

Nucleus ADVISORS

Roundup

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Welcome to our
monthly newsletter

We bring you a concise and noteworthy regulatory developments in Income Tax, Goods & Services Tax, Companies Act during October 2023. We had tried to cover all important updates occurred during October 2023 in this volume of newsletter. The sole purpose of this circulation is to update finance professionals and business owners on direct & indirect taxes and other compliances. Feedbacks are welcome at info@nucleusadvisors.in.



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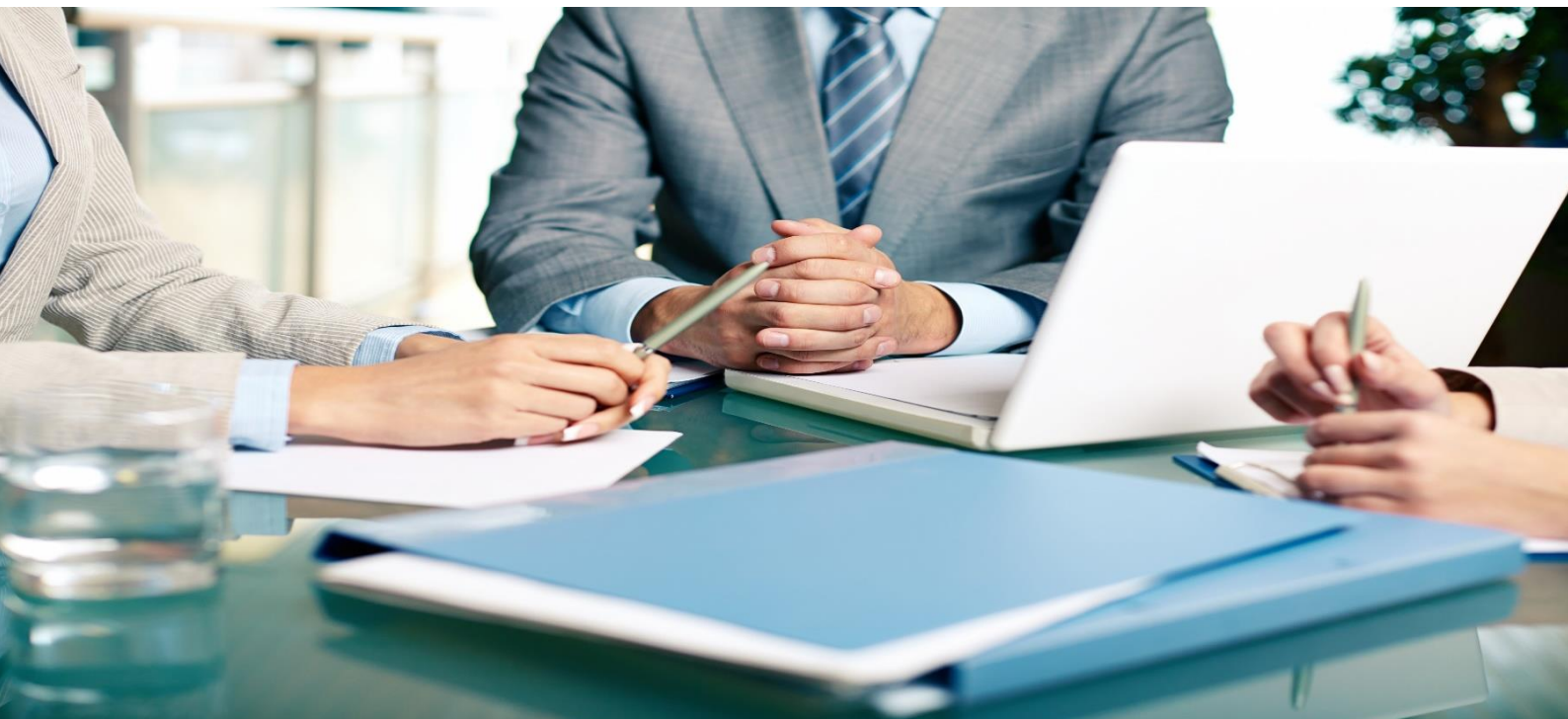
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Why this Volume of Newsletter is important for reader?

