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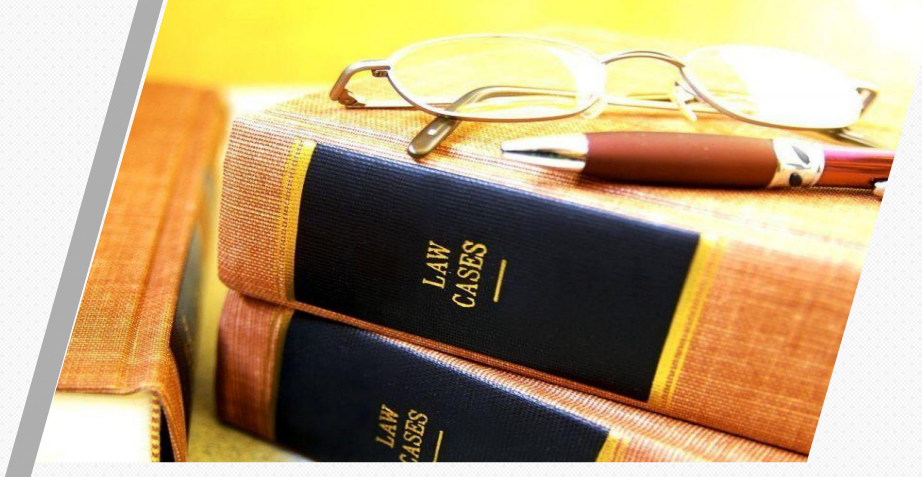
**August 2023**

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# Direct Tax Case Laws



## Case Law 1:

### **DCIT Vs Ghanshyamdas J Sukhwani (HUF) (ITAT Pune)**

ITAT Pune held that contribution of undivided title and rights in the land as share of capital in AOP is taxable under section 45(3) of the Income Tax Act.

#### **Facts :**

The assessee is a proprietor of Vikram Constructions, engaged in the business of land development and Builder.

During the assessment proceedings, the AO observed that assessee was owner of the land at Survey No.72/2d, Hissa No.2 to 7, Hadapsar, Pune. During the year, the assessee sold half of the said land to JKG Associates.

The assessee formed an AOP along with JKG Associates and Mantra Majestique Associates vide "Articles of Agreement". As per Article-6(i), of the said "Articles of Agreement", the assessee contributed his undivided title and rights in the impugned land which is at Survey No.72/2d, Hissa No.2 to 7, Hadapsar, Pune, as its capital contribution to the AOP. It is also mentioned in Article-6(i) that the AOP shall be entitled to exploit the rights obtained therein for the purpose of its business. Thus, Rs.5 crores was credited to the capital account of the assessee.

The AO taxed Rs.5 crore as business income

of the assessee. Aggrieved by the assessment order, assessee filed appeal before Id.CIT(A). The Id.CIT(A) vide his order dated 08.01.2018 allowed the appeal of the assessee.

#### **Conclusion :**

Held that the transaction of impugned land introduced by the assessee as his share of capital in the AOP is taxable u/s.45(3) of the Act. The AO shall consider the value of Rs.5,00,00,000/- which is credited in the books of accounts, as value of land shall be deemed to be the full value of consideration as a result of transfer of land as provided in Section 45(3) of the Act.

## Case Law 2:

### **Jaguar and Company Pvt Ltd Vs DCIT (ITAT Delhi)**

ITAT Delhi held that reopening of assessment under section 147 of the Income Tax Act unjustified in absence of failure on the part of the assessee to disclose fully and truly all the material facts.

#### **Facts :**

The assessee vide the present appeal has mainly contested reopening of the impugned assessment and passing the impugned order u/s 147, in as much as, the statutory conditions as stipulated u/s 147 to

# Direct Tax : Case Laws

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151 have not been complied with.

This appeal by the assessee is preferred against the order of the Id. CIT(A) – 27, New Delhi dated 27.06.2022 pertaining to Assessment Year 2014-15.

## **Conclusion :**

Held that it can be safely concluded that merely by adding a line in the reasons recorded by the Assessing Officer that the assessee had failed to disclose fully and truly all material facts, requirement of proviso to section 147 of the Act would not be satisfied for the purpose of reopening of the assessment u/s 147 of the Act.

