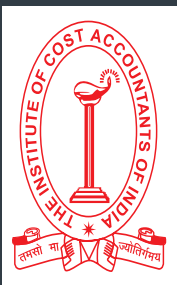




June, 2024

# TAX Bulletin

Volume - 161  
02.06.2024



**THE INSTITUTE OF COST ACCOUNTANTS OF INDIA**

Statutory Body under an Act of Parliament

[www.icmai.in](http://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:

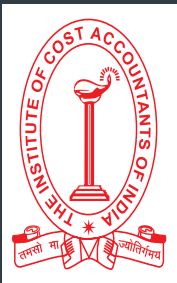
1. Preparation of Suggestions and Analysis of various Tax matters for best Management Practices and for the professional development of the members of the Institute in the field of Taxation.
2. Conducting webinars, seminars and conferences etc. on various taxation related matters as per relevance to 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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# The Institute of Cost Accountants of India

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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/advsc/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

### Modalities

### Eligibility

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

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](mailto:trd@icmai.in)

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

Behind every successful business decision, there is always a **CMA**



**CMA (Dr.) V. Murali**  
Chairman  
Direct Taxation Committee, ICAI

## FROM THE DESK OF CHAIRMAN

Esteemed Professional Colleague,

### POINT TO PONDER:

**K**nowledge is Power it is said. For professionals updation of knowledge is imperative for our growth and professional success. In the light of this the number of CPE hours have been increased and we aim to facilitate the members through dissemination of knowledge through webinars, quiz, tax bulletin etc.

The most important update for this fortnight would be the exemptions that CBDT has provided to RBI from special norms on TDS, tax collected at source. As per the said notification:

The Union Finance Minister has noted that the Central Board of Direct Taxes (CBDT) has exempted the Reserve Bank of India from the special provisions of the Income Tax Act, 1961, regarding the tax deducted at source, and the tax collected at source for non-filers of an income-tax return.

In a notification, the Finance Ministry said: "In exercise of the powers conferred by clause (ii) of the provision to sub-section (3) of section 206CCA of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies the Reserve Bank of India to be a person referred to in the said clause."

The ministry also issued a notification along the same lines under section 206AB of the Income Tax Act.

Section 206CCA of the Income Tax Act, 1961, provides tax collection at source (TCS) on amounts received by a specified person at rates higher than specified in the act. Under this, the tax is collected at twice the rate specified in the relevant provision of the Act, or at the rate of 5%, whichever is higher.

The tax shall be collected at source (TCS) on higher of (i) 2 times the rate given in the Income Tax Act or Finance Act or (ii) 5%

If the person provides the PAN but has not filed the return for the last assessment year and the due date for filing has expired and the aggregate of TDS or TCS in his case is Rs. 50,000 or more then the above rate shall apply. Just to save from this, if he doesn't provide the PAN then tax shall be collected at 20% or a much higher rate as per section 206CC.

A higher amount of TDS shall be deducted on any type of transaction, such as contract payments, professional charges, rent etc., but excluding the following nature of payments:

- Salary (Section 192)
- Premature withdrawal of EPF (Section 192A)
- Winnings from any lottery or card games, or crossword puzzles (Section 194B)
- Section 194BA)

- Winnings from any horse races (Section 194BB)
- Income concerning investment in securitization trust (Section 194LBC)
- Cash withdrawals (Section 194N)
- Non-residents who do not have a permanent establishment (PE) in India.

Section 206AB of the Income Tax Act mandates TDS at rates higher than standard prescribed rates if you do not file your income tax return. This section was introduced in 2021 and nudges people to file returns.

Under this, the tax is deducted at twice the rate specified in the relevant provision of the Act, or at the rate of 5%, or at twice the rates in force, whichever is higher.

Section 206AB is applicable to:

- a) Those who have not filed your income tax return for One assessment year related to the one year preceding the year in which tax is to be deducted
- b) The due date for filing ITR for those 1 year has passed by
- c) The cumulative TDS in those 1 year is greater than Rs. 50,000

The definition of "specified person" has been amended in sections 206AB and 206CCA of the Income Tax Act to exclude the following:

- i. a non-resident who does not have a permanent establishment in India; or
- ii. a person who is not required to furnish the return of income for the assessment year relevant to the said previous year and is notified by the Central Government in the Official Gazette in this behalf.

## ACTIVITIES AND PLAN OF ACTION

A webinar on Direct Tax was conducted on 20.05.2024, the topic being ' "Decoding Section 142(2A) - Income Tax: A CMA Perspective"'. This webinar was interesting one and the ways in which the CMAs can work and the expected deliverables from the CMAs were discussed. The webinar was successful with huge participation from members. The webinars have also been appreciated by senior members in the industry. The admissions to the ensuing batches of the Taxation courses has also commenced in May, 2024.

## WRAP UP POINT

Have you ever considered that God cares! He sends you flowers every spring, He sends you sunshine every morning, He listens to you whenever you talk. God did not promise days without pain, laughter without sorrow, sun without rain. But He did promise strength for the day, comfort for the tears and light for the way. Life is Chemistry; just dilute your sorrows; evaporate your worries; filter your mistakes; boil your ego you will surely get clear crystals of happiness.

