

A Monthly E-Newsletter

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January 2023

The Bottom Line

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KEY METRICS

Indices

BSE SENSEX	60,841	-3.58%	▼
NSE NIFTY50	18,105	-3.48%	▼
NASDAQ Composite	10,466	-8.73%	▼
NIKKEI 225	26,095	-6.70%	▼

Currency

USD/INR	82.72	-1.65%	▼
EURO/INR	88.52	-4.37%	▼
GBP/INR	100.06	-1.84%	▼
JPY/INR	0.63	-6.55%	▼

Note: The month-on-month movement as on December 31, 2022 is represented in percentages
Source: Yahoo Finance, Investing.com



DIRECT TAX

Notifications/Circulars

Relaxation on e-filing of Form 10F by non-residents

Considering the practical challenges being faced by non-residents in mandatorily e-filing form 10F for claiming tax treaty benefits, such non-resident taxpayers who do not have PAN and are not required to obtain PAN under the Act are now exempted from mandatory electronic filing of Form 10F till March 31, 2023. However, the form will still have to be filed manually. Clarity on the mode of filing post March 31, 2023 is still awaited.

Circular F.No. DGIT(S)-ADG(S)-3/e-Filing Notification/Forms/2022/9227 dated December 12, 2022

Circular on deduction of tax on salary for FY 2022-23 released

CBDT releases its annual circular on deduction of tax from salaries for FY 2022-23. It exhaustively covers the provisions of the Act as applicable in this regard including the manner of computation of salary, the rates of deduction of tax for FY 2022-23 and related compliances.

Circular No. 24/ 2022 dated December 7, 2022

Judicial Rulings

Reassessment not permissible during pendency of rectification proceedings

Supreme Court held that as there was no evidence that the rectification proceedings initiated against the assessee under section 154 of the Act were withdrawn on the grounds that it passed the statute of limitation i.e., it was beyond 4 years, the proceedings can be said to have been ongoing and the AO was not justified in reopening the assessment under section 147 of the Act during the pendency of the same.

S. M. Overseas (P.) Ltd. v. Commissioner of Income-tax (SC)

Department to follow ITAT Order even though pending in appeal in higher Court

Supreme Court held that the Department should follow the ITAT order in deciding cases of subsequent assessment years even though the same is pending appeal in higher courts, unless the operation of ITAT's impugned order is stayed/suspended by High Court/Supreme Court.

ITO (International Tax) v. GIA Laboratory (P.) Ltd. (SC)

Surcharge and cess not to be levied on the treaty rates

Article 12 of India – Japan tax treaty provides that tax to be charged on royalty and FTS shall not exceed 10 per cent. Article 2 of tax treaty defines tax in India as income tax including any surcharge thereon. Therefore, article 12 read with article 2 of tax treaty makes it clear that rate of tax at 10 per cent would encompass surcharge and education cess and thus the same should not be levied over and above the taxable rate of 10 per cent.

FCC Co. Ltd v. ACIT (International Tax) [Delhi Tribunal]

Relaxation on e-filing of Form 10F by non-residents

Reassessment not permissible during pendency of rectification proceedings



INDIRECT TAX

Circulars / Notifications

Amendments in CGST Rules, 2017

Pursuant to the Council's recommendations, the following key amendments have been made:

- i. Biometric based Aadhar authentication mandatory at the time of GST registration for specified category of persons.
- ii. A person liable to deduct or collect tax under GST can apply for cancellation of registration if the said person is no longer liable to deduct or collect tax.
- iii. In case of partial non payment of consideration to the vendor, the recipient of supply is required to reverse the ITC proportionate to the amount not paid.
- iv. Where ITC has been availed in respect of an invoice or debit note, details of which have been furnished by supplier in its GSTR-1 but not in GSTR-3B till September 30th, the said ITC shall be reversed in GSTR-3B on or before 30th day of November following the end of such FY. Further, if supplier later furnishes the invoices or debit note in GSTR-3B, the ITC can be re-availed.
- v. Where the tax reported in GSTR-1 exceeds the tax reported in GSTR-3B for a particular tax period, the taxpayer shall be intimated about such difference in FORM DRC-01B. The taxpayer shall not be allowed to furnish GSTR-1 of any subsequent period, unless he has either deposited the difference amount or furnished a reply explaining reason of such difference.
- vi. Documents to be submitted for claiming refund by an unregistered person have been specified.

- vii. If the Order appealed against is uploaded at the time of filing appeal on the GST portal, then the self-certified copy of such Order is not required to be submitted to the department and the date of issue of provisional acknowledgement shall be deemed as the date of filing of appeal.
- viii. The Appellant has been provided with a facility to withdraw the appeal application.