Through the series of this newsletter, we aim at covering all relevant Income Tax, Goods & Service Tax, MCA, Audit & Assurance notification, circulars and case laws which may directly or indirectly impact our readers. At Nucleus, it is our utmost priority to help our readers to be informed with respect to the changes in relevant laws for a smoother compliance.



Direct Tax Updates

- Amendment under Rule 114B “Mandatory PAN for Certain Transactions”
- Amendment under Rule 37BB “Furnishing Information for Payment to Non-Residents”

GST Updates

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- Clarification relating to export of services - Circular 202/14/2023
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- Central Tax (Rate) amendment made in notification 1/2017 (same as for Integrated Tax) - Notification No.17/2023
- Central Tax (Rate) amendment made in notification 2/2017 (same as for Integrated Tax) - Notification No.18/2023
- Central Tax (Rate) amendment made in notification 5/2017 (same as for Integrated Tax) - Notification No.20/2023
- CGST (Fourth Amendment) Rules, 2023 - Notification No.52/2023

MCA Updates

- MCA issues amendment rules requiring private companies (other than small company) to dematerialize shares before October 1, 2024.



DIRECT TAX UPDATES

➤ Amendment Under Rule 114B “Mandatory PAN for Certain Transactions”

According to Income Tax (Twenty Fourth Amendment) Rules, 2023:

(1) In the Income-tax Rules, 1962 in rule 114B:

(a) in the second proviso, for the words “Provided further that any person”, the words “Provided further that any person, not being a company or a firm,” shall be substituted.

(b) after second proviso, the following proviso shall be inserted, namely: --

“Provided also that a foreign company who-

- (i) does not have any income chargeable to tax in India; and
- (ii) does not have a permanent account number,

and enters into any transaction referred to at Sl. No. 2 or 12 of the Table, in an IFSC banking unit, shall make a declaration in Form No. 60.”

(c) in the Explanation, clause (1) shall be re-numbered as (1A) and before the said clause as so re-numbered, the following clause shall be inserted, namely: --

“(1) “IFSC banking unit” means a financial institution defined under clause (c) of sub-section (1) of section 3 of the International Financial Services Centres Authority Act, 2019 (50 of 2019), that is licensed or permitted by the International Financial Services Centres Authority to undertake permissible activities under the International Financial Services Centres Authority (Banking) Regulations, 2020.”

(2) In the principle rules, in rule 114BA, the following shall be inserted at the end, namely:

“Provided that the provisions of this rule shall not apply in a case-

- (a) where the person, making the deposit or withdrawal of an amount otherwise than by way of cash as per clause (a) or (b), or opening a current account not being a cash credit account as per clause (c) of this rule, is a non-resident (not being a company) or a foreign company.
- (b) the transaction is entered into with an IFSC banking unit; and
- (c) such non-resident (not being a company) or the foreign company does not have any income chargeable to tax in India.

➤ **Amendment Under Rule 37BB “Furnishing Information for Payment to Non-Resident”**

According to Income Tax (Twenty Fifth Amendment) Rules, 2023:

(1) In Income Tax Rule 37BB,

(a) in sub-rule (3), after clause (i), the following clause shall be inserted, namely-

(b) in sub-rule (4),-

(I) in clause (i), after the words and brackets “Principal Director General of Income-tax (Systems)”, the words and brackets “or the Director General of Income-tax (Systems)” shall be inserted;

(II) in clause (ii), after the words and brackets “Principal Director General of Income-tax (Systems)”, the words and brackets “or the Director General of Income-tax (Systems)” shall be inserted.

(c) in sub-rule (6), after the words and brackets “Principal Director General of Income-tax (Systems)”, the words and brackets “or the Director General of Income-tax (Systems)” shall be inserted.