With Warm Professional Regards,  
Forever, yours in service,



**CMA (Dr.) V Murali**  
Chairman  
Direct Taxation Committee, ICAI  
02.06.2024





**CMA Rajendra Singh Bhati**  
Chairman  
Indirect Taxation Committee, ICAI

## FROM THE DESK OF CHAIRMAN

**I**n May the department has released the revised and updated editions of the following publications:

1. Handbook on Input Tax Credit under GST
2. Handbook on GST on Service Sector
3. Handbook on GST on Education Sector
4. Handbook on GST on Co-operative Sector
5. Guide Book for GST Professionals
6. Guidance note on Preparation and Filing of Form GSTR 9 & 9C

Very important webinars have also been conducted this month also: (i) On 02.05.2024 a webinar was conducted on the topic, "Ongoing issues under GST" where the faculty has been CMA D S Mahajani, Practicing Cost Accountant. (ii) On 16.05.2024 another webinar was conducted on the topic, "GST on real estate transactions" with CMA Vishwanath Bhat, Practicing Cost Accountant as the faculty and (iii) The third webinar was conducted on 30.05.2024 on the topic, "How different is the UAE VAT and Indian GST" by CMA Robin Singh, Director – Indirect Taxes, Deloitte.

Also a 10-hour workshop was also conducted from the 28.05.2024 to 31.05.2024 on the topic, "Litigations under GST Laws and How to Handle it". The faculty for the session has been CMA Niranjana Swain, Cost Accountant.

GST Course for college and university students completed at ABBS School of Management, Bangalore and exam was held on 22.05.2024. The classes for this course has also commenced at Calcutta Girls College (Batch: 1) and at Taradevi Harakchand Kankaria Jain College (Batch: 2) at Kolkata location. It helps students to find a link between the practical filing and the theory that they learn academically. This course has been widely accepted by students and colleges all across the country actively participate in it.

The admissions to the ensuing batches of the above course has also commenced in May, 2024.

The quiz on indirect tax is conducted on every Friday pan India basis. The Taxation Portal is being updated regularly with the circulars, notifications and press releases. Tax Bulletin has also been published and circulated to the Government and corporates.

I appreciate the efforts of the Tax Research Department and their dedication to their jobs.

Thank You.

A handwritten signature in dark ink, appearing to be 'Rajendra Singh Bhati', written in a cursive style.

**CMA Rajendra Singh Bhati**  
Chairman  
Indirect Tax Committee, ICAI  
02.06.2024



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3. CMA Avijit Goswami  
4. CMA Dr. K Ch A V S N Murthy  
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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](mailto:trd@icmai.in) / [trd.ad1@icmai.in](mailto:trd.ad1@icmai.in)*

# Small Businesses Can Now Thrive on E-Commerce Platforms As Compulsory Registration Lifted From Oct 1, 2023



**CMA Jyoti Sharma**  
Cost Accountant

**T**his move addresses long-standing demands from traders and artisans, providing them with greater opportunities to expand their businesses and reach a wider audience through online platforms.

The Finance Ministry's decision to exempt small businesses selling products through e-commerce platforms from compulsory GST registration is a significant step towards promoting entrepreneurship and economic growth.

Small businesses using e-commerce platforms to sell their products and services (pls check with author will not be required for compulsory registration as the Finance Ministry has notified changes in GST (Goods & Services Tax) law. However, this exemption will be subject to certain conditions.

## **The is effective from October 1, 2023.**

However, the threshold of annual turnover for mandatory registration under GST is ₹40 lakh and ₹20 lakh for goods and services, respectively (₹20 lakh and ₹10 lakh in selected States). However, there are compulsory registration requirements in some instances, which means

a seller who wishes to sell products in e-commerce is invariably required to obtain GST Registration. Any seller who does not have a GST Registration is not allowed to sell products on any e-commerce portal. Now, this provision has changed.

A notification issued by the Central Board of Indirect Taxes and Customs (CBIC) and dated July 31, 2023, says: "The Central Government, on the recommendations of the GST Council, specifies the persons making supplies of goods through an electronic commerce operator who is required to collect tax at source and having an aggregate turnover in the preceding financial year and in the current financial year not exceeding the amount of aggregate turnover above which a supplier is liable to be registered in the State or Union territory as the category of persons exempted from obtaining registration." Such a business entity will have to fulfil eight conditions for the exemption.

1. First of all, it will not make any inter-state supply of goods.
2. Second, it will supply goods through electronic



commerce operators in more than one State or Union territory.

3. Third, it shall be required to have a Permanent Account Number.
4. Fourth, such entity shall, before making any supply of goods through an electronic commerce operator, declare on the common portal their PAN, address of their place of business and the State or Union territory in which such persons seek to make such supply.
5. Fifth, such an entity needs to have been granted an enrolment number on the common portal on successful validation of the PAN.
6. Sixth, it shall not be granted more than one enrolment number in a State or Union territory.
7. Seventh, only a supply of goods shall be made

by such entity through an electronic commerce operator if such persons have been granted an enrolment number on the common portal. And eighth, the enrolment number on the common portal will cease to exist from the date of registration by such an entity.

This has been a long pending demand from small businesses as trade bodies earlier argued that such a provision is barring not only lakhs of traders across the country from using e-commerce to sell their products but even prohibits large numbers of small businesses of artisans, craftsmen, household and cottage industry, women entrepreneurs who are conducting businesses from their home to supplement the income of the family and people of other similar sections of the society. It was also said that such a provision is badly hitting not only the domestic market but even exports being suffered to a greater extent. This move will greatly help small businesses.



# Section 43B(h) of the Income Tax Act, 1961-Implication on MSME Payments.



**CMA Satish R**  
**Cost Accountant**

## Background:

MSME have a significant contribution to the country's economic growth. To promote timely payments to MSME, the payments being made to such MSMEs were included within the ambit of Section 43B of the Act.

As a socio-economic measure and to create a favorable environment for Micro and Small Enterprises, in ease of doing business and contribute to overall economic development a new clause (h) in Section 43 B(h) has been inserted in the Income Tax Act, 1961.

Section 43B of the Act provides for certain deductions to be allowed only on actual payment. A new clause (h) in Section 43B has been inserted which allows any amount paid to MSME as deductions from business income only on actual payment basis.