Notification No. 26/2022-Central Tax dated December 26, 2022

GST on renting of residential dwelling

The service by way of renting of residential dwelling to a registered person, where the said person is proprietor and rents the residential dwelling in his personal capacity for use as his own residence and such renting is on his own account and not that of the proprietorship concern, is exempt under GST.

Notification No. 15/2022-Integrated Tax (Rate) and Notification No. 15/2022-Central Tax (Rate) dated December 30, 2022

ITC difference in GSTR-2A and GSTR-3B

Since during FY 2017-18 and 2018-19, GSTR-2A was not available on the GST portal for reconciliation with GSTR-3B, the procedure for verification of ITC claimed by the registered person in said period has now been provided below.

Circular No. 183/15/2022-GST dated December 27, 2022

Applicability of e-invoicing

The exemption from mandatory generation of e-invoice is for an entity as a whole and is not restricted by the

nature of supply being made by the same entity.

Circular No. 186/18/2022-GST dated December 27, 2022

Treatment of Statutory dues

Clarification has been provided regarding the treatment of statutory dues under GST law in respect of taxpayers for whom the proceedings have been finalised under Insolvency and Bankruptcy Code, 2016.

Circular No. 187/19/2022-GST dated December 27, 2022

Judicial Rulings

Refund of tax paid on notice pay recovery

Vide Circular No. 178/10/2022-GST dated August 03, 2022, it was clarified that the notice pay recovery from employees shall not be subject to tax under GST. Therefore, the petitioner shall be allowed to claim refund of tax paid on such recoveries. Further, as the Circular only clarifies the existing law, it shall be applicable retrospectively.

M/s Manappuram Finance Ltd (Kerala High Court)

Refund of CENVAT credit

Where there are two options available to the dealer i.e. either refund or carry forward of CENVAT credit to the GST regime. The dealer cannot be compelled to opt for one of the two. In the present case, the dealer has opted to file the refund of credit. Therefore, the department cannot deny the refund claimed on the grounds that the dealer should have carried forward the credit to GST regime instead of opting for refund of the same.

M/s Easwaran Brothers India Pvt Ltd (Madras High Court)

CORPORATE & ALLIED LAWS

Circulars / Notifications

Transition of 56 company forms from V2 (version 2) to V3 (version 3) portal

MCA is going to release the second set of Company Forms on the MCA21 V3 portal, in January 2023, comprising of total 56 forms. The first lot will consist of 10 forms to be released on January 9, 2023, and the second lot will consist of 46 forms to be released on January 23, 2023.

Update dated December 26, 2022

Clarification of holding of AGM & EGM through VC

MCA had earlier issued circular No. 14/2020 on 08.04.2020 in respect of holding of EGM through VC and Circular No. 20/2020 dated 05.05.2020 in respect of holding of AGM through VC. Since then, many circulars have been issued by MCA in respect of extension of time of holding of AGM and EGM through VC.

In continuation, recent General Circular has been issued for extended

time period for holding of AGM / EGM or passing of Ordinary/ Special Resolution through VC till 30th September 2023.

General Circular No. 10/22 dated December 28, 2022

Various Company Forms to be transitioned to new portal

Clarification of holding of AGM & EGM through VC



CFO WATCH

SEBI allows virtual attendance in Board meetings

Provisions of scheme of arrangement not applicable on scheme between a debt listed entity and its unlisted wholly owned subsidiary

SEBI allows members to attend Board meeting through video conferencing

A member can participate in the Board meeting through video conferencing, or any other audio-visual means provided the same is communicated to the chairperson or the secretary of the Board in advance so that suitable arrangements can be made.

Clarification on applicability of provisions for scheme of arrangements

SEBI has clarified that provisions of Scheme of Arrangements notified last month would not apply to a scheme between a debt listed entity and its unlisted wholly owned subsidiary. However, such a debt listed entity shall file the draft scheme with the stock exchange for the purpose of disclosure and the stock exchange shall disseminate the scheme documents on their websites.

RBI provides guidance on disclosure of material items in AFS

RBI has notified disclosure of material items in the notes to accounts of AFS of commercial banks. These include disclosure of particulars of “miscellaneous income” in case such income exceeds one per cent of total income. Same conditions are also applicable for “other expense.” To ensure greater transparency, the banks are also required to disclose the particulars of all such items in the notes to accounts wherever any item under Other Liabilities and Provisions - “Others (including provisions)” or Other Assets- “Others” exceeds one per cent of the total assets.

