

Monthly Communique | December 2023

Goods and Services Tax (GST)

- + **Amnesty scheme introduced for filing Appeals against orders passed on / before 31.03.2023:** The CBIC has introduced an amnesty scheme for filing of appeals where (a) a taxpayer person could not file an appeal against the orders passed on or before 31.03.2023 and (b) an appeal filed by the taxpayer was rejected on the grounds that it was not filed within the stipulated timelines. The primary highlights and conditions for eligibility of the scheme are:
 - Appealable Order should have been **issued under Section 73 or 74 of the CGST/SGST Act, 2017;**
 - **Appeal should be filed in Form GST APL-01 on or before 31.01.2024** against such order;
 - Pre-deposit amount for filing of Appeal:
 - **In case of demand is not disputed:** Pay the full amount of tax, interest, fine, fee, and penalty;
 - **In case of demand is disputed:** Pay 12.5% of tax in dispute but subject to a maximum of 25 Crore of tax;
 - Pre-deposit amount **should be in cash by debiting Electronic Cash Ledger to the extent of 20% of disputed tax;**
 - **No refund** shall be granted **in case an appeal has already been filed** by making an **excess amount of pre-deposit of 12.5% or 25 Crore, as applicable;**
 - **Appeal cannot be filed** under this amnesty scheme **where demand does not involve tax;**
 - The appeal, if filed, should have been solely rejected on the ground that the **limitation period of three months is lapsed for filing of an appeal from the date of the communication of the order;**

- + **Procedure for filing of appeals under amnesty scheme in GST Portal:** GSTN has issued an advisory on the procedure for filing of appeals under the aforesaid amnesty scheme. The highlights of the same are:
 - The GST Portal allows taxpayers to choose the mode of payment (electronic Credit/Cash ledger) for pre-deposit;
 - Where the taxpayer has already filed an appeal and wants it to be covered by the benefit of the amnesty scheme, the taxpayer would only need to make the differential payments to comply with the Amnesty Scheme introduced by the Notification No. 53/2023;
 - Taxpayers whose **appeal was rejected as time barred in Form GST APL-02, will be able to refile the appeal.**

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- In case, any issue is faced by the taxpayer while refiling Form GST APL-01, a ticket shall be raised Grievance redressal portal: <https://selfservice.gstsystem.in>.
- The taxpayer can select the Category "**Amnesty Scheme**" and the **sub-category "Amnesty scheme- Issue in appeal filing"** while raising a ticket.
- If the Appellate Authority had issued a rejection order in Form GST APL-04 due to the appeal application being time-barred, then the taxpayer has to approach the respective Appellate Authority office well in advance to comply with the dates in the said notification. The Appellate Authority after checking the eligibility of the taxpayer for the amnesty scheme will forward the case to GSTN through the State Nodal officer.
- **No direct representations will be entertained by GSTN or through the Grievance redressal portal.**

Notification No. 53/2023-Central Tax dated 02.11.2023 & GST News & updates dated 28.11.2023

- + **Mandatory serving of the Summary of Notices and Orders electronically:** Adjudicating Officers, while issuing Notices & Orders to taxpayers for demand and recovery of –
 - Tax not paid/ short paid/ ITC wrongly availed/ refund erroneously made;
 - Interest and / or imposition of penalty or fine.

are also required to serve a Summary of Notices & Orders in Form GST DRC-01 and Form GST DRC-07, respectively. The CBIC has now clarified that non-issuance of summary of notices and orders electronically on the portal is a clear violation of the GST laws and has accordingly, instructed the field formations that the summary of notices and orders in Form GST DRC-01 and Form GST DRC-07 should be served electronically to the taxpayer, on the GSTN portal.

Instruction No. 04/2023-Central Tax dated 23.11.2023

- + **GST news and advisory:**

- **ITC reversal on account of non-filing of Form GSTR-3B by suppliers:**

Background: Taxpayers are required to reverse ITC on invoices or debit notes on / before 30th November of the subsequent year, the details of which have been declared by the supplier in Form GSTR-1 but Form GSTR-3B has not been filed by the supplier by 30th September of the subsequent year.

