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Income Tax

- + **Notification of Powergrid Infrastructure Investment Trust as eligible mode of investment for a charitable trust:** Charitable trusts / institutions that do not spend the minimum amount required to be spent on their objects but accumulate or set apart the incomes are required to invest or deposit such amounts accumulated in certain specified forms or modes. Failing this, such amounts are taxed. In this regard, the CBDT has now notified investment in units in Powergrid Infrastructure Investment Trust as an eligible mode of investment for such trusts / institutions.

Notification No.103 of 2023 dated 18.12.2023

- + **New guidelines issued under section 194-O:** Section 194-O mandates deduction of taxes on payments made by E-Commerce Operators ('ECOs') to E-Commerce participants ('ECPs'). Considering the various representations received, the CBDT vide circular No. 20/2023 has issued certain clarifications and guidelines in relation to deduction of tax under section 194-O. This is in addition to the guidelines and clarifications provided vide Circular No. 17 of 2020 issued on 29.09.2020 and Circular No. 20 of 2021 issued on 25.11.2021. A few key guidelines are summarised below:

- Where there are multiple ECOs present in a transaction, the liability to deduct TDS rests on the ECO finally making the payment to the seller of goods / services.
- The gross amount on which the TDS is to be deducted includes all kinds of additional charges such as convenience fees, delivery charges, packing fees etc.
- The gross amount liable for TDS does not include the GST or other taxes if shown separately. However, where payments are made on advance, the TDS has to be made on the entire payment as it would not be possible to identify the various GST or other tax components of the amount to be invoiced in the future.
- If a discount is provided by the seller himself, the gross amount would be after the deduction of the discount. However, where the discount is provided by an intermediate ECO, the gross amount liable for TDS would be the whole amount charged by the seller and would not factor in the discount.

The above is only a summary of a few key contents in the Circular. The Circular contains detailed explanations with examples and readers are advised to refer the same.

Circular No.20 of 2023 dated & Press release both dated 28.12.2023

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- + **Extension of safe harbour to intragroup loans advanced to AEs other than Wholly-owned subsidiaries:** The CBDT prescribes safe harbour rules which notifies certain circumstances where the income-tax authorities would be required to accept the transfer price at which the assessee undertakes a transaction to be at Arm's length. Safe harbour rules were applicable on such intra-group loans advanced to Associated Enterprises' that were wholly owned subsidiaries of a particular enterprise. Now, the benefit of safe harbour on intra-group loans has been extended to all AEs to whom intra-group loans have been advanced. Further, separate interest rates have been notified for various currencies. This is also a departure from the earlier approach where reference was drawn to LIBOR rate for all transactions irrespective of the currency in which such transaction was undertaken.

Notification No.104 of 2023 dated 19.12.2023

Goods and Services Tax (GST)

- + **Time-limit for issuance of order against a Notice for the FY 2018-19 & 2019-20 extended:** The CBIC has extended the time limit for issuance of order towards the recovery of tax not paid or short paid or input tax credit wrongly availed or utilized (*other than by reason of fraud or wilful-misstatement or suppression of facts to evade tax*) of **CGST Act, 2017**) for the following financial years as under:

Financial Year	Extended Due Date to pass Order u/s 73 of the CGST Act, 2017
2018-19	30.04.2024. <i>Hitherto it was 31.03.2024</i>
2019-20	31.08.2024. <i>Hitherto it was 30.06.2024</i>

Consequentially, the time limit to issue the Show Cause Notice also stands amended as under:

Financial Year	Extended Due Date to issue SCN u/s 73 of the CGST Act, 2017
2018-19	31.01.2024. <i>Hitherto it was 31.12.2023</i>
2019-20	31.05.2024. <i>Hitherto it was 31.03.2024</i>

Notification No. 56/2023 – Central Tax dated 28.12.2023

- + **Instructions issued for adjudication of the matter of secondment of employees:** In light of the judgement of Hon'ble Supreme Court dated 19.05.2023 in the case of Northern Operating Systems Private Limited (NOS), the CBIC has issued instructions clarifying the following aspects to be noted *while initiating investigation and issuance of Show Cause Notice* to tax payers:

