxed and to take advantage of any provisions that can help reduce or eliminate double taxation. Additionally, tax professionals and advisors with expertise in international taxation can provide guidance on navigating these complex tax treaty provisions.

Circular on Taxation of Life Insurance Receipts

Finance Act, 2023 had amended Section 10(10D) of the Income Tax Act("Act") to provide that in case of new policy/ policies taken up on or after 1st April 2023, if the amount of premium paid in any year during the term of the policy/policies exceeds Rs. 5,00,000/- then the amount received on maturity shall not be exempt u/s 10(10D). The above amendment shall not apply in case amount is received on the death of the insured person.

Further section 56(2)(xiii) was inserted to provide that the difference between the proceeds received from a LIC policy which is not exempt u/s 10(10D) and the premium paid is taxable as Income from other sources.

The premium paid should not have been claimed as a deduction during the duration of the policy under any provisions of the Act.

The Central Board of Direct Taxes vide Notification No. 61/2023 dated 16-Aug-2023 (**attached**) have prescribed the manner of computation of Income u/s 56(2)(xiii) by inserting Rule 11UACA.

As per the rule, the Income u/s 56(2)(xiii) is to be calculated as under:

1. When amount is received for the First Time under a policy which is not exempt u/s 10(10D) during the year: A-B
   - A = Amount received during the year
   - B = Premium paid till the date of receipt of amount for the First Time and not claimed as deduction in any earlier period under any provisions of the Act.
2. When amount is received in the subsequent years under a policy which is not exempt u/s 10(10D) during the year: C-D
   - C = Amount received during the subsequent year
   - D = P remium paid till the date of receipt of amount in the subsequent year and not claimed as deduction in any earlier period under any other provisions of the Act & is not claimed as deduction under section 56(2)(xiii).

A Simple case study to enter the taxation is given below:

- A person "X", takes a LIC Policy on 1st April 2023 with a sum assured of Rs. 75,00,000/- for 10 years with an annual premium of Rs. 6,00,000/-.
- The maturity proceeds is 90,00,000/- would be paid in 2 installments of Rs. 75,00,000/- at the end of 9th Year & Rs. 15,00,000/- at the end of 10th Year
- The premium paid is not claimed as deduction in any of the years.
- The Taxation u/s 56(2)(xiii) for the 2 years would be as under:

Ninth Year	Tenth Year
✓ Amount Received = Rs. 75,00,000/- ✓ Premium paid = Rs. 54,00,000/- (Rs, 6lacs * 9 Years)(Premium paid for 9 years and not claimed as deduction under any provision of the Act) ✓ Amount taxable = Rs. 21,00,000/-	✓ Amount Received = Rs. 15,00,000/- ✓ Premium paid = Rs. 6,00,000/- (Rs, 6lacs * 1 Year)(i.e., premium paid for the 10th year and not claimed as a deduction earlier u/s 56(2)(xiii) ✓ Amount taxable = Rs. 9,00,000/-

- Therefore, the amount taxable for the 9th Year is Rs. 21,00,000/- and for the 10th Year is Rs. 9,00,000/-

Do You Know?

- Sale of shares in Indian company by Non-Resident to another Non-Resident. Any FEMA implications?

  - Since the transaction is between non-residents, FEMA will not be triggered here and also it's a private transfer of shares with a shareholder who has no direct connection with an Indian company.

  However, in case of sale of shares on a stock exchange by a non-resident under a portfolio investment scheme banks require form FC-TRS which means the reporting under FEMA should be there. There is an issue here in case of sale of listed shares by a non-resident to another non-resident.

- What is One Person Companies (OPCs) in India.

  -OPC is a unique form of business entity introduced with the Companies Act 2013.

  -OPC allows a single individual to incorporate a company, providing them with a separate legal identity while enjoying limited liability. Moreover, the compliance requirements for OPCs are more relaxed compared to other legal entities.

  -So, OPCs are particularly suitable for small businesses due to their simplified compliance requirements and limited liability protection.

  -The single individual acts as the sole member and can also serve as the director of the OPC.

  -However, it is necessary to appoint a person as a nominee after obtaining written consent.

  -It is important to note that an OPC cannot carry out Non-Banking Financial activities, including investment in securities of any body corporate.

- Indian company investing into a Dubai entity and that Dubai entity invests again in another Indian company. Is it allowed under exchange regulations - Yes!

  An Indian company investing into a Dubai entity. After this, the Dubai entity invests into the Mauritius entity and that Mauritius entity invests in another Indian company. Is it allowed - Yes!

  Now, not more than two layers are allowed so, any structure after the above Mauritius entity before investing again in India is not allowed per se.

- Form 15CA (Part A) and threshold of INR 500,000. How to calculate?

  - The threshold of INR 500,000 shall only be applicable for the remittances which are taxable under the Indian domestic tax law and then they are added together regardless of the characterisation of remittances.

  For Instance, ABC, a foreign company has rendered three types of different services out of which one is not taxable and the other two are taxable. Therefore, for calculating the threshold of 500,000 only the two remittances which are taxable shall be added together.

- What are the conditions of a non resident Indian for purchasing property in India?

  - He can buy a residential house with the funds lying in his NRO account and also can send the money (in INR) from a bank account outside India. The only restriction for him is that he cannot buy agricultural land, a farmhouse, or plantation property.

  Further, he needs to be mindful of the lifetime limit of 2 properties at the time of selling the properties and repatriating the sale proceeds from such properties outside India.

- Do you know that small and medium sized company (SMC) is different from small company (SCo), as follows:

  1. SMC is defined under AS Rules, 2021 while SCo is defined under section 2(85) of the Companies Act, 2013

  2. SMC is relevant only of applicability extent of Accounting Standards while SCo is relevant for many aspects like non applicability (or exemption, as the case may be) of CARO, ICOFR, rotation of auditors, ceiling on number of audits, cash flow statement, etc.

  3. a public company can be SMC but not SCo

- Any Indian law firm or Indian accounting firm in India receives fees from outside India for professional services. Any tax withholding implications on the part of the foreign payer?

  - No. This is because of the circular no. 726 of 18th October 1995 which states, any fees paid through regular banking channels to any chartered accountant, lawyer, advocate, or solicitor who is resident in India by the non-residents who do not have any agent or business connection or permanent establishment in India may not be subject to the provisions of tax deduction at source under section 194J of the Indian domestic tax law.

  However, foreign companies or foreign law and accountancy firms are required to send a quarterly statement, indicating the name and address of the person to whom the payments are made, to the Deputy Secretary, Foreign Tax Division, CBDT, Department of Revenue, Ministry of Finance, New Delhi.

- Tax treaties signed by India with no Fee for technical services clause in it.

  1. UAE
  2. Kingdom of Saudi Arabia
  3. Bangladesh
  4. Brazil
  5. Greece
  6. Libya
  7. Mozambique
  8. Nepal
  9. Philippines
  10. Egypt

  No FTS effectively means going to article 5 of Business profits which can only tax the income at the time of existence of permanent establishment in India. Hence, this can be one of the important points while analysing the service agreements and tax structuring