# Direct Tax Circulars & Notifications



## S. No Notification

### 1. Notification No. 51 /2023/F.No.370142/22/2023-TPL/GSR 519 (E)

In exercise of the powers conferred by clause (XI) of the proviso to clause (x) of subsection (2) of section 56 read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct taxes hereby makes the following rules further to amend the Income-tax Rules, 1962

#### In the Income-tax Rules, 1962, in rule 11UAC :

1. In sub-rule (4), in the Explanation, for the words “this clause” the words “this sub- rule” shall be substituted;
2. After sub-rule (4), the following sub-rule shall be inserted, namely: —
  - ❖ Sub-rule (5) any movable property, being shares or units or interest in the resultant fund received by the fund management entity of the resultant fund, in lieu of shares or units or interest held by the investment manager entity in the original fund, pursuant to the relocation, subject to the following conditions, namely: -
    - a) not less than ninety per cent of shares or units or interest in the fund management entity of the resultant fund are held by the same entity(ies) or person(s) in the same proportion as held by them in the investment manager entity of the original fund, and.
    - b) not less than ninety per cent of the aggregate of shares or units or interest in the investment manager entity of the original fund was held by such entity(ies) or person(s).

# Direct Tax Circulars & Notifications

## S. No    Circulars

### 1. Circular No 12/2023 :

#### **Clarification regarding taxability of income earned by a non-resident investor from off-shore investments in investment fund routed through an Alternative Investment Fund – Reg.**

CBDT Circular NO.14/2019 dated 03.07.2019 was issued to clarify the taxability of income earned by a non-resident investor from outside India (off-shore investment) routed through investment fund as defined in Explanation 1 (a) to Chapter X11-FB of the Income-tax Act, 1961(the Act). This Circular was made applicable to Category I or Category II

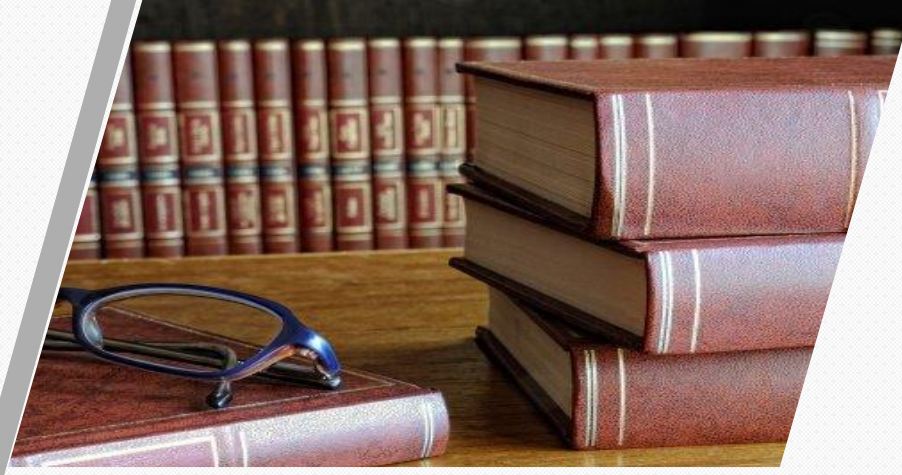
Alternative Investment Funds (AIFs) regulated under Securities and Exchange Board of India (SEBI) regulations, **subject to the following conditions, namely: -**

1. Not less than ninety per cent of shares or units or interest in the fund management entity of the resultant fund are held by the same entity(ies) or person(s) in the same proportion as held by them in the investment manager entity of the original fund; and
2. Not less than ninety per cent of the aggregate of shares or units or interest in the investment manager entity of the original fund was held by such entity(ies) or person(s).
3. By Finance Act 2023, the definition of 'investment fund' under the Income-tax Act,1961 was amended to include reference to International Financial Services Centres Authority (Fund Management) Regulations, 2022 under International Financial Services Centres Authority (IFSCA) Act 2019.
4. Thus the provisions of section 115UB apply only to Category I or Category II AIFs regulated by Securities and Exchange Board of India (SEBI) or International Financial Services Centres Authority (IFSCA)



# Indirect Tax :

## Case Laws



### **Case Law 1:**

#### **Facts & Rulings of the case :**

Profit solutions Pvt Ltd is a private company registered under GST having branch office at Chennai, Tamil Nadu providing support services like engineering, design, accounting, etc. to main office registered under GST in Bengaluru, Karnataka. The appellant provided that employees are appointed for the company as a whole, which is distinct person under GST. Salary and benefits paid to employees are in relation to employment, which is neither a supply of goods nor services.

The applicant was given an opportunity of a personal hearing on 12-01-2023. The applicant appeared and reiterated the submissions. It also stated that no invoice has been issued and no GST is paid for provision of the services. The state jurisdictional authority stated that there are no pending proceedings on the issue raised by the applicant in the ARA application.