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- a) The decision of the Hon'ble Supreme Court in the NOS judgment **should not be applied mechanically** in all the cases;
- b) Investigation in each case **requires a careful consideration of its distinct factual matrix**, including the terms of contract between overseas company and Indian entity.
- c) Investigation proceedings should not be initiated under Section 74 (i.e. issuance of Show Cause Notice for reasons of fraud / suppression of facts etc.) merely for the reason that GST has not been paid unless specific element of fraud or wilful mis-statement or suppression of facts to evade tax is ascertained.

Brief summary of the "Northern operating Case": The Hon'ble Supreme Court of India, under the erstwhile service tax regime, had held that the secondment of employees by the overseas group company to Indian Company was a taxable service of '**manpower supply**' and **Service Tax** was applicable on the same. Consequent to this, investigation proceedings were initiated under GST regime to determine the taxability on secondment of employees.

[Instruction No. 05/2023-GST dated 13.12.2023](#)

+ GST news and advisory:

- **Extension of the due date to report opening balance in the newly introduced Electronic Credit and Re-claimed Statement:** For the returns filed for tax period beginning from Aug-22 (for monthly return filers) / 2nd quarter of the FY 2022-23 (for quarterly return filers) onwards, a new statement called **Electronic Credit and Re-claimed Statement** was introduced to maintain a track of ITC reversed through Table 4B(2) of Form GSTR-3B of a tax period and which is to be re-claimed in subsequent tax periods. Accordingly, for the returns filed up to July-2023, taxpayers were provided with a facility to report the cumulative balance of ITC reversals (which is eligible to be reclaimed) done till the return period for the tax period up to July 2023.

The due date to report such cumulative opening balance has now been extended to 31.01.2024. Hitherto, the due date for reporting the same was 30.11.2023. Further, taxpayers are given a facility to amend the ITC value only 3 times, on or before 29.02.2024 (Hitherto, the due date for such rectification/ amendment was 31.12.2023). **It may however be noted that ITC must be reported by 31.01.2024.** For a detailed advisory click [here](#).

[GST News & updates dated 29.12.2023](#)

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Foreign Trade Policy (FTP)**+ Extension of date of mandatory E-filing of Non-Preferential Certificate of Origin (CoO):**

The period for mandatory filing of applications for Non-Preferential Certificate of Origin (CoO), through the e-CoO platform has been further extended upto 31st December 2024. Hitherto, the said date was extended upto 31st December 2023. Further, between the period 01.01.2024 to 31.12.2024, the options for filing an application either electronically or manually will be available to the importer/exporter.

Trade Notice no. 36/2023-24 dated 26.12.2023

+ Insertion of new rule to provide for establishment of non-processing areas for IT and ITES industry, within SEZs:

The Ministry of Commerce and Industry, has newly inserted Rule 11B into the Special Economic Zones Rules, 2006, to facilitate the delineation of non-processing areas within Information Technology or Information Technology Enabled Services Special Economic Zones (IT or ITeS SEZs). In accordance with this rule:

- The Board of Approval (BOA), upon the request of an IT or ITeS SEZ Developer, has the authority to permit the demarcation of a specific portion of the built-up area within the SEZ for designation as a non-processing area.
- The usage of the non-processing area is restricted to businesses engaged in Information Technology or Information Technology Enabled Services, subject to the terms and conditions stipulated by the BOA.
- The demarcation of a non-processing area should encompass complete floors; fractional allocation of a floor for this purpose is not permissible.
- To ensure proper control over access, robust mechanisms must be implemented for screening individuals and goods entering or exiting the premises of SEZ units and businesses within the non-processing areas.
- Prior to the authorization of a non-processing area, the Developer is obligated to repay, as certified by a Chartered Engineer
 - (i) The tax benefits attributed to that specific area, calculated based on the benefits extended to the processing area of the SEZ. Such repayment must be made without accruing any interest.
 - (ii) The tax benefits already availed for creation of social or commercial infrastructure and other facilities, if proposed to be used by both the IT & ITeS SEZ's and business engaged in the non-processing area of IT & ITeS SEZ's.

