May 2024

TAX Bulletin

Volume - 159
02.05.2024

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA
Statutory Body under an Act of Parliament
www.icmai.in

Headquarters: CMA Bhawan, 12, Sudder Street, Kolkata - 700016
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Delhi Office: CMA Bhawan, 3, Institutional Area, Lodhi Road, New Delhi - 110003
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VISION STATEMENT

"The Institute of Cost Accountants of India would be the preferred source of resources and professionals for the financial leadership of enterprises globally."

MISSION STATEMENT

"The CMA Professionals would ethically drive enterprises globally by creating value to stakeholders in the socio-economic context through competencies drawn from the integration of strategy, management and accounting."

Objectives of Taxation Committees:

1. Preparation of Suggestions and Analysis of various Tax matters for best Management Practices and for the professional development of the members of the Institute in the field of Taxation.
2. Conducting webinars, seminars and conferences etc. on various taxation related matters as per relevance to the profession and use by various stakeholders.
3. Submit representations to the Ministry from time to time for the betterment and financial inclusion of the Economy.
4. Evaluating opportunities for CMAs to make way for further development and sustenance of the opportunities.
5. Conducting and monitoring of Certificate Courses on Direct and Indirect Tax for members, practitioners and stake holders and also Crash Courses on GST for Colleges and Universities.

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Certificate Courses Offered by the Tax Research Department

1. Certificate Course on GST (CCGST)
2. Advanced Certificate Course on GST (ACCGST)
3. Advanced Certificate Course on GST Audit and Assessment Procedure (ACGAA)
4. Certificate Course on TDS (CCTDS)
5. Certificate Course on Filing of Returns (CCFOF)
6. Advanced Course on Income Tax Assessment and Appeals (ACIAA)
7. Certificate Course on International Trade (CCIT)

Admission Link - ***https://eicmai.in/advscc/DelegatesApplicationForm-new.aspx***

Modalities

Description	Course Name						
	CCGST	ACCGST	ACGAA	CCTDS	CCFOF	ACIAA	CCIT
Hours	72	40	30	30	30	30	50
Mode of Class	Offline/ Online	Online					
Course Fee* (₹)	10,000	14,000	12,000	10,000	10,000	12,000	10,000
Exam Fee* (₹)	1,000 per attempt						
Discounts	20% Discount for CMA Members, CMA Qualified and CMA Final Pursuing Students						

**18% GST is applicable on both Course fee and Exam fee*

Eligibility Criteria for Admission

- Members of the Institute of Cost Accountants of India
- Other Professionals (CA, CS, MBA, M.Com, Lawyers)
- Executives from Industries and Tax Practitioners
- Students including CMA Qualified and CMA Pursuing

On passing the examination with 50% marks a Certificate would be awarded to the participant with the signature of the President of the Institute

Course Details

https://icmai.in/TaxationPortal/OnlineCourses/index.php

Courses for Colleges & Universities by the Tax Research Department

Eligibility

- B.Com/ BBA pursuing or completed
- M.Com/ MBA pursuing or completed

Modalities

Description	Courses for Colleges and Universities	
	GST Course	Income Tax
Batch Size	Minimum 50 Students per Batch per course	
Course Fee* (₹)	1,000	1,500
Exam Fee* (₹)	200	500
Duration (Hrs)	32	32

For enquiry about courses, mail at: ***trd@icmai.in***

**18% GST is applicable on both Course fee and Exam fee*

Behind every successful business decision, there is always a CMA

From Tax Research Department

Yesterday, an important notification has come up on the Government website, which is surely a very positive news for us. The release states that, 'the Gross Goods and Services Tax (GST) collections hit a record high in April 2024 at ₹2.10 lakh crore. This represents a significant 12.4% year-on-year growth, driven by a strong increase in domestic transactions (up 13.4%) and imports (up 8.3%). After accounting for refunds, the net GST revenue for April 2024 stands at ₹1.92 lakh crore, reflecting an impressive 15.5% growth compared to the same period last year.

Positive Performance Across Components:

Breakdown of April 2024 Collections:

- Central Goods and Services Tax (CGST): ₹43,846 crore;
- State Goods and Services Tax (SGST): ₹53,538 crore;
- Integrated Goods and Services Tax (IGST): ₹99,623 crore, including ₹37,826 crore collected on imported goods;
- Cess: ₹13,260 crore, including ₹1,008 crore collected on imported goods.
- Inter-Governmental Settlement: In the month of April, 2024, the central government settled ₹50,307 crore to CGST and ₹41,600 crore to SGST from the IGST collected. This translates to a total revenue of ₹94,153 crore for CGST and ₹95,138 crore for SGST for April, 2024 after regular settlement.'

This definitely shows that this financial year has stated on a positive note for the nation.

The department on the last fortnight of April, 2024 has conducted a webinar on the topic: 'Legal Insights: Telangana HC verdict on Transferable Development Rights (TDR)' conducted on the 29th of April, 2024.The webinar started with a detailed discussion on the importance of Joint Development and its necessity. Then the tax implications that such agreements attract were discussed. The webinar showed live on how to check the status of the cases online and how to interpret the same. The faculty for the session has been CMA Bhogavalli Mallikarjuna Gupta.

Also classes for GST Course for college and university students started on the 24th of April, 2024 at ABBS School of Management, Bangalore.

The regular activities of the department, like conduct of courses, update of Taxation Portal, quiz, courses for colleges and universities all are being carried on regularly. We thank our Resource Contributors, Editorial Team and Taxation Committee for their motivation and guidance.

Thank You.

Tax Research Department

The Institute of Cost Accountants of India

02.05.2024

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Articles on the Topics of Direct and Indirect Taxation are invited from readers and authors. Along with the article please share a recent passport-sized photograph, a brief profile and the contact details. The articles should be the author's own original.

Please send the articles to

trd@icmai.in /trd.ad1@icmai.in

Implications of New Tax Regime under Income Tax Act, 1961

CMA Kedarnath

Cost & Management Accountant

Introduction to Tax Regimes:

Income Tax in India is brings a lot of changes from time to time, it introduces number of provisions, deductions, exemptions and benefits to the tax payers. Income Tax Act, 1961 gives number of benefits to the tax payers such as claiming of deductions, exemption and other benefits from time to time, however every deduction and exemption must be backed with the documentary evidence. Also, in certain transactions the payment must be made through banking channel. So that the income tax department can verify and ensure the Guinness of the claim made by the tax payer. However due to increase of tax payers base, increase of business models and change of environment and technology, also lack of sufficient no. of man power, Income tax has come up with the concept of new tax regime.

Under new tax regime the tax payer is not eligible to claim any deductions or exemptions except few unlike under the old regime.

New Tax Regime vs. Old Tax Regime

- The concept of Old and New Tax Regime is applicable for individuals or HUFs
- Under Old Tax Regime tax payer is eligible to claim various deductions and exemptions under the income tax act, 1961
- However, the same is not eligible in the new tax regime except few things
- The Budget 2023 proposes that from FY 2023-24, the new tax regime will be considered the default tax regime.
- It means if the tax payer fails to file the ITR on or before the due date specified u/s 139(1) then he must go with new tax regime only
- In order the claim the Old tax regime, the tax payer has to file the Income Tax Return on or before the due date specified under section 139(1) of the IT Act, 1961.

What is Form 10-IEA:

- As per Budget 2023, the new tax regime was announced as the default tax regime.
- Those taxpayers willing to choose the old tax regime must choose the option by navigating the required process.
- The filing of Form 10-IEA allows taxpayers to use their right to select between the new or old tax regime.
- Taxpayers who want to opt for the old tax regime must file Form 10-IEA.
- Collecting relevant information and mentioning the choice of tax regime and dates assists the government in maintaining transparency in Form 10-IEA.
- In addition to determining tax regime preference, the Form 10-IEA also intends to maintain precise and updated tax records.

- Form 10-IEA is useful for individuals or HUFs to continue utilising the old tax regime in the present FY 2023-24.
- It was presented by the Central Board of Direct Taxes (CBDT)
- Filing of Form 10-IEA is mandatory for the tax payer who is having business or profession during the previous year and opting for old tax regime

Note:

- Tax Payer wish to avail the old tax regime, having income from business or profession, twin conditions must be satisfied
  - Form 10-IEA must be filed before filing the IT Return
  - Such IT Return must be filed on or before the due date specified u/s 139(1) of IT Act, 1961
- For salaried individuals no need to file Form 10-IEA, directly they can opt either new or old regime in the income tax return form.