The concerned officer carefully considered the submissions made by the applicant during the personal hearing. The applicant filed an advance ruling application for determination of liability to pay tax under section 97(2)(e) of CGST Act,2017.

#### **Ruling of the case :**

The authority after analysing the documents submitted by the applicant, states that the supply of services between two registrations of the same person in the same state or in different state attract the provisions of

section 25(4) and section 7 and schedule I (2). Hence, services provided by branch office to its head office, each having separate registration, will be liable to pay GST.

**[In the matter of profit solutions Pvt Ltd, against Advance ruling No. 07/ARA/2023 dated 31-03-2023]**

# Indirect Tax

## Notifications & Circulars



### S. No Notifications

**1. Seeks to extend the due date for furnishing FORM GSTR-1 for April, May and June, 2023 for registered persons whose principal place of business is in the State of Manipur**

CBIC vide Notification No.18/2023-Central tax dated 17th July 2023, has extended the due date till the 31st July 2023 for filing GSTR-1 for the registered person filing return under section 39(1) in the state of Manipur w.e.f. 30th June 2023.

Link: <https://taxinformation.cbic.gov.in/view-pdf/1009772/ENG/Notifications>

**2. Seeks to extend the due date for furnishing FORM GSTR-3B for April, May and June 2023 for registered persons whose principal place of business is in the State of Manipur.**

CBIC vide Notification No.19/2023-Central tax dated 17th July 2023, has extended the due date till the 31st July 2023 for filing GSTR-1 for the registered person filing return under section 39(6) in the state of Manipur w.e.f. 30th June 2023.

Link : <https://taxinformation.cbic.gov.in/view-pdf/1009773/ENG/Notifications>

**3. Seeks to extend the due date for furnishing FORM GSTR-3B for quarter ending June 2023 for registered persons whose principal place of business is in the State of Manipur.**

CBIC vide Notification No.20/2023-Central tax dated 17th July 2023, has extended the due date till the 31st July 2023 for filing GSTR-1 for the registered person filing return under section 39(6) in the state of Manipur.

Link : <https://taxinformation.cbic.gov.in/view-pdf/1009774/ENG/Notifications>

**4. Seeks to extend the due date for furnishing FORM GSTR-7 for April, May and June 2023 for registered persons whose principal place of business is in the State of Manipur.**

CBIC vide Notification No.21/2023-Central tax dated 17th July 2023, has extended the due date till the 31st July 2023 for filing GSTR-1 for the registered person filing return under section 39(6) in the state of Manipur.

Link : <https://taxinformation.cbic.gov.in/view-pdf/1009775/ENG/Notifications>

**5. Seeks to extend amnesty for GSTR-4 non-filers.**

CBIC vide Notification No.22/2023-Central tax dated 17th July 2023, makes the following amendment in notification no. 73/2017-central tax w.e.f. 30th June 2023 by extending the due date till the 31st July 2023 for non-filing of GSTR-4 from 30th June **2023**.



# Indirect Tax Circulars & Notifications

## S. No Notifications

**Link:** <https://taxinformation.cbic.gov.in/view-pdf/1009776/ENG/Notifications>

### **6. Seeks to extend time limit for application for revocation of cancellation of registration.**

CBIC vide Notification No.23/2023-Central tax dated 17th July 2023, makes the following amendment in notification 03/2023 w.e.f. 30th June 2023 by extending the due date for filing of application for revocation or cancellation of registration till the 31st July 2023.

**Link:** <https://taxinformation.cbic.gov.in/view-pdf/1009777/ENG/Notifications>

### **7. Seeks to extend amnesty scheme for deemed withdrawal of assessment orders issued under Section 62.**

CBIC vide Notification No.24/2023-Central tax dated 17th July,2023, makes the following amendment in notification 06/2023 w.e.f. 30th June,2023 by extending the due date for deemed withdrawal of assessment under section 62 till the 31st July,2023.

**Link:** <https://taxinformation.cbic.gov.in/view-pdf/1009778/ENG/Notifications>

### **8. Seeks to extend amnesty for GSTR-9 non-filers.**

CBIC vide Notification No.25/2023-Central tax dated 17th July 2023, makes the following amendment in notification no. 07/2023-central tax w.e.f. 30th June 2023 by extending the due date till the 31st August 2023 for non-filing of GSTR-9 from 30th June,2023.

**Link:** <https://taxinformation.cbic.gov.in/view-pdf/1009779/ENG/Notifications>

### **9. Seeks to extend amnesty for GSTR-10 non-filers.**

CBIC vide Notification No.26/2023-Central tax dated 17th July 2023, makes the following amendment in notification no. 08/2023-central tax w.e.f. 30th June 2023 by extending the due date till the 31st August,2023 for non-filing of GSTR-9 from 30th June,2023.