ASB of ICAI issues Ind-AS disclosures checklist

The ASB of ICAI has issued the Ind-AS - Disclosures Checklist with an aim to help entities identify the relevant disclosures required under Ind-AS to prepare and present financial statements. It contains all the amendments made in Ind-AS up to March 2022 and which are effective from April 01, 2022. The checklist contains only disclosure requirements, therefore, it should be read together with the standards, regulatory requirements, and related guidance material.

MERGERS & ACQUISITIONS

Smaller size deals to dominate the IPO market in 2023

India witnessed 138 IPOs in 2022 up until December compared to 134 in 2021. However, total proceeds dropped by 56% to \$7.5 billion from \$17.3 billion in 2021. According to some research reports, around 89 companies are set to raise \$16.9 billion through IPOs in 2023. However, India is expected see more of small to mid-size deals as investors remain sceptical after poor performance of major technology companies IPOs.

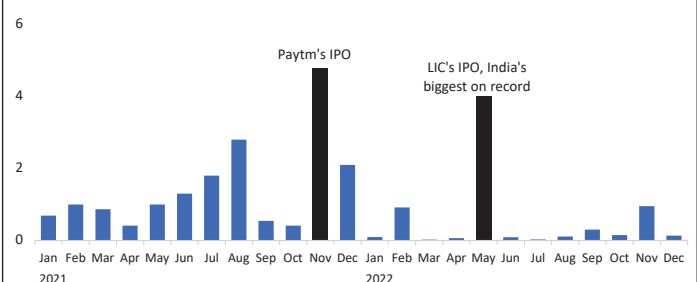
Despite the decline in proceeds, India stood out in a year that was disappointing for IPOs globally, with a 3% volume rise in the number of deals, indicating that the smaller listings dominated much of the market in India. Additionally, in 2022 only two companies raised more than \$500 million through IPOs in India: LIC of India (\$2.7 billion), the country’s largest on record, and Delhivery Ltd. (\$684 million). On the contrary, in previous year 11 companies crossed this threshold in terms of the issue size.

The corporate governance practices of several of the recent major IPOs have also drawn attention. Paytm’s share buyback to return capital to shareholders and Nykaa’s bonus share allotment that coincided with the expiry of its lock-in period created a lot of noise.

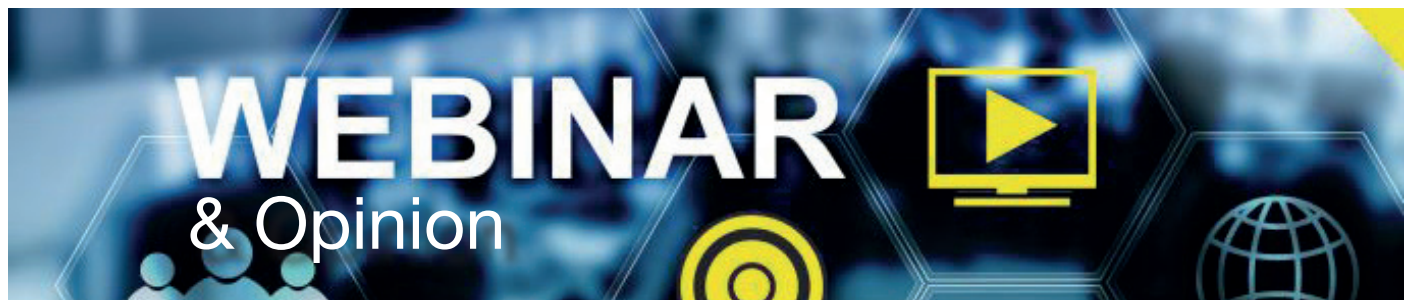
Hence, investors will likely be more selective and cautious about large listings heading into 2023 as recession risks, rising inflation and interest rate hikes have eroded the appetite for the high-growth IPO prospects. Hence, India is expected to see a steady flow of small-to-mid-sized deals in 2023.

Listing in India

IPO activity in India slowed this year after a stellar 2021
Total IPO Proceeds - Monthly (USD Billions)



IN THE NEWS



Events/Webinars

Panel Discussion at the Indo-Japan Conclave - Consumer Goods: How Japan Can be No. 1 again?

- December 19, 2022

Panel: Ajay Sethi, Managing Partner, ASA, Kanwal Jeet Jawa, MD & CEO, Daikin India and Manabu Yamazaki, President & CEO, Canon India

Ajay was a part of a panel discussion where the eminent panel deliberated on the future of “Consumer Goods: How Japan Can be No. 1 again?” at the Indo-Japan Conclave titled ‘India and Japan @70’ organized by the India Today group. Shri S. Jaishankar, Minister of External Affairs, GoI, and HE Mr Hiroshi Suzuki, Japanese Ambassador to India presided over the event and shared valuable inputs on India-Japan relations and the road forward. Exclusive discussions with opinion leaders and CXOs of Japanese organizations such as RC Bhargava, Ajay Mathur, Mayur Shah, Kenta Yoshida, Aalok Kumar, Kapil Maheshwari, Vikram Kapur and India Heads of JETRO and Japan Bank for International Cooperation were part of the activity, which showcased the bilateral economic relationship between Japan and India during the conclave.