Advisory: For the FY 2022-23, the ITC amount to be reversed for the above situations has been calculated and communicated via email to taxpayers by the GSTIN. Taxpayers are required to reverse the ITC amount while filing their Form GSTR-3B return before November 30, 2023 in Table 4(B)(2) of Form GSTR-3B.

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SDU comments: Interest exposure for taxpayers may arise where ITC reversals are made after 30.11.2023 in the subsequent Form GSTR-3B returns / Form GST DRC-03.

GST News & updates dated 14.11.2023

- **ITC mismatch between Form GSTR-2B and Form GSTR-3B issued in Form GST DRC-01C:**

Background: Taxpayers who have claimed ITC in Form GSTR-3B in excess of the ITC reflecting in Form GSTR-2B for a month, are to be intimated of the said difference in Form GST DRC-01C directing them to pay / explain the differences.

Advisory: GSTN has introduced a new functionality on the GST portal that automatically compares the ITC mismatches between ITC availed in Form GSTR-3B vis-à-vis ITC reflected in Form GSTR-2B for each period. If the claimed ITC in Form GSTR-3B exceeds a predefined limit /percentage, the taxpayers will receive an intimation in **Form GST DRC-01C**. The taxpayers must respond by filing **Form GST DRC-01C Part B** by paying the difference identified using Form GST DRC-03 or by explaining the discrepancy or choose a combination of both options.

SDU comments: Taxpayers are suggested to respond to the Form GST DRC-01C at the earliest as the taxpayer won't be able to file their Form GSTR-1 of the subsequent period returns unless a response to the Intimation is filed.

GST News & updates dated 14.11.2023

Foreign Trade Policy (FTP)

- + **Pilot launch of the Upgraded Electronic Bank Realization Certificate (e-BRC) system for self-certification by Exporters:** To improve trade facilitation for exporters, DGFT has announced the pilot launch of the upgraded Electronic Bank Realization Certificate (e-BRC) system for self-certification by exporters. The enhanced eBRC system aims to streamline the process for exporters, reducing transaction time and costs, and easing the burden on bankers. The system is based on electronic Inward Remittance Messages (IRMs) that banks will transmit directly to the Directorate General of Foreign Trade (DGFT). Exporters will then self-certify their e-BRCs based on the IRMs received. The workflow of the upgraded e-BRC system is provided in the trade notice.

The pilot launch of the upgraded e-BRC system is available effective November 15, 2023.

All banks are required to complete the necessary process (including integration of API) by 31.01.2024.

Trade Notice No. 33/2023-24 dated 10.11.2023

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Customs

- + **Extension – Payment of Duties of Customs through Electronic Cash Ledger:** Board has further extended effective date, for mandatory payments of duty of Customs to be made through Electronic Cash Ledger to 20.01.2024. Hitherto, the date due for implementation was 01.12.2023.

Notification No. 87/2023 – Customs (N.T) dated 29.11.2023

Corporate Law

- + **MCA notifies LLP Significant Beneficial Owners Rules, 2023:** The Ministry of Corporate Affairs (MCA) vide notification G.S.R. 832(E) dated 09.11.2023 issued the Limited Liability Partnership (LLP) (Significant Beneficial Owners) Rules, 2023. The notification defines Significant Beneficial Owners (SBOs) as an individual who acting alone or through one or more persons or trust, possesses one or more of the following rights or entitlements:
 - holds indirectly or along with any direct holdings, not less than 10% of the contribution;
 - holds indirectly or along with any direct holdings, not less than 10% of voting rights in such LLP;
 - has the right to receive/participate in not less than 10% of the total distributable profits, through direct or indirect holdings;
 - has the right to exercise/exercises significant influence or control other than through direct holdings alone.