Purpose of Filing Form 10-IEA:

- Individuals with income sourced from profession / business must submit Form 10-IEA by adhering to the prescribed deadline under Section 139(1).
- They must do it to change their new tax regime to the old one.
- The corresponding choice determines the rules and regulations that would be applicable to the assessee.
- Filling out Form 10-IEA requires individuals to provide all the necessary information like PAN number, assessment year, name, and current status.
- These details can be used to accurately categorise and identify taxpayer information.

Amendments Reflected in Form-10IEA:

- Until FY 2022-23, the new tax regime was not announced as the default tax regime.
- So, the individuals had to file Form 10-IE to express their intent to select the new tax regime.
- However, beginning from the Financial Year 2023-24, the new tax regime was established as the default tax regime.
- It indicates that if the taxpayer doesn't declare the intent behind choosing the old tax regime, then they will be automatically taxed under the new regime.
- The revised procedure streamlines the process, enabling individuals without business or professional income (like salaried individuals) to directly specify their preference while filing a tax return by selecting the preferred option.

When to Submit Form 10-IEA:

- It is mandatory to submit Form 10-IEA online before the deadline prescribed for filing the income tax return (i.e., usually July 31st).
- The timely submission guarantees adherence to tax rules and allows the tax authorities to seamlessly process your tax-related information.
- Note that after filing Form 10-IEA, you will get an acknowledgement number.
- The acknowledgement number is important for tracking the status of Form 10-IEA and referencing it in future communication.
- An individual need to mention this reference number while filing an ITR mandatorily, otherwise the ITR can't be submitted.

Why is Form 10-IE discontinued:

- Before the introduction of Form 10-IEA, Form 10-IE was considered valid to choose the new tax regime.
- However, it has now been discontinued due to the adoption of the new tax regime as the default tax regime.
- The discontinuation of Form 10-IE allows the taxpayer to choose the old tax regime by filing Form 10-IEA.

Details to Fill in 10-IEA:

- On has to understand the details are to be filled out in the Form 10IEA

- Taxpayers should provide their full name exactly as per the one mentioned on the PAN card and other relevant official documents. The same is auto populates by default in the online form
- To choose the old tax regime, it is vital to mention the applicable assessment year. Note that the assessment year would follow the fiscal year under assessment. For example, if a person chooses the old tax regime in FY 2023-24, the applicable assessment year is AY 2024-25.
- Taxpayers should also mention whether they are discontinuing or re-entering the default tax regime. The corresponding decision influences the tax deductions, tax rates, and exemptions made for their income.
- It is mandatory to mention the dates for discontinuing a tax regime and entering into another one.
- It is necessary to confirm whether the individual has income under the head of "Profits and Gains of Business and Profession." It must be confirmed in 'yes/no'
- Whether the taxpayer has any unit in IFSC (International Financial Service Centre) as specified in sub-section (1A) of Section 80LA. If that answer is 'Yes,' the taxpayer should provide the details of the unit.
- A taxpayer also needs to mention his/her address, date of birth, type of business / profession (compulsory in case of business income), and declaration.

How to File Form 10-IEA:

Follow these steps for filing Form 10-IEA online:

- **Step 1:** Login to the income tax e-filing portal
- **Step 2:** On the dashboard, click 'e-File' > 'Income tax forms' > 'File Income Tax Forms'
- **Step 3:** Scroll down to select Form 10-IEA under the tab "Person with business / professional income". Alternatively, enter Form 10-IEA in the search box. Click on 'File now' button to proceed.
- **Step 4:** Select the Assessment Year for which you are filing the return. For e.g., If you are filing taxes for the income earned in FY 2023-24, then select AY 2024-25.
- **Step 5:** After selecting the AY, then click on continue, then the page displayed as 'Let's Get Started'.
- **Step 6:** Select "Yes" if you have Income under the head "Profits and gains from business or profession" during the assessment year.
- If you select "No" it will warn and say as "In case of "Non-business cases", option can be exercised with return of income. Notified Form does not allow for filing of the same in the non-business cases
- Select the "due date applicable for filing of return of income" and click on continue.
- It will show "Confirmation" message as like "Before proceeding for filing the form, please be sure that you are opting for the intended regime of taxation and you are filing the form within the due date applicable to you. The benefit of intended tax regime may not be allowed by the Department in case of the delay in filing the form. Once the form is validly filed, same cannot be withdrawn. Do you want to continue?"
- **Note:** Use "help document" by clicking on help document hyperlink for the help for selecting the applicable due date.
- **Step 7:** Click 'Yes' to confirm the selection of the regime.

Imp Note:

- Form-10 IEA is to be filed only for opting old tax regime
- Once Form-10 IEA is filed can't be withdrawn for the same AY

- **Step 8:** Form 10-IEA has 3 sections. Verify and Confirm each section. They are as follows:

i. Basic Information:

- In Basic Information section, your basic information will be pre-filled.
- If form is filing for the first time, then "opting out" (not opting new regime) option will be auto-selected and

- If system has valid form with opting out option (if previously filed), then re-entering option will be auto-selected.
- Click on 'Save' button.

ii. Additional Information:

- Fill the necessary details in Additional information section related to IFSC unit (if any) and click on 'Save'.

iii. Declaration and Verification:

- Verification section contains self-declaration it will be required to check the boxes and agree to the terms and conditions.
- Verify whether all the details are correct and save the information.
- Once done, click on 'Preview' to review Form 10-IEA.

- **Step 9:** After reviewing all the information, we can "edit" the same if required or 'Proceed' to e-verify'. You can e-verify either through:
  - ✓ Aadhaar OTP
  - ✓ Digital Signature Certificate (DSC)
  - ✓ Electronic Verification Code (EVC)
- **Step 10:** After verification Click on 'Yes' to submit the Form.
- **Step 11:** After successful e-Verification, a success message is displayed along with a Transaction ID and an Acknowledgement Receipt Number. Please keep a note of the Transaction ID and Acknowledgement number for future reference. You can also download the form and locate the acknowledgment number.

  Imp Note:
  - To download the filed form, go to 'e-File' → 'Income Tax Forms' → 'View Filed Forms'
  - Mention the Reference number of Form 10-IEA and date of filing of the form in the ITR Form before filing the same

Frequently Asked Questions

1. What happens if an individual doesn't submit the Form 10-IEA timely?
   - ✓ If an individual forgets to complete the submission of Form 10-IEA before or during the filing of the ITR, they will be unable to choose the old tax regime.
   - ✓ The delayed submission of the form or failure to submit the form means that the income tax department will compute tax as per the new tax regime.
2. Why is it vital to precisely mention the dates for opting out and choosing the new regime?
   - ✓ It is crucial to precisely specify the dates for choosing the new regime for clarity and to ensure conformity to prescribed timelines.
   - ✓ It is important to ensure that the dates are within the relevant financial year.
3. Is it allowed to file tax returns under a new tax regime if an individual has opted for the old tax regime?
   - ✓ Salaried individual having a flexibility to switch from one old to new regime as well as new to old regime while filing the IT Return for a respective Assessment Year accordingly.

Let us understand various Scenarios:

- Mr. Ram is an individual who is carrying retail business, during the FY 2023-24 he wish to opt for old tax regime.
  - Yes Mr. Ram can opt the old tax regime but he should File Form-10 IEA before filing of IT Return and Furnish the Reference Number in the ITR Form.
  - He has to continue the old tax regime in future years as long as he wishes to continue
  - In future if Mr. Ram, withdraws old tax regime and opts for new tax regime then again he has to file Form-10IEA saying "withdrawing old tax regime" (or) re-entering into new tax regime
  - Once he re-enters into new tax regime then Mr. Ram shall continue the New tax regime for his life time, and he can't opt for old tax regime again.

- Say, Mr. Ram is opting for new tax regime for the FY 2023-24, then
  - Yes, he can opt for the new tax regime
  - As long as he wishes to continue, he can continue the same
  - In future he has one chance to come back to old tax regime by filing form 10-IEA
  - Later he can re-enter into new tax regime
  - Once he re-enters new tax regime from old tax regime he can't come back again to the old tax regime
  - He shall continue with New Tax Regime only.