(d) for sub-rule (7), the following sub-rule shall be substituted, namely:

“(7) A quarterly statement, for each quarter of the financial year shall be furnished in respect of all remittances referred to in sub-rules (1), (2) and sub-rule (3) by-

- (i) the authorized dealer in Form No. 15CC,
- (ii) a Unit of an International Financial Services Centre referred to in sub-section (1A) of section 80LA, responsible for paying to a non-resident, not being a company, or to a foreign company, in Form No. 15CD,

to the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) or the person authorized by the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) electronically under digital signature within fifteen days from the end of the quarter of the financial year to which such statement relates in accordance with the procedures, formats and standards specified by the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) under sub-rule (8)”

(e) for sub-rule (8), the following sub-rule shall be substituted, namely-

“(8) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) shall specify the procedures, formats and standards for the purposes of furnishing and verification of Form No. 15CA, Form No. 15CB, Form No. 15CC and Form No. 15CD and shall be responsible for the day-to-day administration in relation to the furnishing and verification of information, certificate and quarterly statement in accordance with the provisions of sub-rules (4), (6) and sub-rule (7)”

Notifications Issued

Clarification relating to export of services - Circular 202/14/2023:

It provides essential clarification regarding the use of INR for export remittances. It ensures that when Indian exporters of services receive payments in INR through designated Special Rupee Vostro Accounts, they fulfill the conditions for export of services as per the IGST Act.

Clarification regarding Place of Supply in various cases - Circular 203/15/2023:

- **Place of supply in case of service of transportation of goods, including through mail and courier:** If the recipient's location is available, the place of supply will be at their location. If the recipient's location is not available in the ordinary course of business, the place of supply will be at the supplier's location. Moreover, it specifies that service of transportation of goods by mail or courier will also follow the same principles.
- **Place of supply in case of services in the advertising sector:**
 - a) **Supply (sale) of space on an immovable property for advertising:** The Place of Supply will be the location where supply of sale of space for hoarding/structure for advertising or grant to use such hoardings/billboards is located.
 - b) **Services provided by a vendor who arranges hoardings /billboards but not for sale or sell space:** These Services are in the nature of advertisement services as it is providing visibility to the company's advertisement Therefore, the Place of Supply will be the location of Recipient as per Section 12 of IGST Act,2017.
- **Place of supply in case of supply of the "co-location services":** It involves renting of space for servers and IT Infrastructures. The Place of supply in case of these services will be the location of Recipient. However, where only physical space is involved in the agreement, the Place of Supply shall be the location where such immovable property is located.

Clarification relating to taxability of personal guarantee by Directors and corporate guarantee by companies - Circular 204/16/2023:

- **Personal Guarantee provided by Directors:** The CBIC has clarified that the activity of providing personal guarantee by the Directors/Promoters to the banks/financial institutions for securing credit facilities for their companies is to be treated as a supply of service, even when made without consideration. It is also provided that the taxable value of such supply of service shall be the open market value of such supply.
- **Corporate Guarantee by one company for another:** The corporate guarantee provided by one company for another company, where they are related to each other shall be treated as supply of service as per schedule I even if without consideration. The taxability of the same shall be determined as per sub-rule 2 of rule 28 of the CGST Rules.

Clarification regarding GST Rate on imitation zari thread or yarn - Circular 205/17/2023:

It provides clarity on GST Rate applicable to imitation zari thread or yarn, whether it attracts 5% or 12%. GST Council recommended that imitation zari thread or yarn made from metallised polyester film/plastic film will attract 5% GST and also no refund will be permitted on account of inversion of tax rate.