## Statutory update on Disallowance u/s. 43B (h) of the Income Tax Act, 1961: -

1. This amendment is made applicable from 01/04/2024 and will accordingly apply to the A.Y 2024-25 and subsequent assessment years.
2. Enterprise need to pay to MSME within 15 or 45days.

- a. In case, there is no written agreement, payment shall be made within 15days.
  - b. If there is a written agreement, payment shall be made as per the time mentioned in the agreement. The agreement can be of maximum 45 days.
3. If the payment is not made within same financial year of the above time period,
    - a. The amount will be added to the taxable income in the year of non-payment and will be allowed as expenditure in the year of payment.
    - b. The buyer is liable to pay interest on delayed payments at a rate of 3times of the bank rate notified by the RBI, compounded with monthly rest. Further, the interest will be disallowed u/s 37 of the Income Tax Act.
  4. This new clause is applicable to both the purchases and to all type of expenses.
  5. Registration of seller under MSMED Act, 2006 is not mandatory. Therefore, it is suggested to take declaration from the seller in respect of their



coverage under MSME and their registration under the MSMED Act, 2006 which shall ensure the due compliance and ease the purchaser to find out the enterprise.

**Sec.43B (h) provides that:**

1. Any sum payable by the assessee (buyer) to MSEs registered under MSMED Act;
2. The terms 'Micro Enterprise' and 'Small Enterprise' are respectively as defined in clauses (e) and (g) of Explanation 4 to section 43B read with sections 2(h) and 2(m) and section 7(1)(l)/(ii) of the MSMED Act.
3. Such sum is of the nature referred to in section 15 of the MSMED Act. Sections 2(b), 2(d) and 2(n) of the MSMED Act define 'Appointed Day', 'Buyer' and 'Seller', respectively.
4. The above provisions shall apply 'Notwithstanding' anything contained in any other provisions of this Act.
5. Any outstanding balance as on 31st March 2023 if continues to remain outstanding as on 31.03.2024 the provisions meant for disallowance contained in section 43B(h) would not apply.

The definition of 'supplier' as given in MSMED Act is as under:

“(n) “supplier” means a micro or small enterprise, which has filed a memorandum with the authority referred to in sub-section (1) of section 8, and includes, —

- (i) the National Small Industries Corporation, being a company, registered under the Companies Act, 1956 (1 of 1956);

- (ii) the Small Industries Development Corporation of a State or a Union territory, by whatever name called, being a company registered under the Companies Act, 1956 (1 of 1956);
- (iii) any company, co-operative under any law for the time being in force and engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises;

As summarized, the term Supplier as given in MSMED Act will be:

- A micro or small enterprise
- An enterprise which is engaged in manufacture or production of goods or in rendering of services.
- The industry is specified in the First Schedule to the Industries (Development and Regulation) Act, 1951.

“micro enterprise” means an enterprise classified as such under sub- clause (is) of clause (a) or sub-clause (in) of clause (b) of sub-section (1) of section 7;

“small enterprise” means an enterprise classified as such under sub- clause (ii) of clause (a) or sub-clause (ii) of clause (b) of sub-section (1) of section 7;

the definition of 'enterprise' which is as under:

“enterprise” means an industrial undertaking or a business concern or any other establishment, by whatever name called, engaged in the manufacture or production of goods, in any manner, pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (55 of 1951) or engaged in providing or rendering of any service or services;

**On Disallowance u/s. 43B (h) of the Income Tax Act.**

**Example: if no agreement is made:**

Date of Invoice	Date of delivery of goods / rendering of service	Due Date as per Section 15 of MSMED Act	Payment Date	Deduction allowed in Financial Year (F.Y)	Reason
01/03/2024	01/03/2024	16/03/2024	25/03/2024	2023-2024	Deduction allowed in the year of payment



**Example: if no agreement is made:**

Date of Invoice	Date of delivery of goods / rendering of service	Due Date as per Section 15 of MSMED Act	Payment Date	Deduction allowed in Financial Year (F.Y)	Reason
01/03/2024	01/03/2024	16/03/2024	03/04/2024	2024-2025	Deduction allowed in the year of payment
01/03/2024	18/03/2024	02/04/2024	01/04/2024	2023-2024	Payment made within the due date as per MSMED Act.

The “Appointed date” is relevant only if the buyer and the seller have not agreed to any due date for payment in writing.

**Example: If written agreement is made between buyer and supplier**

Date of Invoice	Date of delivery of goods/ rendering of service	Agreement for days	Due date as per agreement	Due date as per MSME Act	Payment Date	Deducted allowed in F.Y.	Reason
01/03/2024	01/03/2024	15	16/03/2024	16/03/2024	25/03/2024	2023-2024	Deduction allowed in the year of payment
01/03/2024	01/03/2024	15	16/03/2024	16/03/2024	03/04/2024	2024-2025	Deduction allowed in the year of payment
01/03/2024	18/03/2024	15	02/04/2024	02/04/2024	02/04/2024	2023-2024	Paid on or before the date as per MSMED Act
01/03/2024	18/03/2024	15	02/04/2024	02/04/2024	04/04/2024	2024-2025	Deduction allowed in the year of payment
01/03/2024	20/03/2024	15	04/04/2024	04/04/2024	03/04/2024	2023-2024	Paid on or before the date as per MSMED Act
20/03/2024	20/03/2024	15	04/04/2024	04/04/2024	05/04/2024	2024-2025	Deduction allowed in the year of payment
03/02/2024	03/02/2024	60	03/04/2024	19/03/2024	25/02/2024	2023-2024	Paid in same F.Y. (Max 45 days).
03/02/2024	03/02/2024	60	03/04/2024	19/03/2024	02/04/2024	2024-2025	Deduction allowed in the year of payment