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- The demarcation of a non-processing area should not diminish the processing area to less than 50% of the total SEZ area or less than area specified in column (3) of table below:

SR #	Categories of cities as per Annexure IV-A	Minimum Built-up processing Area
1.	Category 'A'	50,000 Square meters
2.	Category 'B'	25,000 Square meters
3.	Category 'C'	15,000 Square meters

- The business engaged within the non-processing area of an IT or ITES SEZ, are ineligible to avail any rights or facilities accorded to SEZ units.
- Tax benefits will not be applicable to the operation and maintenance of common infrastructure and facilities, within an IT or ITES SEZ.
- Businesses engaged in the non-processing area are subject to the provisions of all relevant Central Acts, rules, and orders applicable to entities operating within the Domestic Tariff Area (*meaning any supplies made under GST laws, from such non-processing area/s, will be considered as a regular supply and provisions of Time of Supply and Place of Supply, is to be applied accordingly*).

Amendment in SEZ rules vide Notification dated 06.12.2023

- + **Clarification on Applicability of Ad-Hoc Norms:** The Directorate General of Foreign Trade clarifies that valid ad-hoc norms ratified on or after 01.04.2015, will extend to pending cases/applications submitted under the self-declaration scheme from 01.04.2015 onwards, where such application is filed prior to the application against which ratification of such ad-hoc norms was done. Further, it may be noted that this clarification does not extend to items enumerated under Appendix 4P for other applicants, as restriction is laid down in this regard in Para 4.12(vi) of Hand Book of Procedures 2023, to Foreign Trade policy 2023.

Circular No. 08/2023 dated 27.12.2023

FEMA

- + **Notification of Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2023:** The RBI has notified new regulations regarding the manner of receipt and payment to or from a person resident outside India superseding the existing regulations. These regulations are effective 20.12.2023.

Notification No. FEMA 14(R)/2023-RB dated 21.12.2023

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SEBI

- + **Revised framework for computation of NDCF by REITs and InvITs:** The Securities and Exchange Board of India (SEBI), on 06.12.2023 issued a notification regarding the revised framework for the computation of Net Distributable Cash Flow (NDCF) by Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs).

The notification provides a detailed manner of computation of NDCF, subject to the minimum distribution being 90% of the DFC at the Trust/Holding Company/Special Purpose Vehicle (SPV) level, subject to provisions applicable to the REIT/InvIT, as the case may be.

The revised framework shall be applicable with effect from 01.04.2024 and shall supersede the framework for the calculation of NDCF provided in the master circular for REITs and InvITs dated 06.07.2023.

Circular No. SEBI / HO / DDHS / DDHS-PoD / P / CIR / 2023 / 185 & Circular No. SEBI / HO / DDHS / DDHS-PoD / P / CIR / 2023 / 184 both dated on 06.12.2023

- + **Credit of units of AIFs in dematerialized form:** SEBI, on 11.12.2023, issued a circular regarding the credit of units of Alternate Investment Funds (AIFs) in dematerialized form. The key highlights of the circular are:

- Schemes of AIFs with a corpus more than or equal to Rs. 500 Crore shall credit units already issued to existing investors (onboarded before 01.11.2023) who have not provided their demat account details, into Aggregate Escrow Demat Account latest by 31.01.2024.
- Units already issued by such schemes to existing investors who have provided demat account details shall be credited to respective investors' demat accounts at the earliest, but not later than 31.01.2024.
- Units issued by such schemes as of 30.04.2024, to investors who have provided demat account details shall be credited to respective investors' demat accounts at the earliest, but not later than 10.05.2024.

Circular No. SEBI/HO/AFD/PoD1/CIR/2023/186 dated on 11.12.2023

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