**Link :** <https://taxinformation.cbic.gov.in/view-pdf/1009780/ENG/Notifications>

### **10. Seeks to notify the provisions of section 123 of the Finance Act, 2021 (13 of 2021)**

CBIC vide Notification No.27/2023-Central tax dated 31st July 2023, in exercise of the powers conferred by section 1(2)(b) of finance Act,2021, central government notifies that provisions of section 123 shall come into force from 1st October,2023.

**Link:** <https://taxinformation.cbic.gov.in/view-pdf/1009805/ENG/Notifications>

# Indirect Tax Circulars & Notifications

## S. No Notifications

### **11. Seeks to notify the provisions of sections 137 to 162 of the Finance Act, 2023 (8 of 2023)**

CBIC vide Notification No.28/2023-Central tax dated 31st July 2023, in exercise of the powers conferred by section 1(2)(b) of finance Act,2021, central government notifies that provisions of section 137 to 162 shall come into force from 1st October,2023 and section 149 to 154 from 1st August,2023.

Link: <https://taxinformation.cbic.gov.in/view-pdf/1009806/ENG/Notifications>

### **12. Seeks to notify special procedure to be followed by a registered person pursuant to the directions of the Hon'ble Supreme Court in the case of Union of India v/s Filco Trade Centre Pvt. Ltd., SLP(C) No.32709-32710/2018.**

CBIC vide Notification No.29/2023-Central tax dated 31st July 2023, in exercise of the powers conferred by section 1(2)(b) of CGST Act,2017, central government seeks to notifies the procedure to be followed by a registered person or an officer referred in Section 107(2),who intends to file an appeal against the order passed by the proper officer under section 73 or 74 of the said Act in accordance with Circular No. 182/14/2022.

Link : <https://taxinformation.cbic.gov.in/view-pdf/1009807/ENG/Notifications>

### **13. Seeks to notify special procedure to be followed by a registered person engaged in manufacturing of certain goods.**

CBIC vide Notification No.30/2023-Central tax dated 31st July 2023, in exercise of the powers conferred by section 148 of CGST Act,2017, central government seeks to notifies the procedure to be followed by a registered person engaged in manufacturing of Pan Masala & Tobacco related products.

Link : <https://taxinformation.cbic.gov.in/view-pdf/1009808/ENG/Notifications>

### **14. Seeks to amend Notification No. 27/2022 dated 26.12.2022.**

CBIC vide Notification No.31/2023-Central tax dated 31st July 2023, in exercise of the powers conferred by Rule 8(4B) of CGST Act,2017, central government seeks to amend the notification 27/2022, after the words `state of Gujarat`, the words `state of Puducherry` shall be inserted.

Link : <https://taxinformation.cbic.gov.in/view-pdf/1009809/ENG/Notifications>

### **15. Seeks to exempt the registered person whose aggregate turnover in the financial year 2022-23 is up to two crore rupees, from filing annual return for the said financial year.**

# Indirect Tax Circulars & Notifications

## S. No Notifications

CBIC vide Notification No.32/2023-Central tax dated 31st July 2023, in exercise of the powers conferred by section 44 of CGST Act, central government provides the exemption of Rs. 2 crores to the registered person for filing annual return for financial year 2022-23

Link : <https://taxinformation.cbic.gov.in/view-pdf/1009810/ENG/Notifications>

### **16. Seeks to notify “Account Aggregator” as the systems with which information may be shared by the common portal under section 158A of the CGST Act, 2017.**

CBIC vide Notification No.33/2023-Central tax dated 31st July 2023, in exercise of the powers conferred by section 158 of CGST Act and section 20 of IGST Act,2017, central government seeks to notify ‘Account Aggregator’ as the system with which the common GST portal may share information based on consent u/s 158A of CGST Act.

Link: <https://taxinformation.cbic.gov.in/view-pdf/1009811/ENG/Notifications>

### **17. Seeks to waive the requirement of mandatory registration under section 24(ix) of CGST Act for person supplying goods through ECOs, subject to certain conditions.**

CBIC vide Notification No.34/2023-Central tax dated 31st July 2023, in exercise of the powers conferred by section 23(2) of CGST Act, central government seeks to notifies that the persons making supplies of goods through an electronic commerce operator who is required to collect tax at source under section 52 of the said Act and having an aggregate turnover in the preceding financial year and in the current financial year not exceeding the amount of aggregate turnover above which a supplier is liable to take registration under section 22(1).