Clarification regarding applicability of GST on certain services - Circular 206/18/2023:

- **'Same Line of Business' and Passenger Transport Service:** It is clarified that input services in the same line of business include the transport of passengers or renting of motor vehicles with operators. Leasing of motor vehicles without operators is taxed differently and falls outside this category.
- **GST on Reimbursement of Electricity Charges:** when electricity is supplied bundled with renting of immovable property and/or maintenance of premises, it constitutes a composite supply. The principal supply, i.e., renting of immovable property and/or maintenance of premises, dictates the GST rate, even if electricity is billed separately the supply will constitute as composite supply and the principal rate shall be charged on the same. However, where the electricity is supplied by the Real Estate Owners, Resident Welfare Associations (RWAs), Real Estate Developers etc, as a pure agent, it will not form part of value of their supply. Further, where they charge for electricity on actual basis they will be deemed to be acting as pure agent for this supply.
- **GST on Job Work for Processing of "Barley" into "Malted Barley":** The conversion of barley into malt is considered job work related to food products, regardless of its end use. Therefore, it attracts a 5% GST rate.
- **District Mineral Foundations Trusts (DMFTs) and GST Exemptions:** DMFTs are eligible for the same GST exemptions as other governmental authorities. These trusts work for the benefit of individuals and areas affected by mining operations and provide various services, including drinking water supply, environment protection, healthcare, and education.
- **Exemption from GST for Horticulture Services to Central Public Work Departments:** Such services, when provided to the Central Public Works Department (CPWD), are eligible for exemption under specific notification clauses. This exemption is aligned with constitutional provisions relating to Panchayats and Municipalities.

Central Tax (Rate) amendment made in some rates-conditions (same as for Integrated Tax) - Notification No.12/2023:

Description of Service	Rate	Addition in Conditions
Transport of passengers by any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient.	2.5%	where the supplier of input service in the same line of business charges central tax at a rate higher than 2.5%, ITC in excess of 2.5% shall not be allowed.
Renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient.	2.5%	where the supplier of input service in the same line of business charges central tax at a rate higher than 2.5%, ITC in excess of 2.5% shall not be allowed.

Central Tax (Rate) amendment made in notification 12/2017(same as for Integrated Tax) - Notification No.13/2023-

Amendment made in notification no.12/2017-exemptions notified on supply of services, to provide:

- A new Entry has been inserted to include “Services provided to a Governmental Authority by way of (a) water supply; (b) public health; (c) sanitation conservancy; (d) solid waste management; and (e) slum improvement and upgradation.”
- To withdraw exemption on “Services by the Ministry of Railways (Indian Railways)”.

Central Tax (Rate) amendment made in notification 13/2017(same as for Integrated Tax) - Notification No.14/2023:

The notification no. 13/2017 has been amended to include supply of all services by Indian Railways shall be taxed under FCM to enable them to avail ITC.

Central Tax (Rate) amendment made in notification 15/2017(same as for Integrated Tax) - Notification No.15/2023:

It is to provide that no refund of unutilised input tax credit shall be allowed under section 54(3) in case of supply of services of construction of a complex, building or a part thereof, intended for sale to a buyer, wholly or partly, where the amount charged from the recipient of service includes the value of land or undivided share of land, as the case may be, except where the entire consideration has been received after issuance of completion certificate , where required , by the competent authority or after its first occupation , whichever is earlier.

Central Tax (Rate) amendment made in notification 17/2017(same as for Integrated Tax) - Notification No.16/2023:

It is to impose the condition that in case of Services by way of transportation of passenger by Omnibus, the tax on intra -state supplies of which shall be paid by the E-commerce operator, only where the person supplying such service through E-Commerce Operator is not a Company.

Central Tax (Rate) amendment made in notification 1/2017 (same as for Integrated Tax) - Notification No.17/2023:

Description of Service	Rate
Food preparation of millet flour in powder form, containing least 70% millets by weight	18% TO 5%- - if sold pre-packaged and labelled. Nil - if sold otherwise
Molasses	28% TO 5%
Spirits for industrial use	18%

Central Tax (Rate) amendment made in notification 2/2017(same as for Integrated Tax) - Notification No.18/2023:

To provide exemption from GST on Food preparation of millet flour, in powder form, containing at least 70% millets by weight, other than pre-packaged and labelled.