Conclusion:

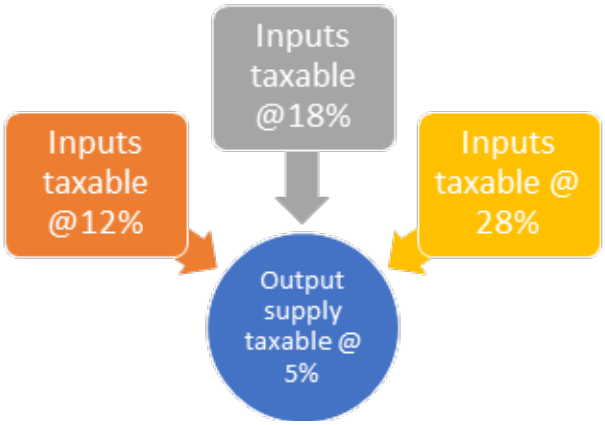
Selecting Old Tax Regime or New Tax Regime is based on the tax payer choice, and tax payer can choose the same whichever is more beneficial to them. Opting Old Tax Regime is a one-time opportunity given to the Individual and HUF who is carrying business or profession. In case of salaried individuals, they have an opportunity to switch over from "old to new" and "new to old" year on year basis as per their choice.

Refund under Inverted Duty Structure

Rohit Vaswani
Cost & Management Accountant

GST, being value added tax system, imposes tax at every stage of value addition and at every stage there might be distinct or new commodities that may be subject to tax at different rates under GST. One of the primary reasons behind the introduction of GST was to eliminate the cascading or "tax on tax" effect prevalent in earlier indirect tax regimes. As we have a variety of rates of taxes under GST, mainly 0%, 5%, 12%, 18% and 28%, implemented in India and lawmakers envisaged a situation where inwards supplies are taxed at a higher rate in comparison with the rate of tax on output supplies. A classic example of the above situation is the rate of tax on synthetic or artificial filament yarns being taxed @12% whereas fabric made out of these yarns is being taxed @ 5%. In a country like India where multiple tax rates are implemented, it is very difficult to achieve the real benefit of the implementation of GST by removing the cascading effect. In fact, in many cases, supplies that are exempt from GST become more costly to consumers rather than supplies taxable at a lower rate of tax.

Inverted Duty Structure is a situation where the supplier pays a higher rate of tax on its input supplies and pays a comparatively lower rate of tax on its output supplies. Consequently, a large amount of credit of tax paid on input supplies is accumulated. This would result in a cascading effect of taxes if loaded to product cost with a consequent increase in the cost to consumer which is against the basic principle of GST being a consumption tax. <<<<Pls check with the author how it will result in cascading of taxes, it would result in accumulation of input tax credit, >>>>



Section 54 (3) of the CGST Act, 2017 envisages a situation where the credit has accumulated on account of the rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council. For ease of understanding section 54 (3) of the CGST Act, 2017 is reproduced below:

54 (3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

Provided that no refund of unutilised input tax credit shall be allowed in cases other than—

(i) zero rated supplies made without payment of tax;

(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated

or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

Although a plain reading of sub-section (3) of section 54 allows a refund of the un utilised input tax credit and seems to have very wide applicability, but there are three proviso's to this sub-section and especially the first proviso narrows down the section applicability only to the extent of two scenarios as mentioned in that proviso. Case (ii) mentioned in the first proviso relates to refund in a case that is popularly known as an inverted duty structure.

There are three types of inward supplies defined under the GST law 'input', 'input services' and 'capital goods', but the lawmakers have chosen only 'inputs' for comparison of the rate of tax with output supplies. In place of 'inputs' if the 'inward supplies' word could have been used then the situation would have been different altogether.

Rule 89(5) deals with the refund in such situations and in the case of a refund on account of an inverted duty structure, the refund of the input tax credit shall be granted as per the following formula (as initially introduced):

(5). In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula:-

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services.

Explanation- For the purposes of this sub-rule, the expressions –

(a) "Net ITC" shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; and

(b) "Adjusted Total turnover" shall have the same meaning as assigned to it in sub-rule (4).

Explanation to Rule 89(5) of the CGST Rules, 2017 restricts the benefit of such refund only to the extent of input tax credit availed on inputs being the 'goods' procured by the supplier and that too excluding capital goods. This means that the refund of input tax paid on 'services' cannot be availed.

Hon'ble Gujarat High Court had the occasion for judicial scrutiny of the above provisions in the case of VKC Footsteps India Pvt. Ltd. vs. UOI -2020 (7) TMI 726 and held that the above Explanation is ultra vires to the provisions of the Act as the CGST Act categorically provides that refund of 'unutilized Input tax credit' and Rules cannot go to disallow a benefit which is granted by the parent legislation.

Contrary to the above decision of the Hon'ble Gujarat High Court, the Hon'ble Madras High Court passed an order in favour of revenue in the case of TVL. Transtonnelstroy Afcons Joint Venture vs. UOI- 2020 (9) TMI 931. Hon'ble Madras High Court arrived at the following conclusion:

(1) Section 54(3)(ii) does not infringe Article 14.

(2) Refund is a statutory right and the extension of the benefit of refund only to the unutilised credit that accumulates on account of the rate of tax on input goods being higher than the rate of tax on output supplies by excluding unutilised input tax credit that accumulated on account of input services is a valid classification and a valid exercise of legislative power.

(3) Therefore, there is no necessity to adopt the interpretive device of reading down so as to save the constitutionality of Section 54(3)(ii).

(4) Section 54(3)(ii) curtails a refund claim to the unutilised credit that accumulates only on account of the rate of tax on input goods being

higher than the rate of tax on output supplies. In other words, it qualifies and curtails not only the class of registered persons who are entitled to refund but also the imposes a source-based restriction on refund entitlement and, consequently, the quantum thereof.

(5) As a corollary, Rule 89(5) of the CGST Rules, as amended, is in conformity with Section 54(3)(ii).

Consequently, it is not necessary to interpret Rule 89(5) and, in particular, the definition of Net ITC therein so as to include the words input services.

Hon'ble Supreme Court in the case of Union Of India & Ors. Versus VKC Footsteps India Pvt Ltd- 2021 (9) TMI 626 - SC, upheld the judgement of Madras High Court in the case of TVL. Transtonnelstroy Afcons Joint Venture vs. UOI (supra) and held that having considered this batch of appeals, and for the reasons which have been adduced in this judgment, we affirm the view of the Madras High Court and disapprove of the view of the Gujarat High Court.

So far as the issue related to the calculation of Net ITC for the purpose of quantification of refund amount as per rule 89(5) is concerned, that controversy seems to have been settled to an extent by the Hon'ble SC and the Net ITC shall include ITC related to 'Inputs' being goods other than capital goods and excluding 'input services' only.

However, Honourable SC in the above case of VKC Footsteps India Pvt Ltd (supra) has also pointed out about the anomalies of the formula in the calculation of refund under the inverted duty structure in para 104 to 111 of the said judgement. Para 111 of the said judgement is being reproduced below for reference and discussion:

111 The above judicial precedents indicate that in the field of taxation, this Court has only intervened to read down or interpret a formula if the formula leads to absurd results or is unworkable. In the present case however, the formula is not ambiguous in nature or unworkable, nor is it opposed to the intent of the legislature in granting limited refund on accumulation of unutilised ITC. It is merely the case that the practical effect of the formula might result in certain inequities. The reading down of the formula as proposed by Mr Natarjan and Mr Sridharan by prescribing an order of utilisation would take this Court down the path of recrafting the formula and walk into the shoes of the executive or the legislature, which is impermissible. Accordingly, we shall refrain from replacing the wisdom of the legislature or its delegate with our own in such a case. ***However, given the anomalies pointed out by the assessees, we strongly urge the GST Council to reconsider the formula and take a policy decision regarding the same****.*

As per the above observation of the Hon'ble Supreme Court, the formula as prescribed under rule 89(5) of the CGST Rules, 2017 was further amended after the decision in the 47th GST Council meeting vide Notification No. 14/2022–Central Tax dated 05-07-2022, after the amendment the formula reads as under:

Maximum Refund Amount *= {(Turnover of inverted rated supply of goods and services) × Net ITC ÷ Adjusted Total Turnover} -* ***{tax payable on such inverted rated supply of goods and services × (Net ITC÷ ITC availed on inputs and input services)}****.*

After this amendment reduction of output tax payable on inverted duty goods from proportionate Net ITC to arrive at the amount of refund, is also to be proportionate in the ratio of Net ITC and ITC including credit on input services. It was amended to give marginal relief on account of credit availed on input services by the registered person which is not available for refund under an inverted duty structure but the same can be utilized for payment of output tax.