The Central Government has issued Notification No. 2119(E), dated 26-6-2020, under Section 7(1) read with Section 7(9) of the MSMED Act. Para 3(1) of the said Notification provides that a composite criterion of investment and turnover shall

apply for the classification of an enterprise as micro, small or medium. Para 1 provides that an enterprise shall be classified as a micro, small or medium enterprise on the basis of the following criteria:



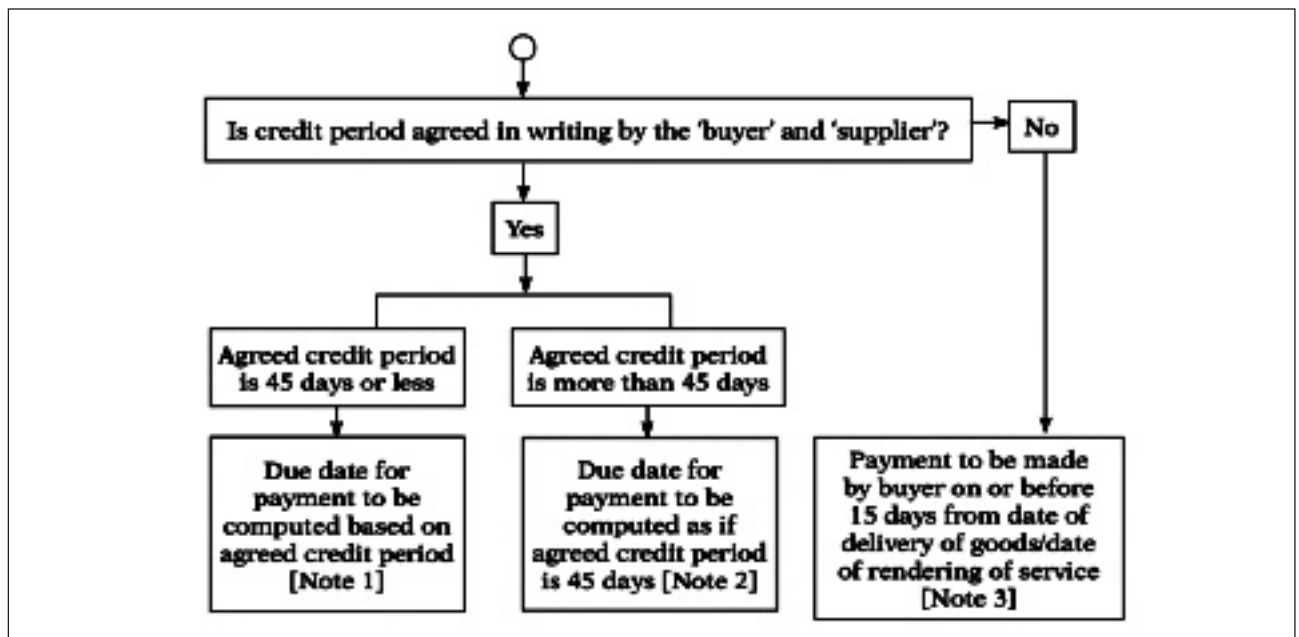
Category of Enterprise	Criteria for classification
Micro Enterprise	<ul style="list-style-type: none"> <li>Net investment in plant and machinery or equipment does not exceed Rs 1 crore; and</li> <li>Net turnover does not exceed Rs 5 crores.</li> </ul>
Small Enterprise	<ul style="list-style-type: none"> <li>Net investment in plant and machinery or equipment does not exceed Rs 10 crore; and</li> <li>Net turnover does not exceed Rs 50 crores.</li> </ul>
Medium Enterprise	<ul style="list-style-type: none"> <li>Net investment in plant and machinery or equipment does not exceed Rs 50 crore; and</li> <li>Net turnover does not exceed Rs 250 crores.</li> </ul>

- ◆ It must be noted that only micro and small enterprises are considered suppliers for the purpose of Section 43B(h). Medium enterprises are not regarded as suppliers and are not entitled to enforce prompt payment and interest for delayed payment.
- ◆ A trader though allowed to take registration as MSME yet it is facilitation for a limited purpose of priority sector lending only and in the absence of manufacturing or production of goods, it cannot be termed as 'supplier' as defined in MSMED Act. It also does not amount to rendering of services. In other words, those who does not fall under the definition of Supplier, the time limit given under section 15 will

not apply.

- ◆ Investments in plant and machinery or equipment is linked to the previous year filed Income Tax Returns. In case of new enterprises, having no ITR, the investment will be based on the self-declaration of the promoter of the enterprise and such relaxation shall be and after 31st March of the F.Y in which the enterprise files its first ITR.
- ◆ In case of new enterprises, the value of plant and machinery or equipment, whether purchased new or used one shall be considered excluding the GST, if any on self-declaration or disclosure basis.

**Due Date for Payment to 'Supplier'  
(‘Udyam-Registered Micro/Small Enterprise’) as per Section 15 of MSMED Act**



**Note 1:**

- ◆ If written objection is raised by supplier within 15 days from date of delivery of goods/date of rendering of service, due date based on agreed credit period of 45 days or less to be counted from date of removal of objection by supplier.
- ◆ written objection is not raised within 15 days, due date to be computed based on agreed credit period from date of delivery of goods/date of rendering of service.

**Note 2:**

- ◆ If written objection raised by buyer within 15 days from date of delivery of goods/date of rendering of service, due date to be computed as if agreed credit period is 45 days. The period of 45 days to be counted from the date of removal of objection.
- ◆ If written objection is not raised within 15 days, due date is to be computed as if agreed credit period is 45 days from date of delivery of goods/date of rendering of services.

**Note 3:**

- ◆ If written objection raised by buyer within 15 days from date of delivery of goods/date of rendering of service, due date is 15 days from the date of removal of objection by supplier.
- ◆ If written objection not raised within 15 days as aforesaid, due date is 15 days from the date of delivery of goods/date of rendering of service.