Central Tax (Rate) amendment made in notification 5/2017 (same as for Integrated Tax) - Notification No.20/2023:

To provide that no refund of unutilized ITC shall be allowed, where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on the output supplies of such goods (other than nil rated or fully exempt supplies), in respect of “imitation zari thread or yarn made out of Metallized polyester film /plastic film”. This entry shall apply for refund of input tax credit only on polyester film /plastic film.

CGST (Fourth Amendment) Rules, 2023 - Notification No.52/2023:

- **Rule 28 Amendment:** The value of supply of services by a supplier to a related person, involving the provision of a corporate guarantee to a banking company or financial institution on behalf of the recipient. The value of this supply shall be deemed as one percent of the amount of the guarantee offered or the actual consideration, whichever is higher.
- **Rule 142 Modification:** Rule 142 of the CGST Act, 2017 outlines the procedures for issuing notices and orders for the demand of amounts payable under the Act. The term “order” is replaced with “intimation,” indicating a shift in the nature of communication from the proper officer.
- **Rule 159 Adjustment:** It is to include the period for seeking a refund of excess balance in the electronic cash ledger is within one year from the date of issuance of the order under Sub-rule (1) or earlier, whichever applies. **FORM GST REG-01 Update:** In PART-B, a new clause (xiva) is added to include “One Person Company” as a type of business entity registering under GST.
- **FORM GST REG-08 Revision:** It is to cover the order of cancellation of registration as a Tax Deduct at source or Tax Collector at source. The form outlines the reasons for cancellation and emphasizes the liability to pay tax and other dues even after registration cancellation for the prior period.
- **FORM GST PCT-01 Modification:** In PART-B, the list of enrolment sought is updated to include additional qualifications, including Chartered Accountants, Company Secretaries, Cost and Management Accountants, and more.
- **FORM GST DRC-22 Alteration:** A paragraph is added to FORM GST DRC-22, indicating that the order shall cease to have effect either on the date of issuance of an order in FORM GST DRC-23 by the Commissioner or after one year from the date of issuance, whichever is earlier.

MCA UPDATES

MCA issues amendment rules requiring private companies (other than small company) to dematerialize shares before October 1, 2024.

- The Ministry had earlier mandated public companies to transact shares only in demat form but private companies were not covered by the ruling.
- Under this amendment, every private company, which is not a small company, must:
 - a) issue the securities only in dematerialised form
 - b) facilitate dematerialisation of all its securities.
- A timeline of 18 months is provided from the closure of the respective financial year during which such companies shall comply with the mandatory dematerialisation requirements.
- Every such private company making any offer for issue of any securities or buyback of securities or issue of bonus shares or rights offer, must ensure that before making such offer, entire holding of securities of its promoters, directors, key managerial personnel has been dematerialised.
- All holders of securities who intends to transfer such securities or subscribes to any securities of the private company, by the way of private placement or bonus shares or rights offer, must ensure that all the securities are held in dematerialised form before such transfer or subscription.
- The shareholders of a Private Company can continue holding their shares in physical form even after October 1, 2024, the shares of a Company can only be issued to a shareholder, if such shareholder has a Demat account. Further, any transfer of shares from October 1, 2024, can only be done in Demat mode.

A private company, covered under this Amendment will be required to:

- Obtain International Securities Identification Number (“ISIN”) for all existing securities issued by the Company;
- Facilitate Dematerialisation of all existing securities (as and when request is received from the holder of such securities);
- Ensure that the entire holding of its promoters, directors and KMPs are held in Dematerialised form only, prior to making any offer for issuance or buyback of securities on or after September 30, 2024;
- From October 1, 2024, issue all securities in Dematerialised form only; and
- File half-yearly returns with the Depository and the Ministry of Corporate Affairs in relation to the return of shares held in Demat form.