Another controversy has arisen due to Circular No.135/05/2020 – GST dated 31st March 2020 where the CBIC has clarified that the benefit of refund under an inverted duty structure is not available where the input and the output supplies are the same. Relevant para 3.2 of the above circular is reproduced below:

3.2 It may be noted that refund of accumulated ITC in terms clause (ii) of sub-section (3) of section 54 of the CGST Act is available where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. It is noteworthy that, the

input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered under the provisions of clause (ii) of sub-section (3) of section 54 of the CGST Act. ***It is hereby clarified that refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the CGST Act would not be applicable in cases where the input and the output supplies are the same****.*

There are many instances of reduction of the rate of tax under GST or where a concessional rate of tax has been prescribed for supplies to certain specified recipients for example Concessional GST rate on scientific and technical equipment supplied to publicly funded research institutions has been prescribed by Notification No. 45/2017 - Dated: 14-11-2017 - CGST (Rate). These types of rate variations accumulate credit with the traders and there is no alternate mechanism provided for the same.

The same issue came for consideration before the Hon'ble Gauhati High Court in the case of BMG Informatics Pvt. Ltd., Vs The Union Of India - 2021 (9) TMI 472 dated 2nd September 2021. The Hon'ble Gauhati High Court held as below:

28. Consequently, in view of the clear unambiguous provisions of Section 54(3) (ii) providing that a refund of the unutilized input tax credit would be available in the event the rate of tax on the input supplies is higher than the rate of tax on output supplies, ***we are of the view that the provisions of paragraph 3.2 of the circular No.135/05/2020-GST dated 31.03.2020 providing that even though different tax rate may be attracted at different point of time, but the refund of the accumulated unutilized tax credit will not be available under Section 54(3)(ii) of the CGST Act of 2017 in cases where the input and output supplies are same, would have to be ignored****.*

33. However, we have taken note of that the circular No.135/05/2020-GST dated 31.03.2020 was issued in exercise of the powers under Section 168(1) of the CGST Act of 2017. As already noted, Section 168(1) of the CGST Act of 2017 pertains to a situation where the Central Board of Indirect Tax and Customs considers it necessary and expedient to do so for the purpose of uniformity in implementing the CGST Act of 2017. In other words, the provisions of Section 168(1) can be invoked to bring in uniformity in the implementation of the CGST Act of 2017. ***In the instant case, when the provisions of Section 54(3)(ii) of the CGST Act of 2017 are unambiguous and explicitly clear in nature, there is no requirement of bringing in any uniformity in the implementation of the Act and the provisions of Section 54(3)(ii) would have to be applied in the manner it is provided in the Act itself****.*

The above condition was relaxed by Circular No. 173/05/2022-GST dated 6th July 2022 and the relevant para of Circular No.135/05/2020 – GST dated 31st March 2020 was amended to give relief to the cases where duty inversion was due to the concessional rate notifications. Relevant para 4 of the Circular No. 173/05/2022-GST dated 6th July, 2022 is being reproduced below for reference and discussion:

4. Therefore, it is clarified that in such cases, ***refund of accumulated input tax credit on account of inverted structure as per clause (ii) of sub-section (3) of section 54 of the CGST Act, 2017 would be allowed in cases where accumulation of input tax credit is on account of rate of tax on outward supply being less than the rate of tax on inputs (same goods) at the same point of time, as per some concessional notification issued*** *by the Government providing for lower rate of tax for some specified supplies subject to fulfilment of other conditions.*

Further, the concessional rate notification No. 45/2017-Central Tax (Rate) dated 14th November 2017 was also withdrawn with effect from 18th July 2022 which was giving a Concessional GST rate of 2.5% on scientific and technical equipment supplied to publicly funded research institutions.

The concept of refund under the inverted duty structure is contentious, complicated to implement. This was also accepted by the Hon'ble Finance Minister in her budget speech 2021 and the relevant para 176 of the budget speech 2021 is reproduced below:

176. The GST Council has painstakingly thrashed out thorny issues. As Chairperson of the Council, ***I want to assure the House that we shall take every possible***

measure to smoothen the GST further, and remove anomalies such as the inverted duty structure.

In the 45th GST Council meeting held on 17th September 2021 following decision was taken as per the press release dated 17.09.2021, which is worth considering to understand the complexity of the issue related to the inverted duty structure:

"Council decides to set up 2 GoMs to examine issue of correction of inverted duty structure for major sectors *and for using technology to further improve compliance, including monitoring."*

From the above discussion, it's clear that controversies relating to inverted duty structure are not going to end soon and any efforts done to mitigate the issues related to inverted duty structure may further increase the confusion and complexities unless a single GST rate is worked out for most of the goods and services barring very minimal exceptions and now after having experience of revenue collections for more than 6 years that seems to be not very difficult.

PRESS RELEASE

INDIRECT TAX

GST revenue collection for April 2024 highest ever at ₹ 2.10 lakh crore

GST collections breach landmark milestone of ₹ 2 lakh crore Gross Revenue Records 12.4% y-o-y growth

Net Revenue (after refunds) stood at ₹ 1.92 lakh crore; 15.5% y-o-y growth

Posted On: 01 MAY 2024 11:55AM by PIB Delhi

The Gross Goods and Services Tax (GST) collections hit a record high in April 2024 at ₹2.10 lakh crore. This represents a significant 12.4% year-on-year growth, driven by a strong increase in domestic transactions (up 13.4%) and imports (up 8.3%). After accounting for refunds, the net GST revenue for April 2024 stands at ₹1.92 lakh crore, reflecting an impressive 15.5% growth compared to the same period last year.

Positive Performance Across Components:

Breakdown of April 2024 Collections:

- Central Goods and Services Tax (CGST): ₹43,846 crore;
- State Goods and Services Tax (SGST): ₹53,538 crore;
- Integrated Goods and Services Tax (IGST): ₹99,623 crore, including ₹37,826 crore collected on imported goods;
- Cess: ₹13,260 crore, including ₹1,008 crore collected on imported goods.

Inter-Governmental Settlement: In the month of April, 2024, the central government settled ₹50,307 crore to CGST and ₹41,600 crore to SGST from the IGST collected. This translates to a total revenue of ₹94,153 crore for CGST and ₹95,138 crore for SGST for April, 2024 after regular settlement.

The chart below shows trends in monthly gross GST revenues during the current year. Table-1 shows the state-wise figures of GST collected in each State during the month of April, 2024 as compared to April, 2023. Table-2 shows the state-wise figures of post settlement GST revenue of each State for the month of April, 2024.

Chart: Trends in GST Collection

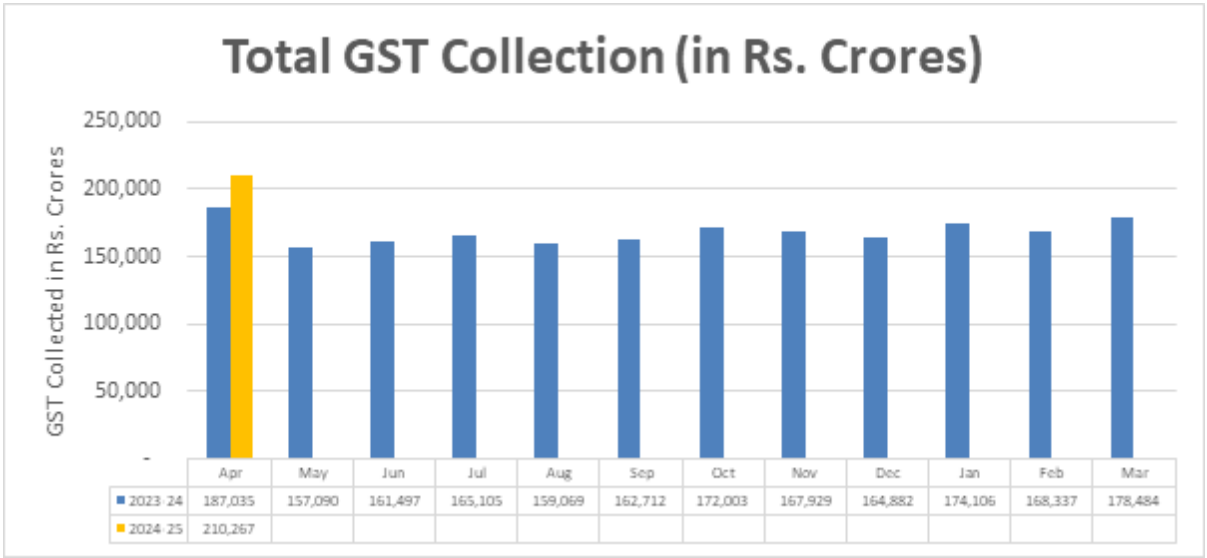


Table 1: State-wise growth of GST Revenues during April, 2024[1]