Webinar - CXO Vigilance – Insider Scams and Ethical Violations

- December 14, 2022

Speaker: Akhilesh Thakur, National Head, Risk Advisory, ASA, Nagesh Pinge, Independent Director on Multiple Boards, Satish Shenoy,

Auditing Professional, Former Head of Audit of Aditya Birla Group and L&T, Prameesh Barlota, CFO, Samsonite India Pvt Ltd., and Sandhya Sharma, Head of Operations, Schindler India.

ASA organized a webinar ‘CXO Vigilance – Insider Scams and Ethical Violations’ with an eminent panel to educate the finance world professionals about how to safeguard their organizations from ethical violations and scams abetted by insiders. The panel shared their experiences and discussed how to evaluate these risks viz. data theft, insider trading, personal gratification etc. and measures to mitigate possible exposure.

Webinar and Guide Launch – Doing Business in India for French Companies

- December 07, 2022

Speakers: Ajay Sethi, Managing Partner, ASA, Elodie Barria, Regional Manager - Asia Pacific, Bpifrance, Eric Fajole, Trade Commissioner, Embassy of France in India & Regional Head, Business France India,

Frédéric Tcherneian, Vice-president - M&A, Questel, Christophe Mariette, Commercial Director, Lyra & Chairman, Lyra India, Sunil Arora, Partner, Taxation & Head of French Desk, ASA, Léa Parmentier, French Desk, ASA, and Sumeet Anand, President, Indo-French Chamber of Commerce & Industry (IFCCI) & Founder-CEO, IndSight Growth Partners

ASA, jointly with Bpifrance, launched a “Doing Business in India Guide” in the French language. The guide is

very comprehensive and helpful for French companies who are planning to enter the Indian market or implement their projects in India. Along with the launch, ASA and Bpifrance also organized a session on ‘Doing Business in India for French Companies’. The panel of experts shared their experiences, and an overview of the Indian legal framework, and provided pragmatic advice to French SMEs.

Webinar on Auditing Accounting Estimates and Related Disclosures

- December 13, 2022

Speaker: Rahisuddin Saifi, Associate Director, Assurance

ARahis was the guest speaker for a webinar organized by ICAI where he shared the panel with other esteemed dignitaries like CA (Dr.) Sanjeev Kr. Singhal, Chairman, AASB of ICAI and CA Vishal Doshi, Vice-Chairman, AASB of ICAI. In the session, Rahis shared his thoughts and experience on Auditing Accounting Estimates and Related Disclosures which were very well appreciated by the industry members.

Masterclass on Taxation of Cryptocurrency – December 16, 2022

Speaker: Nikhil Merchant, Senior Manager, Taxation

ATLAS SkillTech University, in association with the Indian School of Management & Entrepreneurship, organized a Masterclass on the Taxation of Cryptocurrency where they invited Nikhil to share his thoughts and perspective on this interesting topic.

GLOSSARY



AFS

Audited Financial Statements

AGM

Annual General Meeting

AO

Assessing Officer

AASB

Auditing & Assurance Standards Board

ASB

Accounting Standards Board

CBDT

Central Board of Direct Taxes

CENVAT

Central Value Added Tax

EGM

Extra-Ordinary General Meeting

FY

Financial Year

GST

Goods & Services Tax

ICAI

Institute of Chartered Accountants of India

Ind-AS

Indian Accounting Standards

IPO

Initial Public Offer

ITAT

Income Tax Appellate Tribunal

ITC

Input Tax Credit

MCA

Ministry of Corporate Affairs

PAN

Permanent Account Number

RBI

Reserve Bank of India

SEBI

Securities and Exchange Board of India

SME

Small and Medium-sized Enterprises

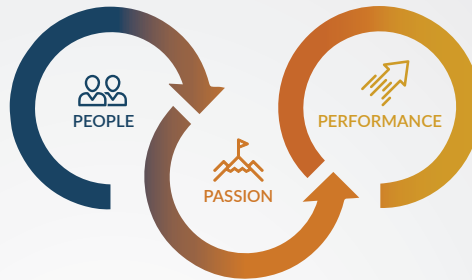
VC

Video Conference

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Vishakhapatnam

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Denmark, Egypt, France, Finland, Germany,
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