Shareholders of private companies covered under this Amendment will be required to:

- Obtain a Permanent Account Number, which is an Income Tax Identification Number (if not already obtained);
- Obtain a Demat account with a Depository Participant in India;
Rule 9 Amendment for Public Companies for Share Warrants:

- The Amendment introduces changes for public companies that had previously issued share warrants before the commencement of the Companies Act, 2013.
- These companies are required to take specific actions within specified timelines:
 - a. Within three months of the Amendment's commencement, public companies must inform the Registrar about the details of such share warrants using Form PAS-7.
 - b. Within six months of the Amendment's commencement, these companies must request bearers of the share warrants to surrender them and get the shares dematerialized.
- This requirement involves placing a notice on the company's website and publishing the same in local and English newspapers.
- Failure to surrender the share warrants results in their conversion into dematerialized form and transfer to the Investor Education and Protection Fund.



COMPLIANCE CALENDER

Direct Taxes

November 07, 2023

- Due date for deposit of Tax deducted/collected for the month of October 2023.

November 14, 2023

- Due date for issue of TDS Certificate for tax deducted under section 194-IB, 194-IA, 194M, 194S in the month of September, 2023

November 15, 2023

- Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending June 30, 2023
- Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of October, 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 October, 2023

November 30, 2023

- Quarterly statement of TDS deposited for the quarter ending September, 2023.
- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB, 194-M & 194-S in the month of October, 2023.
- Return of income for the assessment year 2023-24 in the case of an assessee if he/it is required to submit a report under section 92E pertaining to international or specified domestic transaction(s)
- Report in Form No. 3CEAA by a constituent entity of an international group for the accounting year 2022-23.
- Statement of income distribution by Venture Capital Company or venture capital fund in respect of income distributed during previous Year 2022-23 (Form No. 64)

November 30, 2023

- Report in Form No. 3CEAA by a constituent entity of an international group for the accounting year 2022-23.
- Statement of income distribution by Venture Capital Company or venture capital fund in respect of income distributed during previous Year 2022-23 (Form No. 64)
- Statement to be furnished in Form No. 64D by Alternative Investment Fund (AIF) to Principal CIT or CIT in respect of income distributed (during previous year 2022-23) to units holders.
- Due date to exercise option of safe harbour rules for international transaction by furnishing Form 3CEFA & Form 3CEFB.
- Due date for filing of statement of income distributed by business trust to unit holders during the financial year 2022-23. This statement is required to be filed electronically to Principal CIT or CIT in form No. 64A.
- The due date of furnishing of Return of Income in Form ITR-7 for the Assessment Year 2023-24 in the case of assessee referred to in clause (a) of Explanation 2 to section 139(1) [Circular no. 16/2023: Extension of Due Date]
- Due date for e-filing of report (in Form No. 3CEJ) by an eligible investment fund in respect of arm's length price of the remuneration paid to the fund manager. (if the assessee is required to submit return of income on November 30, 2023).
- Statement by scientific research association, university, college or other association or Indian scientific research company as required by rules 5D, 5E and 5F (if due date of submission of return of income is November 30, 2023).
- Submit copy of audit of accounts to the Secretary, Department of Scientific and Industrial Research in case company is eligible for weighted deduction under section 35(2AB) [if company has any international/specified domestic transaction].



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ABOUT US

Nucleus AAR Advisors LLP is an Investment Banking and Risk Advisory Firm providing specialized services in the field of Startup Advisory, M&A Advisory, International Taxation, Audit & Assurance. We partner with entrepreneurs in their critical decision making by providing them various analysis customized as per their requirement. We also help in the effective implementation of decisions and its subsequent monitoring as well.

Team Nucleus is comprised of people from Big4s and reputed consulting firms with combined experience of 30+ years. Team is distinguished by their functional and technical expertise combined with their hands-on experience, thereby ensuring that our clients receive the most professional



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