State/UT	Apr-23	Apr-24	Growth (%)
Jammu and Kashmir	803	789	-2%
Himachal Pradesh	957	1,015	6%
Punjab	2,316	2,796	21%
Chandigarh	255	313	23%
Uttarakhand	2,148	2,239	4%
Haryana	10,035	12,168	21%
Delhi	6,320	7,772	23%
Rajasthan	4,785	5,558	16%
Uttar Pradesh	10,320	12,290	19%
Bihar	1,625	1,992	23%
Sikkim	426	403	-5%
Arunachal Pradesh	238	200	-16%
Nagaland	88	86	-3%
Manipur	91	104	15%
Mizoram	71	108	52%
Tripura	133	161	20%
Meghalaya	239	234	-2%
Assam	1,513	1,895	25%
West Bengal	6,447	7,293	13%
Jharkhand	3,701	3,829	3%
Odisha	5,036	5,902	17%
Chhattisgarh	3,508	4,001	14%
Madhya Pradesh	4,267	4,728	11%
Gujarat	11,721	13,301	13%
Dadra and Nagar Haveli and Daman & Diu	399	447	12%
Maharashtra	33,196	37,671	13%
Karnataka	14,593	15,978	9%
Goa	620	765	23%
Lakshadweep	3	1	-57%
Kerala	3,010	3,272	9%
Tamil Nadu	11,559	12,210	6%
Puducherry	218	247	13%

State/UT	Apr-23	Apr-24	Growth (%)
Andaman and Nicobar Islands	92	65	-30%
Telangana	5,622	6,236	11%
Andhra Pradesh	4,329	4,850	12%
Ladakh	68	70	3%
Other Territory	220	225	2%
Center Jurisdiction	187	221	18%
Grand Total	1,51,162	1,71,433	13%

Table-2: SGST & SGST portion of IGST settled to States/UTs April (₹. in crore)

	Pre-Settlement SGST			Post-Settlement SGST[2]		
State/UT	Apr-23	Apr-24	Growth	Apr-23	Apr-24	Growth
Jammu and Kashmir	394	362	-8%	918	953	4%
Himachal Pradesh	301	303	1%	622	666	7%
Punjab	860	999	16%	2,090	2,216	6%
Chandigarh	63	75	20%	214	227	6%
Uttarakhand	554	636	15%	856	917	7%
Haryana	1,871	2,172	16%	3,442	3,865	12%
Delhi	1,638	2,027	24%	3,313	4,093	24%
Rajasthan	1,741	1,889	9%	3,896	3,967	2%
Uttar Pradesh	3,476	4,121	19%	7,616	8,494	12%
Bihar	796	951	19%	2,345	2,688	15%
Sikkim	110	69	-37%	170	149	-12%
Arunachal Pradesh	122	101	-17%	252	234	-7%
Nagaland	36	41	14%	107	111	4%
Manipur	50	53	6%	164	133	-19%
Mizoram	41	59	46%	108	132	22%
Tripura	70	80	14%	164	198	21%
Meghalaya	69	76	9%	162	190	17%
Assam	608	735	21%	1,421	1,570	10%
West Bengal	2,416	2,640	9%	3,987	4,434	11%
Jharkhand	952	934	-2%	1,202	1,386	15%
Odisha	1,660	2,082	25%	2,359	2,996	27%
Chhattisgarh	880	929	6%	1,372	1,491	9%

State/UT	Pre-Settlement SGST			Post-Settlement SGST[2]		
	Apr-23	Apr-24	Growth	Apr-23	Apr-24	Growth
Madhya Pradesh	1,287	1,520	18%	2,865	3,713	30%
Gujarat	4,065	4,538	12%	6,499	7,077	9%
Dadra and Nagar Haveli and Daman and Diu	62	75	22%	122	102	-16%
Maharashtra	10,392	11,729	13%	15,298	16,959	11%
Karnataka	4,298	4,715	10%	7,391	8,077	9%
Goa	237	283	19%	401	445	11%
Lakshadweep	1	0	-79%	18	5	-73%
Kerala	1,366	1,456	7%	2,986	3,050	2%
Tamil Nadu	3,682	4,066	10%	5,878	6,660	13%
Puducherry	42	54	28%	108	129	19%
Andaman and Nicobar Islands	46	32	-32%	78	88	13%
Telangana	1,823	2,063	13%	3,714	4,036	9%
Andhra Pradesh	1,348	1,621	20%	3,093	3,552	15%
Ladakh	34	36	7%	55	61	12%
Other Territory	22	16	-26%	86	77	-10%
Grand Total	47,412	53,538	13%	85,371	95,138	11%

[1] Does not include GST on import of goods

[2] Post-Settlement GST is cumulative of the GST revenues of the States/UTs and the SGST portion of the IGST settled to the States/UTs

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DIRECT TAX

Net Direct Tax collections (provisional) for Financial Year (FY) 2023-24 exceed Union Budget Estimates by ₹. 1.35 lakh crore i.e. by 7.40%

Gross Direct Tax collections (provisional) for FY 2023-24 stand at ₹. 23.37 lakh crore registering a growth of 18.48% Year-on-Year (Y-o-Y)

Net Direct Tax collections (provisional) for the FY 2023-24 exceed Revised Estimates by ₹. 13,000 crore

Net Direct Tax collections (provisional) for the FY 2023-24 stand at ₹. 19.58 lakh crore marking a growth of 17.70% Y-o-Y

Refunds aggregating to ₹. 3.79 lakh crore issued in FY 2023-24

Posted On: 21 APR 2024 1:01PM by PIB Delhi

The provisional figures of Direct Tax collections for the Financial Year (FY) 2023-24 show that **Net collections are at ₹. 19.58 lakh crore, compared to ₹. 16.64 lakh** crore in the preceding Financial Year i.e. FY 2022-23, representing an **increase of 17.70%**.

The Budget Estimates (BE) for Direct Tax revenue in the Union Budget for FY 2023- 24 were fixed at ₹. 18.23 lakh crore which were revised and the Revised Estimates (RE) were fixed at ₹. 19.45 lakh crore. The provisional Direct Tax collections (net of the refunds) have exceeded the BE by **7.40%** and RE by **0.67%**.

The **Gross collection (provisional)** of Direct Taxes (before adjusting for refunds) for the FY 2023-24 stands at ₹. 23.37 lakh crore showing a growth of 18.48% over the gross collection of ₹. 19.72 lakh crore in FY **2022-23**.

The Gross Corporate Tax collection (provisional) in FY 2023-24 is at ₹. 11.32 lakh crore and has shown a growth of 13.06% over the gross corporate tax collection of ₹. 10 lakh crore of the preceding year. The Net Corporate Tax collection (provisional) in FY 2023- 24 is at ₹. 9.11 lakh crore and has shown a growth of 10.26% over the net corporate tax collection of ₹. 8.26 lakh crore of the preceding year.

The Gross Personal Income Tax collection (including STT) (provisional) in FY 2023- 24 is at ₹. 12.01 lakh crore and has shown a growth of 24.26% over the Gross Personal Income Tax collection (including STT) of ₹. 9.67 lakh crore of the preceding year. The Net Personal Income Tax collection (including STT) (provisional) in FY 2023-24 is at ₹. 10.44 lakh crore and has shown a growth of 25.23% over the Net Personal Income Tax collection (including STT) of ₹. 8.33 lakh crore of the preceding year.

Refunds of ₹. 3.79 lakh crore have been issued in the FY 2023-24 showing an increase of 22.74% over the refunds of ₹. 3.09 lakh crore issued in FY 2022-23.

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CBDT extends due date for filing Form 10A/10AB upto 30th June, 2024

Posted On: 25 APR 2024 5:21PM by PIB Delhi

The Central Board of Direct Taxes (CBDT), has issued Circular No. ---07/2024 dated 25.04.2024 further extending the due date for filing Form 10A/ Form 10AB under the Income-tax Act, 1961 (the 'Act') upto 30th June, 2024.

CBDT had earlier extended the due date for filing Form 10A/ Form 10AB by trusts, institutions and funds multiple times to mitigate genuine hardships of the taxpayers. The last such extension was made by Circular No. 06/2023 extending the date to 30.09.2023.