Link : <https://taxinformation.cbic.gov.in/view-pdf/1009812/ENG/Notifications>

### **18. Seeks to appoint common adjudicating authority in respect of show cause notices in favour of against M/s BSH Household Appliances Manufacturing Pvt Ltd.**

CBIC vide Notification No.35/2023-Central tax dated 31st July 2023, in exercise of the powers conferred by section 5 of the CGST Act, 2017 and section 3 of IGST Act, 2017, hereby appoints Joint or Additional Commissioner of Central Tax, Bengaluru South Central Excise and GST Commissionerate for adjudicating the notices in favour of M/s BSH Household Appliances Manufacturing Pvt Ltd.

Link : <https://taxinformation.cbic.gov.in/view-pdf/1009813/ENG/Notifications>

# Indirect Tax Circulars & Notifications

## S. No Circulars

### 1. Clarification on charging of interest under section 50(3) of the CGST Act, 2017, in cases of wrong availment of IGST credit and reversal thereof.

**CBIC vide Circular No. 192/04/2023-GST dated 17 July'23 has been clarified that:**

- If IGST credit has been wrongly availed and subsequently reversed, there will be no interest liability under sub-section (3) of section 50 of the CGST Act. Interest will be attracted only when the total balance in the electronic credit ledger under any head together falls below the amount of wrongly availed IGST credit.
- It has also been clarified that credit of compensation cess available in electronic credit ledger cannot be considered for the purpose of calculation of interest under subrule (3) of rule 88B of CGST Rules in respect of wrongly availed and utilized ITC.

Link : <https://taxinformation.cbic.gov.in/view-pdf/1003166/ENG/Circulars>

### 2. Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for the period 01.04.2019 to 31.12.2021.

**CBIC vide Circular No. 193/05/2023-GST dated 17 July'23 has been clarified that:**

- From 9th October 2019 to 31st December 2019, registered persons could avail of ITC in respect of invoices or debit notes that were not reported by suppliers in FORM GSTR-1 or IFF up to 20% of the eligible credit available for invoices or debit notes that were reported, from 1st January 2020 to 31st December 2020, the limit was reduced to 10%, and from 1st January 2021 to 31st December 2021, it was further reduced to 5%.
- The circular clarifies that the guidelines provided in Circular No. 183/15/2022-GST shall be applicable to the period from 1st April 2019 to 8th October 2019, and the rules under rule 36(4) shall be applicable for the period from 9th October 2019 to 31st December 2019, subject to the specified conditions.

Link: <https://taxinformation.cbic.gov.in/view-pdf/1003167/ENG/Circulars>

### 3. Clarification on TCS liability under Sec 52 of the CGST Act, 2017 in case of multiple E-commerce Operators in one transaction.

CBIC vide Circular No. 194/06/2023-GST dated 17 July'23 has been clarified that ECO is responsible for collecting TCS under section 52 of CGST Act,2017 in case where multiple E-commerce operator is involved in one transaction:

- the supplier-side ECO is liable for compliances and TCS collection where the supplier-side ECO himself is not the supplier.

# Indirect Tax Circulars & Notifications

## S. No Circulars

- the buyer-side ECO is liable for compliances and TCS collection where the supplier-side ECO himself is the supplier.

Link : <https://taxinformation.cbic.gov.in/view-pdf/1003168/ENG/Circulars>

### **4. Clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period.**

CBIC vide Circular No. 195/07/2023-GST dated 17 July'23 has been clarified that:

- GST would not be applicable when the manufacturer provides replacement of parts or repair services to the customer during the warranty period, without separately charging any consideration at the time of such replacement/ repair services. However, GST would be applicable if any additional consideration is charged by the manufacturer from the customer.
- It is not required to reverse the input tax credit where the manufacturer provides replacement of parts and/ or repair services to the customer during the warranty.

Link: <https://taxinformation.cbic.gov.in/view-pdf/1003169/ENG/Circulars>

### **5. Clarification on taxability of share capital held in subsidiary company by the parent company.**

CBIC vide Circular No. 196/08/2023-GST dated 17 July'23 has been clarified that GST would not be applicable on holding of shares of subsidiary company by the holding company, as it cannot be treated as a supply of services under SAC 997171.

Link : <https://taxinformation.cbic.gov.in/view-pdf/1003170/ENG/Circulars>

### **6. Clarification on refund-related issues.**

CBIC vide Circular No. 197/09/2023-GST dated 17 July'23 has been clarified certain issues related to refund under section 54(3) including the guidelines for refund of Input tax credit, requirement of undertaking in form RFD-01 along with manner of calculating adjusted total turnover.