**Year-end provisions: -**

In this regards, the payment must be made within 15/45 days from the actual delivery of goods or services. For any provision made during year end, for which actual delivery of goods or services does not takes place till the end of the year, hence no disallowance can be made u/sec. 43B(h) of the Income Tax Act.

**Impact on cash system of accounting:**

Under the cash system, an expenditure is charged to the profit and loss account on actual payment basis and not on accrual basis. Accordingly, any payment to MSEs will be treated as expenditure and consequently claimed as allowance under the IT Act. The cash system of accounting is consistent with the provisions of Sec.43B(h) and hence there will be no impact of Sec.43B(h) on assesses following cash system of accounting.

**Implications of provisions of Section 43B(h) on capital expenditure**

If a capital expenditure is allowable under other provisions of the IT Act, then it would also be subject to the provisions of Section 43B(h) and will be allowed only on actual payment, if not made within the Specified time. Section 43B(h) will not be applicable on capital expenditure except in exceptional circumstances where capital expenditure is allowable under the IT Act.

It is important to emphasize that depreciation allowance on capital expenditure should not be constrained by the provisions of Section 43B(h).

**Impact on opting presumptive taxation scheme:**

Disallowances under section 43B(h) cannot be made in case of assessee opting presumptive taxation (sec 44AD/ ADA/ AE) as section 43B is not applicable in these cases. The reason is that presumptive income determination subsumes "anything contrary contained in sections 28 to 43C.

**Source:**

- ◆ Income Tax Act, 1961.
- ◆ The Micro, Small and Medium Enterprises Development Act, 2006.



# NOTIFICATIONS & CIRCULARS

## Indirect Tax

### **CUSTOMS (NON - TARIFF)**

**Government of India**  
**Ministry of Finance Department of Revenue**  
**Central Board of Indirect Taxes and Customs**  
**Notification No. 37/2024-CUSTOMS (N.T.)**

New Delhi, 21st May, 2024 , 31 Vaishakha, 1946 (SAKA)

S.O. ... (E).— In exercise of the powers conferred by sub-section (2) of section 14 of the Customs Act, 1962 (52 of 1962), the Central Board of Indirect Taxes & Customs, being satisfied that it is necessary and expedient to

do so, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2001-Customs (N.T.), dated the 3rd August, 2001, published in the Gazette of India, Extraordinary, Part-II, Section-3, Sub-section (ii), vide number S. O. 748 (E), dated the 3rd August, 2001, namely:-

In the said notification, for TABLE-1, TABLE-2, and TABLE-3 the following

Tables shall be substituted, namely: -

**“TABLE-1”**

Sl. No.	Chapter/heading/sub-heading/ tariff item	Description of goods	Tariff value (US \$Per Metric Tonne)
(1)	(2)	(3)	(4)
1	1511 10 00	Crude Palm Oil	892 (i.e., no change)
2	1511 90 10	RBD Palm Oil	907 (i.e., no change)
3	1511 90 90	Others – Palm Oil	900 (i.e., no change)
4	1511 10 00	Crude Palmolein	919 (i.e., no change)
5	1511 90 20	RBD Palmolein	922 (i.e., no change)
6	1511 90 90	Others – Palmolein	921 (i.e., no change)
7	1507 10 00	Crude Soya bean Oil	935 (i.e., no change)
8	7404 00 22	Brass Scrap (all grades)	5587 (i.e., no change)

**“TABLE-2”**

Sl. No.	Chapter/heading/sub-heading/tariff item	Description of goods	Tariff value (US \$Per Metricn Tonne)
(1)	(2)	(3)	(4)
1	71 or 98	Gold, in any form, in respect of which the benefit of entries at serial number 356 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	
2		Silver, in any form, in respect of which the benefit of entries at serial number 357 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	
3		<p>(i) Silver, in any form, other than medallions and silver coins having silver content not below 99.9% or semimanufactured forms of silver falling under sub-heading 7106 92;</p> <p>(ii) Medallions and silver coins having silver content not below 99.9% or semimanufactured forms of silver falling under sub-heading 7106 92, other than imports of such goods through post, courier or baggage.</p> <p>Explanation. - For the purposes of this entry, silver in any form shall not include foreign currency coins, jewellery made of silver or articles made of silver.</p>	
4		<p>(i) Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units;</p> <p>(ii) Gold coins having gold content not below 99.5% and gold findings, other than imports of such goods through post, courier or baggage.</p> <p>Explanation. - For the purposes of this entry, "gold findings" means a small component such as hook, clasp, clamp, pin, catch, screw back used to hold the whole or a part of a piece of Jewellery in place.</p>	

**“TABLE-3”**

Sl. No.	Chapter/heading/sub-heading/tariff item	Description of goods	Tariff value (US \$Per Metricn Tonne)
(1)	(2)	(3)	(4)
1	080280	Areca nuts	6033 (i.e., no change)"

2. This notification shall come into force with effect from the 22nd day of May, 2024.

[F. No. 467/01/2024-Cus.V] GOVERNMENT OF INDIA



## Customs (CVD)

### MINISTRY OF FINANCE (DEPARTMENT OF REVENUE)

#### Notification No. 02/2024-Customs (CVD)

New Delhi, 28th May, 2024

G.S.R.--(E). -Whereas, the designated authority vide initiation notification No. 7/34/2023-DGTR dated 26th March, 2024, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 26th March, 2024, has initiated review in terms of sub-section (6) of section 9 of the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act) read with rule 24 of the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination Of Injury) Rules, 1995 (hereinafter referred to as the said rules), in the matter of continuation of countervailing duty on imports of "Saccharin in all its forms" (hereinafter referred to as the subject goods) falling under Tariff Item 2925 11 00 of the First Schedule to the Customs Tariff Act, originating in or exported from China PR (hereinafter referred to as the subject country), imposed vide notification of the Government of India, in the Ministry of Finance (Department of Revenue) No. 2/2019-Customs (CVD), dated 30th August, 2019, published in the Gazette

of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 610(E), dated the 30th August, 2019, and has requested for extension of the said countervailing duty in terms of sub-section (6) of section 9 of the Customs Tariff Act.