Considering the representations received by CBDT requesting for further extension of due date for filing of such Forms beyond the last extended date of 30.09.2023, and with a view to avoid genuine hardships to taxpayers, CBDT has extended the due date of filing Form 10A/ Form 10AB upto 30th June, 2024, in respect of certain provisions of section 10(23C)/ section 12A/ section 80G/ and section 35 of the Act.

CBDT further clarifies that, if any such existing trust, institution or fund had failed to file Form 10A for AY 2022-23 within the extended due date, and subsequently, applied for provisional registration as a new entity and received Form 10AC, can also now avail this opportunity to surrender the said Form 10AC and apply for registration for AY 2022-23 as an existing trust, institution or fund, in Form 10A till 30th June 2024.

It is also clarified that those trusts, institutions or funds whose applications for re-registration were rejected solely on the grounds of late filing or filing under wrong section code, may also submit fresh application in Form 10AB within the aforesaid extended deadline of 30th June, 2024.

The applications as per Form 10A/ Form 10AB shall be filed electronically through the e-filing portal of Income Tax Department. The Circular No. 07/2024 is available on **www.incometaxindia.gov.in**

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NOTIFICATIONS

INDIRECT TAX

CENTRAL EXCISE (TARIFF)

Notification No. 12/2024-Central Excise

New Delhi, the 15th April, 2024

G.S.R.....(E).–In exercise of the powers conferred by section 5A of the Central Excise Act, 1944 (1 of 1944) read with section 147 of the Finance Act, 2002 (20 of 2002), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 18/2022-Central Excise, dated the 19th July, 2022, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 584 (E), dated the 19th July, 2022, namely:-

In the said notification, in the Table, -

(i) against S. No. 1, for the entry in column (4), the entry "₹. 9600 per tonne" shall be substituted;

2. This notification shall come into force on the 16th day of April, 2024.

[F. No. 354/15/2022-TRU]

Notification No. 13/2024-Central Excise

New Delhi, the 30th April, 2024

G.S.R.....(E).–In exercise of the powers conferred by section 5A of the Central Excise Act, 1944 (1 of 1944) read with section 147 of the Finance Act, 2002 (20 of 2002), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 18/2022-Central Excise, dated the 19th July, 2022, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 584 (E), dated the 19th July, 2022, namely:-

In the said notification, in the Table, -

(i) against S. No. 1, for the entry in column (4), the entry "₹. 8400 per tonne" shall be substituted;

2. This notification shall come into force on the 1st day of May, 2024.

CIRCULARS

DIRECT TAX

Circular No.6 /2024

F.No. 275/4/2024-IT(B)

New Delhi, 23rd April, 2024

Sub: Partial modification of Circular No. 3 of 2023 dated 28.03.2023 regarding consequences of PAN becoming inoperative as per rule 114AAA of the Income tax Rules, 1962- reg.

Circular No. 3 of 2023 dated 28.03.2023 issued by the Board details the consequences of PAN becoming inoperative as under:

> *"Consequent to the notification substituting rule 114 AAA of the Income-tax Rules, 1962 (the Rules) vide notification no. 15 of 2023 dated 28th March, 2023, it is hereby clarified that a person who has failed to intimate the Aadhaar number in accordance with section 139AAA of the Income-tax Act, 1961 (the Act) read with rule 114AAA shall face the following consequences as a result of his PAN becoming inoperative:*
>
> (i) refund of any amount of tax or part thereof, due under the provisions of the Act shall not be made to him;
>
> (ii) interest shall not be payable to him on such refund for the period, beginning with the date specified under sub-rule (4) of rule 114AAA and ending with the date on which it becomes operative;
>
> (iii) where tax is deductible under Chapter XV/1-B in case of such person, such tax shall be deducted at higher rate, in accordance with the provisions of section 206AA;
>
> (iv) where tax is collectible at source under Chapter XVII-BB in case of such person, such tax shall be collected at higher rate, in accordance with the provisions of section 206CC."

2. As per sub-rule (4) of rule 114AAA of the Income-tax Rules, 1962, the above consequences shall have effect from the date specified by the Board. The Board vide Circular No. 03 of 2023 dated 28th March, 2023 had specified that the consequences shall take effect from 1st July, 2023 and continue till the PAN becomes operative.

3. Several grievances have been received from the taxpayers that they are in receipt of notices intimating that they have committed default of 'short deduction/collection' of TDS/TCS while carrying out the transactions where the PANs of the deductees/collectees were inoperative. In such cases, as the deduction/collection has not been made at a higher rate, demands have been raised by the Department against the deductors/collectors while processing of TDS/TCS statements under section 200A or under section 206CB of the Act, as the case maybe.

4. With a view to redressing the grievances faced by such deductors/collectors, the Board, in partial modification and in continuation of the Circular No. 3 of 2023, hereby specifies that for the transactions entered into upto 31.03.2024 and in cases where the PAN becomes operative (as a result of linkage with Aadhaar) on or before 31.05.2024, there shall be no liability on the deductor/collector to deduct/collect the tax under section 206AA/206CC, as the case maybe, and the deduction/collection as mandated in other provisions of Chapter XVII-B or Chapter XVII-BB of the Act, shall be applicable.

Circular No. 7/2024

F. No. 173/25/2024-ITA-I

New Delhi, Dated 25th April, 2024

Sub: Extension of due date for filing of Form No. 10A/10AB under the Income-tax Act, 1961- reg.

On consideration of difficulties reported by the taxpayers and other stakeholders in the electronic filing of Form No. 10A/10AB, the Central Board of Direct Taxes (the Board) in exercise of its powers under section 119 of the Income-tax Act, 1961 (the Act) extended the due date for filing Form No. 10A to 31.08.2021 by Circular No. 12/2021 dated 25.06.2021, to 31.03.2022 by Circular No. 16/2021 dated 29.08.2021, to 25.11.2022 by Circular No. 22/2022 dated 01.11.2022 and further to 30.09.2023 by Circular No. 6/2023 dated 24.05.2023, and extended the due date for filing Form No. 10AB to 30.09.2022 by Circular No. 8/2022 dated 31.03.2022 and further to 30.09.2023 by Circular No. 6/2023 dated 24.05.2023.

2. Representations have been received in the Board with a request to condone the delay in filing Form No. l0A/l0AB, as the same could not be filed in such cases within the last extended date, i.e., 30.09.2023.

3. On consideration of the matter, with a view to avoid and mitigate genuine hardship in such cases, the Board, in exercise of the powers conferred under section 119 of the Act, hereby extends the due date of making an application/ intimation electronically in -

   (i) Form No. l0A, in case of an application under clause (i) of the first proviso to clause (23C) of section 10 or under sub-clause (i) of clause (ac) of sub-section (1) of section 12A or under clause (i) of the first proviso to sub-section (5) of section 80G or in case of an intimation under fifth proviso of sub section (1) of section 35 of the Act, till 30.06.2024;

   (ii) Form No. I0AB, in case of an application under clause (iii) of the first proviso to clause (23C) of section 10 or under sub-clause (iii) of clause (ac) of sub-section (1) of section 12A or under clause (iii) of the first proviso to sub-section (5) of section 80G of the Act, till 30.06.2024.

4. It may be also noted that extension of due date as mentioned in paragraph 3(ii) shall also apply in case of all pending applications under clause (iii) of the first proviso to clause (23C) of section 10 or sub-clause (iii) of clause (ac) of sub-section (1) of section 12A or under clause (iii) of the first proviso to sub-section (5) of section 80G of the Act, as the case may be. Hence, in cases where any trust, institution or fund has already made an application in Form No.l0AB under the said provisions on or before the issuance of this Circular, and where the Principal Commissioner or Commissioner has not passed an order before the issuance of this Circular, the pending application in Form No. I0AB may be treated as a valid application.

4.1 Further, in cases where any trust, institution or fund has already made an application in Form No. I0AB, and where the Principal Commissioner or Commissioner has passed an order rejecting such application, on or before the issuance of this Circular, solely on account of the fact that the application was furnished after the due date or that the application has been furnished under the wrong section code, it may furnish a fresh application in Form No. l0AB within the extended time provided in paragraph 3(ii) i.e. 30.06.2024.

5. It is also clarified that if any existing trust, institution or fund who had failed to file Form No. l0A for AY 2022-23 within the due date as extended by the CBDT circular no. 6/2023 dated 24.05.2023 and subsequently, applied for provisional registration as a new trust, institution or fund and has received Form No. I0AC, it can avail the option to surrender the said Form No. I0AC and apply for registration for AY 2022-23 as an existing trust, institution or fund in Form No. l0A within the extended time provided in paragraph 3(i) i.e. 30.06.2024.