Link: <https://taxinformation.cbic.gov.in/view-pdf/1003171/ENG/Circulars>

### **7. Clarification on issue pertaining to e-invoice.**

CBIC vide Circular No. 198/10/2023-GST dated 17 July'23 has been clarified that the registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, is required to issue e-invoices for the supplies made to such Government Departments or establishments/ Government agencies/ local authorities/ PSUs, etc under rule 48(4) of CGST Rules.



# Indirect Tax Circulars & Notifications

## S. No Circulars

Link : <https://taxinformation.cbic.gov.in/view-pdf/1003172/ENG/Circulars>

### **8. Clarification regarding taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons.**

CBIC vide Circular No. 199/11/2023-GST dated 17 July'23 has been clarified certain issues regarding taxability of services provided by Head offices to other branches in another state by way of ISD or tax invoice.

It has also been clarified in cases where the Branches are eligible to claim full ITC, the value declared in the invoice by the HO is deemed to be the open market value. This means that the value mentioned in the invoice issued by the HO to the BOs is considered as the fair market value for such transactions.

Link : <https://taxinformation.cbic.gov.in/view-pdf/1003173/ENG/Circulars>

### **MINUTES OF 50<sup>th</sup> AND 51<sup>st</sup> GST COUNCIL MEETING :**

- Due date for amnesty scheme has been extended till 31st August,2023 for non-filing of GSTR-4, GSTR-9, GSTR-10 and application for revocation of cancellation of registration.
- No RCM on services provided by director to the company in his private capacity (such as renting of immovable property).
- Goods transport agency will not be required to file any declaration for paying GST under forward charge every year.
- Supply of food and beverages in cinema hall would be taxable @5%,
- Relaxations provided related to GSTR-9 and GSTR-9C in FY 2021-22, to be continued for FY 2022-23.
- Registered person having turnover upto 2 crores is not required to file GSTR-9.
- GST has been reduced to 5% on LD slag, uncooked foods, fish soluble paste, and Zari or thread.
- No GST or ITC is applicable on repairing or replacement services provided by manufacturer under Warranty period.
- System based intimation has been started for the excess avilment of ITC in GSTR-3B from GSTR-2B.
- Registration under ISD is not mandatory for providing common input services for the avilment of ITC.
- GST would be exempted from cancer related drugs, rare diseases medicines and food products for special medical purposes.
- Refund of ITC to be restricted to ITC appearing in GSTR-2B.
- Circular no. 183/15/2022-GST would also be applicable for the period of 1st April 2019 to 31st December 2021, to provide declaration from vendor/CA for the difference in ITC claimed in GSTR-3B as of GSTR-2A.
- GST @18% would be applicable on online gaming, horse racing, and casinos.

# Legal & Regulatory Notifications



## S. No Notifications

### 1. Merger of multiple user IDs in V2 portal with new user ID in V3 and deactivation of old user ID in V2 portal

(Notification dated July 12, 2023)

Ministry of Corporate Affairs, vide its Notification dated July 12, 2023, has issued notification informing that there are members of Institute of Chartered Accountants of India, Institute of Company Secretaries of India and Institute of Cost Accountants of India who has created multiple user IDs on the MCA V2 portal and now is getting error while creating ID on the MCA V3 portal.

Further, to resolve this issue, they may approach the respective institutes with their credentials and the institute shall recommend whether to merge or deactivate multiple user IDs in the V2 portal.

Link:

<https://www.mca.gov.in/bin/dms/getdocument?mds=IPgXWqVdrvG%252FOTWP8QcM%252Bw%253D%253D&type=open>

## RESERVE BANK OF INDIA

### Requirement of and additional declarations on ESOP/ESPP cross border remittances :

Reserve Bank of India vide its master directions namely Foreign Exchange Management (Overseas Investment) Directions, 2022 and Master Direction - Liberalised Remittance Scheme (LRS) states that since Employee Share Purchase Program (ESPP)/ Employee Share Options Program (ESOP) for which contributions are being made by employees are classified as Liberalized Remittance scheme (LRS) remittances as per RBI regulations, any cross border remittances for the same shall require AD Bank to collect Tax Collected at Source (TCS).

Also, for all ESOP/ESPP cross border remittances where employee contributions have been received, shall require the following:

1. Additional declarations to be signed by the authorized signatories in wet ink.
2. Annexure with the employee details for which the remittance is being made.

# Legal & Regulatory

No remittances shall be processed unless the abovementioned documents have not been received by AD Bank.