Now, therefore, in exercise of the powers conferred by sub-sections (1) and (6) of section 9 of the Customs Tariff Act, read with rules 20 and 24 of the said rules, the Central Government hereby makes the following amendment in the notification of the Government of India, in the Ministry of Finance (Department of Revenue) No. 2/2019-Customs (CVD), dated 30th August, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 610(E), dated the 30th August, 2019, namely :-

In the said notification, after paragraph 2 and before the Explanation, the following paragraph shall be inserted, namely: -

"3. Notwithstanding anything contained in paragraph 2, the countervailing duty imposed under this notification shall remain in force up to and inclusive of the 28th February, 2025, unless revoked, superseded or amended earlier."

[F. No. CBIC-190354/112/2022-TRU Section-CBEC]





# JUDGEMENT INDIRECT TAX

## Registration to be treated as cancelled from date of first application since assessee didn't want to continue business: HC

### Facts of the case :

#### *Asian Traders v. Principal Commissioner of Department of Trade and Taxes - [2024] (Delhi)*

The petitioner was engaged in the business of trading of polymers and ethylene. It filed application for cancellation of GST registration on 30.05.2023 on the ground of closure of business. However, the said application was rejected by an order dated 07.12.2023. Thereafter, it again applied for cancellation of the GST registration on 14.12.2023 on the ground of closure of business and the said application was also rejected.

It filed writ petition against the rejection of application and contended that the application was rejected by merely mentioning that it was rejected in accordance with the provisions of the CGST Act since reply wasn't satisfactory and order did not give any particulars or details.

### Decision of the case :

- ◆ The Honorable High Court noted that the department did not give any specific reasons for rejection. The mere cancellation of registration does not preclude the department from taking any action in accordance with law for recovery of any tax, penalty or fine that may be due.
- ◆ In the instant case, no such ground was taken by department. Therefore, it was held that the registration of petitioner was to be treated as cancelled with effect from 30.05.2023 i.e., date when petitioner first filed application seeking cancellation of GST registration and the department was not precluded from taking any steps for recovery of any tax, penalty or interest that may be due.

## HC remanded matter as assessee was unaware of proceedings in view of cancellation of its GST registration

### Facts of the case :

#### *Tvl. E.Clouds v. Assistant Commissioner (ST) - [2024] (Madras)*

The petitioner was providing power aggregation services. Due to lack of business, it opted for cancellation of registration with effect from 31.03.2023. It received order confirming tax proposal and imposing interest. It filed writ petition and contended that it was unaware of proceedings especially in view of the cancellation of the GST registration.

### Decision of the case :

- ◆ The Honorable High Court noted that the impugned order was preceded by an intimation, show cause notice and two reminders. However, on perusal of the order confirming the tax proposal, it was evident that such order pertained to discrepancies between the petitioner's GSTR 3B return and the auto-populated GSTR 2A. Especially in view of cancellation of GST registration, the petitioner had little reason to monitor GST portal on an ongoing basis.
- ◆ Therefore, the Court held that the impugned order was to be set aside and matter was to be remanded for re-consideration on condition that the petitioner remitted 10% of the disputed tax amount.

## HC set aside order which denied ITC on purchase of tipper lorry without providing hearing opportunity to assessee

### Facts of the case :

#### *Tvl. Devi v. Deputy State Tax Officer-1 - [2024] (Madras)*

The petitioner was engaged in business of dealing in construction material. The department issued show cause notice proposing to deny input tax credit (ITC) on ground that a commercial vehicle was purchased and that such commercial vehicle fell within scope of sub-section (5) of Section 17 of CGST Act, 2017. The petitioner replied to notice by stating that commercial vehicle was purchased in furtherance of business. However, the department passed an order in original and denied ITC. It filed writ petition and contended that the reply was not considered.

### Decision of the case :

- ◆ The Honorable High Court noted that the relevant invoice had been placed on record and the petitioner

had asserted that purchase was in furtherance of business because it was dealer in construction material. The Court noted that no documents were uploaded while filing such reply and therefore, the petitioner failed to substantiate the contention that the purchase was in furtherance of business and outside the scope of sub-section (5) of Section 17 of CGST Act, 2017. However, the interest of justice warranted provision of an opportunity of hearing to petitioner. Therefore, the Court held that the impugned order was liable to be set aside and matter was to be remanded on condition that petitioner shall remit 10% of disputed tax demand.

### **HC remanded matter as demand was raised merely on ground that assessee failed to reply to SCN issued by Dept.**

#### ***Facts of the case :***

#### ***Sri Krishna Fabricators (India) (P.) Ltd. v. Assistant Commissioner (ST) - [2024] (Madras)***

The petitioner was a manufacturer of fabricated metal products. The department issued a show cause notice alleging that the tax proposal pertained to the difference between Input Tax Credit (ITC) available as per the GSTR-2A and the ITC availed of under the petitioner's GSTR-3B returns. However, the petitioner did not respond to the notice and the department passed an order demanding the tax.

The petitioner filed writ petition before the High Court and contended that the tax liability was imposed on the petitioner although the petitioner availed of lower ITC than that reflected in the GSTR-2A.

#### ***Decision of the case :***

- ◆ The Honorable High Court noted that the ITC available in the auto-populated GSTR-2A exceeded the ITC availed of in the petitioner's GSTR-3B returns. Prima facie, in those circumstances, GST liability would arise only if there was sales suppression but the liability was imposed on account of non-submission of reply. Thus, the Court observed that

the petitioner failed to submit reply and it can't be absolved of responsibility in this regard. Therefore, the Court held that the impugned order was to be set aside and matter was to be remanded for re-consideration on condition that the petitioner would remit 10% of the disputed tax demand.