JUDGEMENT

INDIRECT TAX

Madras HC condoned delay in filing appeal as right to prefer appeal can't be deprived on account of delay occurred beyond control

Facts of the case - Tvl. GT India (P.) Ltd. v. State Tax Officer - [2024] (Madras)

The petitioner was a registered taxpayer under GST. The department issued a show cause notice to the petitioner and it filed reply on the very next day. The department passed the assessment order on the same day. The petitioner came to know about the said impugned order only when the department issued recovery notice.

Thereafter, the petitioner immediately took steps to file appeal but with a delay. The petitioner filed writ petition to call for the records and to quash the order but now it would suffice if the Court passed an order permitting the petitioner to file a statutory appeal.

Decision of the case :

The Honorable High Court noted that the petitioner had filed reply on the very next day since the notice was issued on 1-6-2023, and the petitioner was under an impression that the order would be passed after the time limit fixed for filing the reply. The Court also noted that the reasons assigned by petitioner for delay in filing appeal were reasonable. Therefore, the Court held that the delay in filing appeal was liable to be condoned.

Limitation period provided under Section 73 would be separately applicable for every assessment year: HC

Facts of the case - Titan Company Ltd. v. Joint Commissioner of GST & Central Excise - [2024] (Madras)

The petitioner received bunching of Show Cause Notices (SCNs) for GST dues spanning five assessment years. It filed writ petition against the same contending that it violated Section 73 of CGST Act, 2017's three-year limitation period for each year.

Decision of the case :

- The Honorable High Court noted that Section 73(10) of the Act specifically provides a time limit of three years from the due date for furnishing of annual return for the financial year to which the tax due relates to. In the present case, notice was issued under section 73 of the Act for determination of the tax and therefore, the limitation period of three years as prescribed under section 73(10) would be applicable
- Moreover, the time limit of three years would be separately applicable for every assessment year and it would vary from one assessment year to another. It is not that it would be carried over or that the limitation would be continuing in nature and the same can be clubbed. Therefore, the Court held that issuing bunching of show cause notices would be against the spirit of provisions of Section 73 of the Act and the same was liable to be quashed.

Penalty imposed on assessee for transporting goods purchased from supplier who was set up for bogus ITC to be set aside: HC

Facts of the case - Fairdeal Metals Ltd. v. Assistant Commissioner of Revenue, State Tax, Bureau of Investigation (NB) - [2024] (Calcutta)

The petitioner was engaged in business of trading of goods. The department issued show cause notice to petitioner and mentioned that there was a need for physical examination of the goods and other verification

of the documents produced before the proper officer. The notice further mentioned that the supplier from whom the petitioner procured the goods was found to have filed returns in GSTR-3B for the month of October and November, 2023 but on verification certain discrepancies were noticed.

Thereafter, the penalty was calculated and the petitioner was directed to show cause as to why the proposed tax and penalty should not be payable failing which further proceeding would be initiated. The petitioner filed writ petition and contended that there was no allegation against the petitioner but the entire allegation had been made against the supplier from whom the petitioner procured the goods. It was also submitted that the goods that were being transported did not have the coverage as per their GST registration and the supplier had deposited the input tax before issuance of show cause notice.

Decision of the case :

The Honorable High Court noted that the supplier was registered by the registered authority in Assam. Had there been any deficiency on the part of the supplier in production of relevant documents, registration ought not to have been issued. After registration has been issued and tax paid by the supplier, the allegation made against the supplier did not stand. Since the petitioner was no way connected with any of the allegations that had been levelled against supplier, it could not be made liable to pay penalty. Therefore, the Court held that the order of detention and the subsequent order imposing penalty were liable to be set aside and quashed.

Requirement of GST certificate can't be made mandatory in tender if turnover is below threshold limit: HC

Facts of the case - Nazimuddin Ahmed v. Principal Secretary - [2024] (Gauhati)

In the present case, the petitioner's bid for settlement of a market was rejected by BTC Authorities for not enclosing GST clearance certificate. The petitioner contended that Tender Notice had indicated that condition regarding submission of GST clearance certificate was optional and it was not required to be registered under CGST Act, 2017 since, its annual aggregate turnover in a Financial Year did not exceed ₹. 20,00,000.

Decision of the case :

The Honorable High Court noted that the notice inviting tender provided that GST clearance certificate would have to be annexed to bid documents, if necessary. Further, there was nothing to show that petitioner's annual aggregate turnover in a financial year was above twenty lakh rupees. Therefore, it was not necessary for petitioner to include GST clearance certificate in bid/quotation. Thus, the Court held that the reason for disqualifying petitioner's bid was not sustainable and authorities shall accordingly make a fresh selection of the successful tenderer.

HC set aside order demanding tax on post-supply volume discount being not includible in transaction value

Facts of the case - Supreme Paradise v. Assistant Commissioner - [2024] (Madras)

The petitioner was engaged in the retail sale of mobile phones. The GST Authorities had issued a notice to the petitioner demanding a tax on the discount o?ered by the supplier. The authorities argued that the discount could be allowed only in cases specified in Section 15(3)(a) and (b) of the CGST Act, 2017.

The petitioner challenged the order on the ground that the transactional value should be the value on which GST was levied and paid on the entire invoice amount, which included volume discount. The petitioner further argued that the discount was not deducted for GST levy purposes and that the invoice value (without deduction of the volume discount) including GST was paid to the vendor supplier. Hence, the petitioner did not need to pay further tax on the volume discount amount.

Decision of the case :

- The Honorable High Court noted that a further sale or supply of goods or services by the recipient of such goods or services at a discounted price cannot form part of "transaction value" of such recipient/ seller, unless such discount was on account of

subsidy for such supply given by a 3rd party and was disguised as a discount. A discount linked to subsidy alone can form part of "transaction value".

- The court also noted that the discount o?ered to the petitioner and the discounted price at which the petitioner e?ected further sale to its customers were two independent transactions and there was no scope for intermingling them for demanding tax from the petitioner. The Court, therefore, quashed the impugned orders and remitted the case back to the respondent authority to pass order on merits.

DIRECT TAX

Time-limit u/s 149(1)(b) is for issuing notice after recording reasons & not for furnishing copy of reasons to assessee

Facts of the case - Bangalore Turf Club Ltd. v. Union of India - [2024] (Karnataka)

The Bangalore Turf Club Limited (the assessee), a recognized Turf Authority, was engaged in organizing thoroughbred horse racing. The assessee was assessed for the relevant assessment year under section 143(3).

During the assessment proceedings, payments made to horse owners were disallowed under section 40(a)(ia) on the ground that TDS under section 194B/194BB was not made. Aggrieved by the order, the assessee filed an appeal before the Tribunal. The Tribunal granted a stay of the assessment order.

Subsequently, the Assessing Officer (AO) issued a notice under section 148 to initiate reassessment proceedings. The assessee contended that the initiation of proceedings under section 147 was barred by limitation as the copy of the reasons recorded was issued after the expiry of six years from the end of the relevant assessment year.

The matter reached the Karnataka High Court.

Decision of the case :

- The High Court held that the time limit prescribed under section 149(1)(b) is for issuing a notice under section 148 after recording reasons and not for furnishing a copy of the reasons to the assessee.
- The conditions for the exercise of jurisdiction to initiate reassessment must be complied with within the time limit for issuing the notice. If the power vested to exercise such jurisdiction is shackled, it cannot be reasonably opined that reasons for reassessment had to be furnished within the period of six years.
- In the instant case, reasons were recorded for re-assessment before issuance of notice, and the assessee had disclosed primary facts. Thus, there could not be any allegation of failure to truly and fully disclose material facts.

Sale consideration of shares not to be considered as turnover of share broker: ITAT

Facts of the case - Parag Hashmukhbhai Davda v. ITO - [2024] 161 taxmann.com 307 (Rajkot - Trib.)

Assessee, an individual, was engaged in the business of share trading and earned commission income from the sub-broker activity of shares. During the relevant year, the assessee's income from share trading and commission income were accepted in the scrutiny assessment. The assessee filed the return of income without getting the books of accounts audited.

The Assessing Officer (AO) levied a penalty under section 271B as the assessee failed to get his books of accounts audited in terms of section 44AB. In the penalty order, the AO considered the turnover from the sale of shares to be ₹. 6,06,87,030 and levied a penalty of ₹. 1,50,000.

The matter reached the Rajkot Tribunal.