Once the declarations mentioned in point 1 is received, AD Bank shall collect the TCS amount, if applicable and deposit the same with the tax authorities. It shall issue a TCS certificate, on individual employee's name after filing of Quarterly TCS return.

**Link:**

- [https://rbi.org.in/Scripts/BS\\_ViewMasDirections.aspx?id=12381](https://rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=12381)
- [https://www.rbi.org.in/Scripts/BS\\_ViewMasDirections.aspx?id=10192](https://www.rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=10192)



## An Introduction to Fraud Examination & Forensic Accounting

By – Dhurba Chhetri

IBA

### Overview & Context :

Fraud examination and forensic accounting are separate but connected areas that deal with detecting, examining, and stopping fraudulent acts within organizations or financial transactions. Both areas are essential to recognizing and preventing numerous types of fraud, including asset theft, financial statement fraud, embezzlement, corruption, etc.

Organizations are facing a lot of fraud instances across the globe. Such instances result in high losses to the organization in terms of financial loss, reputation loss, and morale loss as well. To identify improper conduct, the person responsible for the same and to stop fraud in the future, the organization chooses to conduct fraud examination and forensic accounting.

### **I. Fraud Examination :**

Fraud examination is the process of looking into alleged fraudulent activity which helps to determine if fraud happened and who committed it, as well as reporting facts that may be utilized in legal action or to recover fraud damages. Professionals in this area are referred to as fraud examiners or fraud investigators, and they employ various strategies and procedures to collect information, check financial documents, speak with witnesses, and record their findings. Fraud assessment may be carried out either by specialized consulting organizations outside of the organization or internally within the organization.

The following are important parts of fraud examination:

- ❖ **Finding:** Finding clues or warning signs that fraud could be committed.
- ❖ **Examination:** Making in-depth inquiries in order to gather the proof to build a case.
- ❖ **Resolution:** Make findings known to management, law enforcement, or legal authorities for the purpose of determining the best course of action.

### **II. Forensic Accounting :**

A specialized area of accounting known as "forensic accounting" is concerned with using auditing, investigative, and accounting principles to analyze and interpret financial data for legal purposes.

To investigate financial fraud and disputes, forensic accountants collaborate with advocates, law enforcement officials, or other organizations.

**The following are important aspects of forensic accounting:**

- ❖ **Tracking Funds:** Finding the flow of money through various financial transactions in order to find undetected possessions or fraudulent schemes.
- ❖ **Measuring Losses:** In legal or judicial proceedings, determining the financial consequences of fraudulent behavior.
- ❖ **Professional testimony:** Giving testimony and expert opinions in court.

Forensic accountants commonly work with other professionals, such as advocates, investigators, and law enforcement personnel, to support their investigations and provide financial insights in legal cases.

**Planning and Conducting a Fraud Examination :**

Planning and conducting a successful fraud examination requires a systematic and well-structured approach to ensure a thorough and effective investigation. Here are the key steps to follow in the process:

- A. Initial Analysis and Planning
- B. Obtain Authorization and Legal Considerations
- C. Collect and Preserve Evidence
- D. Data Analysis
- E. Reporting
- F. Testifying to Findings
- G. Preserve Confidentiality

**A. Initial Analysis and Planning :**

There should be proper predication before initiating the fraud examination. Obtain information that is easily reachable on the alleged fraud, such as papers, bank records, transaction data, and any tips or complaints. Evaluate the organization's internal controls and identify potential weaknesses that may have contributed to the fraud. Also, obtain internal audit reports and organization structure to evaluate management controls.

It is also essential to establish a team of skilled individuals with expertise in fraud examination, forensic accounting, law, and any other relevant areas.

**B. Obtain Authorization and Legal Considerations :**

Ensure to have the necessary permission from the appropriate management or authorities to conduct the investigation. Understand and adhere to legal requirements, including privacy regulations, chain of custody for evidence, and applicable laws related to fraud investigations. Therefore, complete the engagement letter or contract with the organization or authorities before commencing the engagement.

**C. Collect and Preserve Evidence :**

Collect and preserve all potential evidence to maintain its integrity. This may involve securing physical documents, electronic records, and data backups. Document the handling and transfer of evidence to maintain its admissibility in legal proceedings.



#### **D. Data Analysis :**

Utilize data analytics tools to identify patterns, trends, or anomalies in large datasets that may indicate fraudulent activities. Assess financial ratios and trends to identify potential red flags or areas of concern. Diagnostic Analysis, Predictive Analysis, Prescriptive Analysis, Text Analysis, and Statistical Analysis are the most commonly used data analytics types.