- ◆ AO can't attach property of assessee if he has already made requisite pre-deposit while filing appeal: HC

#### ***Facts of the case :***

#### ***Tvl. Maxtile AAC Block v. State Tax Officer - [2024] (Madras)***

The petitioner was a taxable person and an order was issued against it by confirming tax proposal pertaining to discrepancy between GSTR-3B returns and auto populated GSTR-2A. It filed an appeal against the said order and made requisite pre-deposit as per Section 107 of CGST Act, 2017. However, the department attached immovable property of petitioner even before expiry of statutory period of three months after order was issued. It filed writ petition seeking release of attachment and contended that such attachment was contrary to statutory provisions.

#### ***Decision of the case :***

- ◆ The Honorable High Court noted that the recovery measures should not be undertaken for a period of three months after the order in original is issued so as to enable the tax payer to file a statutory appeal. In the present case, the petitioner had placed on record the order in original and proof of filing of the appeal. It was evident that the petitioner had made the requisite pre-deposit of 10% of the disputed tax demand as per Section 107 of CGST Act, 2017.
- ◆ However, without waiting for statutory period of three months, the department had attached immovable property of the petitioner. Therefore, it was held that the attachment was contrary to the statutory prescription and the department was directed to release the attachment over the immovable property.





# JUDGEMENT DIRECT TAX

## No separate notice is to be issued to joint account holder for recovery of tax dues from primary account holder: HC

### *Facts of the case :*

*Pratik Chimanbhai Gami & Anr. Vs. Union of India & Ors. - [2024] (Gujarat)*

The petitioners were farmers and were doing agricultural activities. They sold agricultural goods produced from the joint holding land with their uncle. They collectively cultivated the land and sold the seasonal crops. Out of the sale proceedings, an amount was deposited in the petitioner's joint account with his uncle. When the petitioners approached the bank for withdrawal of the said amount, they were informed that there was an attachment to the joint account for the uncle's outstanding amount from the Income Tax Department for non-payment of said amount.

The petitioners approached the Gujarat High Court and contended that no notice under Section 226(3) of the Income-tax Act was issued to the petitioners before attaching the account. It was submitted that the petitioners were the secondary account holders, and their uncle was the primary account holder in the said joint savings account.

### *Decision of the case :*

- ◆ The High Court held that it was informed that the petitioners were secondary account holders and their uncle was the primary account holder in the said joint savings account.
- ◆ When the impugned notice was issued for recovery of the outstanding dues of the uncle, who is defaulter in making payment of dues to the department, merely because the petitioners were joint account holders, no separate notice was required to be issued to the petitioners for having a joint account as secondary holder in view of provisions of Section 226(3)(iii) of the Act.
- ◆ Further, upon perusal of the provisions, it was clear that notice must be forwarded to the assessee from whom money is due or may become due

to the assessee or any person who holds or may subsequently hold money for or on account of the assessee. This means the notice must be issued from whom the amount is due and not to the joint account holder.

- ◆ If the petitioners have any grievance against recovery of the above dues in the account of their uncle along with them, they can initiate necessary proceedings in accordance with the law before the appropriate forum.
- ◆ Accordingly, the writ petition was disposed of.

## HC grants relief to PepsiCo India; follows Sony Ericsson ruling to reject Bright Line Test to benchmark AMP exp.

### *Facts of the case :*

*PCIT v. PepsiCo India Holding (P.) Ltd. - [2024] (Delhi)*

The Delhi High Court has confirmed the Tribunal's decision to grant relief to PepsiCo India regarding the Transfer Pricing adjustment related to advertising, marketing, and promotional (AMP) expenses.

The High Court ruled that the calculation of AMP expenses using the Bright Line Test (BLT) is not viable, considering the judgment in Sony Ericsson Mobile Communications India (P) Ltd. v. CIT [2015] 55 taxmann.com 240 (Delhi).

### *Case Background*

Assessee (PepsiCo India) was set up in India as a subsidiary of PepsiCo Inc., a US-based company. It was involved in manufacturing soft drink/juice-based concentrates for aerated and non-aerated drinks in India. The assessee obtained a license from its US parent AE for the technology to manufacture the concentrates and to use and exploit the brands owned by its AE.

In the Transfer Pricing (TP) proceedings, the Transfer Pricing Officer (TPO) held that the assessee had incurred a huge advertising, marketing and promotional (AMP) expenditure to promote its brand and trademark. He treated the AMP expenses as an international transaction and made adjustments to the AMP expenses. The matter

reached the Delhi Tribunal.

The Tribunal relies upon the Delhi High Court ruling in the case of Sony Ericsson Mobile Communications India (P.) Ltd. (Supra) held the TPO could not quantify the adjustment by determining the AMP expenses spent by the assessee after applying the Bright Line Test (BLT) to hold it to be excessive, thereby evidencing the existence of the international transaction involving the AE.

It was held in the Sony Ericsson case that the bright line test has no statutory mandate, and it is not obligatory to subject AMP expenses to a bright line test and consider non-routine AMP as a separate transaction.

### **No relief to assessee if he failed to place clinching evidence to show that there was no income derived by him: HC**

#### ***Facts of the case :***

#### ***Ravikumar Subhash Kalsi v. CIT - [2024] (Karnataka)***

Assessee ran a vulcanizing shop. He used to collect money from landowners interested in digging a borewell. After rig owners dug the borewell, he used to pay them money as per estimated rig charges.

The assessee filed a return showing certain income. However, the Assessing Officer (AO) treated the total amount received in the assessee's bank account as his income and raised a demand. Assessee accepted the receipts but claimed that a substantial amount had been paid to rig owners as rig charges.