Decision of the case :

- The Tribunal held that the assessee was engaged in the business of sub-brokerage, and its turnover or gross receipts to be considered for determining

whether it was liable to get its books audited under section 44AB was to be confined only to the commission income earned by it.

- The sale consideration of the shares sold by the assessee, on which it earned commission/brokerage, is not turnover and cannot constitute its turnover. The assessee's commission income was ₹. 1,55,614, and the income in the present case falls well below the limit prescribed by section 44AB.
- Thus, there was no case for the assessee to have had its books audited in terms of provisions of section 44AB. Therefore, there is no case for levy of penalty under section 271B for not getting the books audited under section 44AB.

Sum received from employer on account of out-of-court settlement isn't taxable as profit in lieu of salary: ITAT

Facts of the case - ITO v. Avirook Sen - [2024] (Delhi - Trib.)

The assessee, an individual, received ₹. 2 Crore from his employer, INX Media, after his termination from service. The assessee voluntarily settled the case as his reputation was diminished due to extreme harassment and ill-treatment caused by the employer.

Assessing Officer (AO) added said amount along with ₹. 13,08,444 as perquisites in the assessee's income. The AO treated the receipt as profits in lieu of salary. On appeal, CIT(A) deleted the additions made by AO. Aggrieved-AO filed the instant appeal before the Tribunal.

Decision of the case :

- The Tribunal held that the payment of ex-gratia compensation was voluntary in nature without the employer having any obligation to pay further amount to the assessee in terms of any service rule. Thus, it would not amount to compensation in terms of section 17(3)(i).
- The AO relied upon various Madras High Court judgments wherein it was held that the amount received for encashment of leave salary would be a profit in lieu of salary and taxable under the "voluntary Separation Programme".
- He also relied upon the decision of the Hon'ble Delhi High Court in the case of Deepak Verma (2010) 194 taxman 265 (Delhi) wherein it was held that if the payment is made ex gratia or voluntarily by an employer out of his own sweet will and is not conditioned by any legal duty or legal obligation, either on sympathetic grounds or otherwise, such payment is not to be treated as profit in lieu of salary under sub-clause (i) of section 17(3).
- In the present case, the payment of ex-gratia compensation was voluntary in nature without there being any obligation on the part of the employer to pay further amount to the assessee in terms of any service rule. Therefore, it would not amount to compensation in terms of section 17(3)(i) of the Act. The impugned additions were rightly deleted by the CIT(A).

Loss on forward foreign exchange contracts to be treated as speculative if no nexus established with business: ITAT

Facts of the case - DCIT v. Standard Match Industries (P.) Ltd. - [2024] (Chennai - Trib.)

Assessee-company engaged in the manufacturing and sale of safety matches. During the relevant assessment year, assessee decided to book options contracts based on State Bank of India (SBI) advice to hedge its foreign exchange risk.

The forward contracts were designed to protect the company from adverse market movements by allowing it to lock in an exchange rate in advance for future transactions. However, due to the depreciation of the rupee against the US Dollar and Euro, the company cancelled the forward contracts and incurred a loss of ₹. 945.43 lakhs.

During the assessment proceedings, the AO treated the loss as a speculative loss as the assessee was not able to

procure export orders, and adverse market conditions led to the cancellation of export orders.

The CIT(A) reversed the order of AO and treated the loss as a business loss. Aggrieved by the order, an appeal was filed to the Chennai Tribunal.

Decision of the case :

- The Tribunal held that the assessee did not submit proper evidence to prove that the loss was not speculative in nature. The assessee merely stated that it was not able to procure export orders, and adverse market conditions led to the cancellation of export orders. The assessee was asked to explain the losses claimed with reference to purchase orders and invoices vis-a-vis exchange contracts with banks for specific transactions, at least on a sample basis, but it could not provide such details.
- Further, the assessee referred to the proviso to section 43(5) and submitted that it had undertaken forward contract and derivative contract as hedging against any foreign exchange fluctuation to fulfil its commitments of exports.
- However, the said proviso provides that a contract in respect of raw materials or merchandise entered into by a person in the course of his manufacturing or merchanting business to guard against loss through future price fluctuations in respect of his contracts for actual delivery of goods manufactured by him or merchandise sold by him. The assessee's case would not be covered by the said proviso.
- As the assessee could not substantiate its case and furnish the requisite details/explanations, the matter was restored to the file of the CIT(A) for denovo adjudication.

Sec. 153C proceedings can be initiated only if seized material is likely to have bearing on determination of income

Facts of the case - Saksham Commodities Ltd. v. - [2024] (Delhi)

The instant writ petitions were filed to challenge the validity of the notices issued under section 153C to the assessee. The contention of the assessee was that the satisfaction of the Assessing Officer (AO) that the seized documents belong to the assessee and have a bearing on the determination of the total income of the assessee was not valid.

Decision of the case :

- The High Court held Section 153C enables and empowers the jurisdictional AO to commence assessment or reassessment for a block of six AYs' or the "relevant assessment year", that action is founded on satisfaction being reached that the books of accounts, documents or assets seized "have a bearing on the determination of the total income of such other person".
- The Court held that it would be incorrect to either interpret or construe Section 153C as envisaging incriminating material pertaining to a particular AY having a cascading effect and which would warrant a mechanical and inevitable assessment or reassessment for the entire block of the "relevant assessment year".
- The jurisdictional AO would have to firstly be satisfied that the material received is likely to have a bearing on or impact the total income of years or years which may form part of the block of six or ten AYs' and thereafter proceed to place the assessee on notice under Section 153C. The power to undertake such an assessment would stand confined to those years to which the material may relate or is likely to influence.
- Absent any material that may either cast a doubt on the estimation of total income for a particular year or years, the AO would not be justified in invoking its powers conferred by Section 153C.

TAX CALENDAR

INDIRECT TAX

Due Date	Returns
May 11th, 2024	GSTR 1 (Monthly) for April 2024
May 13th, 2024	GSTR 1 IFF (Optional) (Apr 2024) for QRMP

DIRECT TAX

Due Date	Returns
May 7th, 2024	TDS & TCS liabilities deposit for April 2024.
May 15th, 2024	Due date for furnishing TDS Certificates in respect of tax deducted under section 194-IA / 194-IB / 194M / 194S in the month of March, 2024
	Quarterly statement for TCS (Form 27EQ) for the quarter ending March, 2024.

E-PUBLICATIONS

Of

TAX RESEARCH DEPARTMENT

- **Guide Book for GST Professionals**
- **Handbook for Certifi cation for diff erence between GSTR-2A & GSTR - 3B**
- **Impact of GST on Real Estate**
- **Insight into Customs-Procedure & Practice**
- **Input Tax Credit and In depth Discussion**
- **Taxation on Co-operative Sector**
- **Guidance notes on Preparation and Filing of Form GSTR 9 and 9c**
- **Guidance Note on Anti Profi teering**
- **Handbook on GST on Service Sector**
- **Handbook on Works Contract under GST**
- **Handbook on Impact of GST on MSME Sector**
- **Assessment under the Income Tax Law**
- **Impact on GST on Education Sector**
- **International Taxation and Transfer Pricing**
- **Handbook on E-Way Bill**
- **Filing of Return**
- **Handbook on Special Economic Zone and Export Oriented Units**

For E-Publications, Please Visit Taxation Portal
https://icmai.in/TaxationPortal/

NOTES:

TAXATION COMMITTEES - PLAN OF ACTION

Proposed Action Plan:

1. Successfully conduct all Taxation Courses.
2. Publication and Circulation of Tax bulletin (both in electronic and printed formats) for the awareness and knowledge updation of stakeholders, members, traders, Chambers of Commerce, Universities.
3. Publication of Handbooks on Taxation related topics helping stakeholders in their job deliberations.
4. Carry out webinars for the Capacity building of Members - Trainers in the locality to facilitate the traders/ registered dealers.
5. Conducting Seminars and workshops on industry specific issues, in association with the Trade associations/ Traders/ Chamber of commerce in different location on practical issues/aspects associated with GST.
6. Tendering representation to the Government on practical difficulties faced by the stakeholders in Taxation related matters.
7. Updating Government about the steps taken by the Institute in removing the practical difficulties in implementing various Tax Laws including GST.
8. Facilitating general public other than members through GST Help-Desk opened at Head quarter of the Institute and other places of country.
9. Introducing advance level courses for the professionals on GST and Income Tax.
10. Extending Crash Courses on Taxation to Corporates, Universities, Trade Associations etc.

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