The key compliances notified in the SBO Rules, 2023 are:

- LLPs are required to identify SBOs and submit their declarations via Form LLP BEN-1.
- Existing SBOs must file declarations within 90 days of the rules' commencement.
- New SBOs must comply with such provisions within 30 days.
- Following the receipt of declarations, LLPs must submit returns to the Registrar in Form LLP BEN-2.
- A register of Partners and Significant Beneficial Owners must be maintained in Form LLP BEN-3.
- LLPs are mandated to issue notices in Form LLP BEN-4 to partners holding a stake of 10% or more, seeking information about beneficial interests.

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The above provisions shall not apply to the following LLPs/body corporates:

- a. Where contribution has been made or the Central Government exercises control, any State Government(s), or any local authority(s);
- b. An Investment vehicle registered with and regulated by the Securities and Exchange Board of India (SEBI);
- c. An investment vehicle regulated by the Reserve Bank of India, the Insurance Regulatory and Development Authority of India, or the Pension Fund Regulatory and Development Authority.

G.S.R. 832(E) dated 09.11.2023

SEBI

+ Framework for dealing with unclaimed amounts lying with specified entities: SEBI, on 08.11.2023, issued a notification regarding the procedural framework for dealing with unclaimed amounts (interest/dividend/redemption amount not claimed within 30 days from the due date of interest/dividend/redemption payment and transferred to the escrow account) lying with the following entities:

- a. Listed entities that have issued non-convertible securities
- b. Infrastructure Investment Trusts (InvITs)
- c. Real Estate Investment Trusts (REITs)

The key highlights of the circular are:

- a. Amounts unclaimed or unpaid for 7 years shall be transferred to the Investor Protection and Education Fund (IPEF);
- b. The entity(s) shall display on its website, details of such unclaimed amounts and amounts transferred to IPEF;
- c. The entity(s) can file refund claims for such amounts transferred to IPEF, in the manner specified by SEBI;
- d. The entity(s) shall set up a search facility on its website for investors to file a claim for such unclaimed amounts;
- e. The entity(s) shall designate a Director, Chief Financial Officer, Company Secretary, or Compliance Officer as the 'Nodal Officer,' who shall be the point of contact for investors entitled to claim their unclaimed amounts;
- f. Entities having unclaimed amounts in the escrow account for less than 7 years as on 29.02.2024 shall start computing interest as specified in the circular, from 01.03.2024; and

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- g. Entities that have unclaimed amounts in the escrow account for more than 7 years as on 29.02.2024 shall transfer the unclaimed amounts of the investors to IPEF, in compliance with the provisions specified in the circular, on or before 31.03.2024.

These provisions shall come into force with effect from 01.03.2024.

Circular no. SEBI/HO/DDHS/DDHS-RAC-1/P/CIR/2023/176 dated 08.11.2023

Circular no. SEBI/HO/DDHS/DDHS-RAC-1/P/CIR/2023/178 dated 08.11.2023

Circular no. SEBI/HO/DDHS/DDHS-RAC-1/P/CIR/2023/177 dated 08.11.2023

- + **Highlights of the 203rd SEBI Board meeting:** SEBI concluded its 203rd board meeting on 25.11.2023, where the following pivotal amendments and frameworks were approved:

1. **Flexibility in Social Stock Exchange (SSE):**

- a. Reduction in minimum Issue Size from Rs. 1 Crore to Rs. 50 lakhs for public issuance of Zero Coupon Zero Principal Instruments (ZCZP) by NPOs on SSE to boost fundraising by Not-for-Profit Organizations (NPOs).
- b. Reduction of minimum application size from Rs. 2 lakhs to Rs. 10,000 for wider participation.

2. **Facilitation of Small & Medium (SM) REITs:**

- a. SM REITs can be set up with an asset value of at least Rs. 50 crores, contrasting with the Rs. 500 crores requirement for existing REITs.
- b. SM REITs can establish separate schemes for owning real estate assets through special purpose vehicles (SPV).

3. **Amendments to AIF Regulations:**

- a. Fresh Alternate Investment Fund (AIF) investments made after September 2024 must be held in dematerialized form.
- b. Provisions of appointment of custodian (who is an associate of manager or sponsor of the AIF) shall extend to all AIFs.

Press Release No. 27/2023 dated 08.11.2023

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