Aggrieved by the order, the assessee filed a revision petition before the CIT under section 264. CIT rejected the revision petition, and the matter reached the Karnataka High Court.

#### ***Decision of the case :***

- ◆ The High Court held that it was incumbent on the part of the assessee to place clinching material on record to revise the order of the AO by exercising the power under section 264. The assessee did not place on record such clinching material to show the amount of money exactly derived, who the landowners were, who said to have dug the borewell in their lands, and what exactly the charges that have been paid by him to rig owners, except producing the Bank statement.

- ◆ The power of the revisional authorities is not as wide as an appeal. Therefore, it was incumbent on the part of the assessee to place clinching material on record to revise the order of the AO by exercising the power under section 264.

### **Mere fact that gifts were received through banking channels won't establish genuineness of transaction: HC**

#### ***Facts of the case :***

#### ***Mohit Agarwal V CIT - [2024] (Allahabad)***

The assessee, an individual, received gifts from six individuals, aggregating to Rs. 14,50,000. During the assessment proceedings, the Assessing Officer (AO) asked the assessee to furnish the details of the gift and the donor. In response, the assessee furnished the confirmation from the donors along with their PAN, acknowledgement of having filed the return of income, and the bank statement showing the gift amount credited to the assessee's bank account.

Unsatisfied with the explanation, the AO treated the gift as unexplained income under section 68. On appeal, the Tribunal upheld the order of AO and confirmed his addition. Aggrieved by the order, the assessee filed an appeal before the Allahabad High Court.

#### ***Decision of the case :***

- ◆ The High Court held that the assessee was well-to-do, whereas the donors were persons of modest means. In the absence of any relationship shown or basis disclosed for the generation of the gift, the Tribunal disbelieved the explanation furnished by the assessee on the preponderance of probability emerging from the evidence led by the parties.
- ◆ Insofar as the assessment of the income tax is purely a civil proceeding, the test of preponderance of probability applied by the Tribunal cannot be faulted. In the context of the gift set up by the assessee, merely because the assessee may have been able to establish such gift was received through the bank channel and merely because the donors may not have disputed the gift made may never have been enough to establish the genuineness of the transaction.
- ◆ The High Court held that slight differences in test



may continue to exist in cases involving gift, and deposits that are to be repaid by the recipient. Insofar as the gift claimed by the petitioner amounted to a change of title in the money, the High Court did not find any defect in the course adopted by the Tribunal in disbelieving the claim based on holistic consideration of the material before the Tribunal.

## No question of law arises if assessee failed to establish basic ingredients required to be established u/s 68: HC

### *Facts of the case :*

#### *Balgopal Merchants (P.) Ltd. vs. Principal Commissioner of Income Tax - [2024] (Calcutta)*

The assessee, a private company, was incorporated on 29.06.2011 and filed the return of income for the assessment year 2012-13. During the previous year, the assessee raised share capital along with a security premium. The case was selected for scrutiny, and notices under Section 143(2) and 142(1) were issued. In response to the notice, the assessee's authorised representative appeared and filed the details as requested.

Unsatisfied with the response, the AO issued summons under Section 131 to the directors of the assessee. The summons required them to produce proof of identity/PAN, a list of companies where the directors were directors or shareholders, proof of acknowledgement of filing personal income tax returns, copies of the accounts, etc. Since the assessee failed to comply with the summons, the AO completed the assessment under Section 143(3) by adding the share capital amount under Section 68.

The CIT(A) and the Tribunal confirmed the additions. Aggrieved by the order, the assessee filed the present appeal before the Calcutta High Court.

### *Decision of the case :*

- ◆ The Court held that the assessee was incorporated in June 2011 and was in the first year of its operation. On examining the facts, it was found that the assessee had no track record or asset base for demanding an astronomical high premium per share, defying all commercial and financial prudence and logic.
- ◆ There was no noticeable business activity or book value/earnings per share, which can justify the very high share premium. The assessee had admitted that the companies to whom the shares were issued at a premium were its associates. However, there was no explanation as to why the shares were allotted to the companies with such a high premium per share while the shares were allotted to individuals without any premium.
- ◆ Further, the assessee had failed to establish that it had actively involved itself in the development of land. Thus, charging such a premium was illogical, and there was no basis for fixing such an amount. There was nothing to indicate the identity, creditworthiness of the shares subscribers, or genuineness of the transactions.
- ◆ Since the assessee failed to establish the basic ingredients required to be established under section 68, no question of law arose for consideration.

TB



# Tax Calendar (Indirect Tax)

Due Date	Returns
June 11 <sup>th</sup> , 2024	GSTR 1 (Monthly) for May 2024
June 13 <sup>th</sup> , 2024	GSTR 1 IFF (Optional) (May 2024) for QRMP

## Direct Tax

Due Date	Returns
June 7 <sup>th</sup> , 2024	Due date for deposit of Tax deducted/collected for the month of May, 2024. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan
June 14 <sup>th</sup> , 2024	Due date for issue of TDS Certificate for tax deducted under section 194-IA, IB, M & S in the month of April, 2024
June 15 <sup>th</sup> , 2024	Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of May, 2024 has been paid without the production of a challan
	Quarterly TDS certificates (in respect of tax deducted for payments other than salary) for the quarter ending March, 2024
	Certificate of tax deducted at source to employees in respect of salary paid and tax deducted during Financial Year 2023-24
	Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of May, 2024
	Furnishing of statement (in Form No. 64D) of income paid or credited by an investment fund to its unit holder for the previous year 2023-24



## E-PUBLICATIONS OF TAX RESEARCH DEPARTMENT

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

For E-Publications, Please Visit Taxation Portal-

<https://icmai.in/TaxationPortal/>



# Notes

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# Notes

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# 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.

## Disclaimer:

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