Review financial statements, transaction records, emails, and other relevant documentation to identify inconsistencies or anomalies.

#### **E. Reporting :**

Preparing a detailed report which describes the investigation's findings, evidence, and conclusions in a clear and organized manner. Make recommendations, suggest suitable steps to address internal control deficiencies, and assist in preventing fraud from happening again.

#### **F. Testifying to Findings :**

Testifying findings is a crucial part of the fraud examination process, especially when the investigation leads to legal proceedings or other formal inquiries. When a fraud examiner or forensic accountant testifies, they present their findings and expert opinions under oath, subject to cross-examination by opposing parties. It helps the issue be resolved in the most equitable way by clearly and impartially presenting the results.

Obtaining written consent from witnesses is an essential and ethical practice in any investigation, including fraud examination and forensic accounting. Written consent serves several purposes, including ensuring transparency, protecting the rights of witnesses, and establishing the voluntary nature of their participation.

#### **G. Preserve Confidentiality :**

Maintaining confidentiality is important to protect the rights and reputations of those involved as well as the independence of the investigation. Confidentiality violations may jeopardize the inquiry, strain interpersonal ties, and result in legal repercussions.

The fraud assessment procedure can run smoothly while ensuring the relevant parties are notified at the right time and in the right way by putting in place strict confidentiality safeguards.

#### **Conclusion :**

In general, we can say that fraud examination and forensic accounting are two sides of the same coin. To efficiently detect fraud and effectively punish the fraudster, these two professions must collaborate. The fields of forensic accounting and fraud examination are important parts of the larger area of investigations, they are essential in safeguarding financial integrity, exposing fraud, and preserving public confidence in commercial and financial institutions.

Government issues the advisories to companies from time to time regarding Cybersecurity Threats, Scam Warnings, Money Laundering Risks, etc., and it is essential for companies to take government advisories seriously and assess their own risk exposure accordingly. Companies should review their internal controls, risk management practices, and fraud prevention measures periodically.

## Training Session: New TDS Provisions



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We appreciate Neha's presentation on New TDS Provisions. We learned importance of accurate compliance and documentation to adhere to updated tax regulations.

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## Training session: Indian Lok Adalat System



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We appreciate Madhur's Presentation on Indian Lok Adalat System". The training emphasized the value of alternative dispute resolution methods for efficient and accessible justice.

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# Upcoming Compliances

Date	Compliance
August 11, 2023	Due Date for filing of Form GSTR-1 for the period July 2023 for the registered taxpayers who have opted for monthly filing of GST Returns.
August 13, 2023	Due Date for submission of invoices through IFF under QRMP scheme for the period July 2023 for the registered taxpayers who have opted for quarterly filing of GST Returns.
	Due Date for filing of Form GSTR-6 for the period July 2023 for the registered taxpayers who have obtained Input Service Distributor (ISD) registration.
August 14, 2023	Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194-IB,194M,194S in the month of June, 2023.
August 15, 2023	Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of July, 2023 has been paid without the production of a challan
	Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of July, 2023
	Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending June 30, 2023
August 20, 2023	Due Date for filing of Form GSTR-3B for the period July 2023 for the registered taxpayers who have opted for monthly filing of GST Returns.
August 24, 2023	Due Date for Challan Payment for the period July 2023 for the registered taxpayers who have opted for QRMP scheme.
August 30, 2023	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB,194M,194S for the month of July, 2023.
August 31, 2023	Statement in Form no. 10 to be furnished to accumulate income for future application under section 10(21) or section 11(1) (if the assessee is required to submit return of income on October 31, 2023).



# Editorial Team



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## About us:

IBA is a leading financial and legal advisory company with specialization in Assurance, Risk Consulting, Legal, Direct Tax, Indirect Tax (GST) and Corporate Advisory for midsize, SMEs and start-up firms. IBA constitute a young team of path breaking professionals, who believe in creating value through innovation and creativity to provide ultimate client satisfaction. Clients benefit from our fresh thinking, constructive challenge and practical understanding of the issues they face. We aim to alloy a perfect blend of professionalism with high standards of service, in our pursuit of excellence.

Founded in the Year 2003, the company witnessed immense growth from 2 members to currently a 100 members team, with its offices in Delhi, Mumbai and Bengaluru and its clients from across states. IBA continues to offer wholesome service experience to boost highly valued client relationships by combining the technical and industry expertise at par with well-placed firms together with a personal commitment to optimize client service.

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We have our branch offices in Gurgaon, Mumbai, Bangalore and New York and associate arrangements in other major cities of USA and India.



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