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NETWORK MEMBER



A Monthly E-Newsletter

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# The Bottom Line

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## KEY METRICS

### Indices

BSE SENSEX	72,240	7.84% ▲
NSE NIFTY50	21,731	7.94% ▲
NASDAQ Composite	15,011	5.52% ▲
NIKKEI 225	33,464	-0.07% ▼

### Currency

USD/INR	83.19	0.20% ▲
EURO/INR	91.81	-1.18% ▼
GBP/INR	105.89	-0.65% ▼
JPY/INR	0.59	-4.82% ▼

Note: The month-on-month movement as on December 29, 2023 is represented in percentages  
Source: Yahoo Finance, Investing.com

# DIRECT TAX

## Notifications/Circulars

### Safe Harbour rules pertaining to intra-group loans amended

CBDT amended safe harbour rules by widening the definition of intra-group loan. The definition now includes loans to Associated Enterprises and removes the condition for loans to be sourced in Indian Rupee. Further, the reference to 'CRISIL', where the loans are denominated in foreign currency, have also been omitted. Consequently, the credit rating issued by other rating agencies can also be used to determine safe harbour. This amendment shall be applicable from April 1, 2024.

*Notification No 104 dated December 19, 2023*

### Income tax forms notified for AY 2024-25

CBDT has notified the income tax forms ITR-1 (SAHAJ) and ITR-4 (SUGAM) for AY 2024-25.

*Notification No. 105 dated December 22, 2023*

### Guidelines issued on TDS by e-commerce operators

Finance Act, 2020 had introduced section 194-O in the Income Tax Act, requiring an e-commerce operator to deduct 1% TDS on the amount of sale of goods or provision of service, or both, facilitated through its digital or electronic facility or platform. The operation of such TDS was clarified vide several earlier circulars. CBDT has now issued additional guidelines through FAQs based on certain issues faced by the deductors viz. multiple e-commerce operators in the chain

of a transaction, GST related issues and impact of TDS, adjustments for purchase returns etc..

*Circular No 20 dated December 28, 2023*

## Judicial Rulings

### Non-signing of assessment order is a non-curable defect

The Tribunal quashed the Order where it was held that since draft assessment order was duly signed by the AO and there were no variations in the final assessment Order, not signing of the final assessment Order is merely a procedural defect which can be rectified. The Tribunal held that signing of an assessment Order by AO is a mandatory requirement and not merely a procedural formality and was not a curable procedural defect which could be fixed by signing of order after the same was serviced to Assessee.

*Reuters Asia Pacific Ltd (Mumbai ITAT)*

### Time barred reassessment based on change of opinion unjustified

The Apex Court dismissed the SLP against the High Court decision that had held reassessment proceedings initiated after four years to be unjustified. The case involved an investment holding company that computed capital gains on shares using an accepted method. The reassessment, alleging a mischaracterization under a different section, was considered impermissible by the High Court. The Apex Court noted no new material was discovered, deeming it

Safe Harbour rules pertaining to intra-group loans amended

Guidelines issued on TDS by e-commerce operators

Non-signing of assessment Order is a non-curable defect

a baseless change of opinion as the original assessment had considered the transaction.

*Lehman Brothers Investments Pvt Ltd (Supreme Court)*



# INDIRECT TAX

## Circulars / Notifications / Press Releases

### Taxability of seconded employees

Instructions have been issued that the judgement of the Hon'ble Supreme Court in the case of Northern Operating Systems should not be blindly and mechanically applied in all cases of secondment. There should be a careful study of the facts of each case, including the terms of the contract between overseas company and Indian entity, to determine taxability of such secondment as a supply of manpower services under GST. Further, Section 74 should only be invoked where there is material evidence of fraud or wilful misstatement or suppression of facts to evade tax on part of the taxpayer and such evidence should form part of notice issued to taxpayer

*Instruction No. 05/2023-GST dated December 13, 2023*

### Mandatory 6 digit HSN code in e-invoices

A minimum of 6 digits HSN code in e-invoices is now mandatory for taxpayers with an aggregate annual turnover of INR 50 million and above. This requirement comes into effect from December 15, 2023.

*Advisory dated December 04, 2023*

### Extension of due date for passing Order

The due dates of issuing Order under Section 73(9) of the CGST Act for FY 2018-19 and 2019-20 have been extended till April 30, 2024 and August 31, 2024 respectively.

*Notification No. 56/2023-Central Tax dated December 28, 2023*

## Judicial Rulings

### Interim relief for GST on expat salary payment/reimbursement

The Court granted interim stay on the show cause notice for GST recovery on salaries paid in Indian Rupees to expatriates & balance amount reimbursed to the parent company. It was also instructed that in case any adverse Order is passed by the authorities, no coercive action will be taken against the taxpayer for recovery till the final Order is given by the Court.

*M/s BMW India Pvt Ltd (Punjab & Haryana High Court)*

### Tax payable on secondment of employees

Salaried paid to employees even through seconded by foreign affiliate could not be considered prima facie as payment for manpower services. Stay granted against the Show Cause Notice.

*M/s Metal One Corporation India Pvt Ltd (Delhi High Court)*

### Vendor invoices not reflecting in GSTR-2A

The Apex Court dismissed the Special Leave Petition filed by the authorities against the High Court ruling permitting allowability of ITC not reflecting in GSTR-2A, since payment was made via valid tax invoice and show cause notice found fault with assessee's GSTR-1 only and not with possession or receipt of tax invoice. Further, action against supplier was essential before seeking reversal of such ITC in the hands of the recipient.

*M/s Suncraft Energy Pvt Ltd (Supreme Court of India)*

### Refund of accumulated ITC due to inverted duty structure

Refund is admissible even when principal input and output may

Clarifications issued on taxability of seconded employees

Litigations for GST on expat salary payment/reimbursement continue

Unsigned Order is no Order

attract same rate of tax, but other inputs attract different rate of tax.

*M/s India Oil Corporation Ltd (Delhi High Court)*

### Refund of accumulated ITC due to inverted duty structure

Refund is admissible even when principal input and output may attract same rate of tax, but other inputs attract different rate of tax.

*M/s India Oil Corporation Ltd (Delhi High Court)*

### Pre-deposit before filing appeal

The High Court ruled that the pre-deposit for filing appeal is not an output tax. Therefore, the balance in Electronic Credit Ledger cannot be utilized for its payment. It can only be paid through Electronic Cash Ledger. However, this judgement has been stayed by the Apex Court.

*M/s Flipkart Internet Pvt Ltd (Patna High Court)*

*M/s Flipkart Internet Pvt Ltd (Supreme Court of India)*

### Unsigned Order is no Order

Where an Order is unsigned, it is no Order in the eyes of law and cannot be covered under any mistake, defect or omission as used in Section 160 of the CGST Act and was quashed.

*M/s SRK Enterprises (Andhra Pradesh High Court)*

# CORPORATE & ALLIED LAWS

## Circulars / Notifications

### RBI revamps Foreign Exchange Management (Manner of Receipt and Payment) Regulations

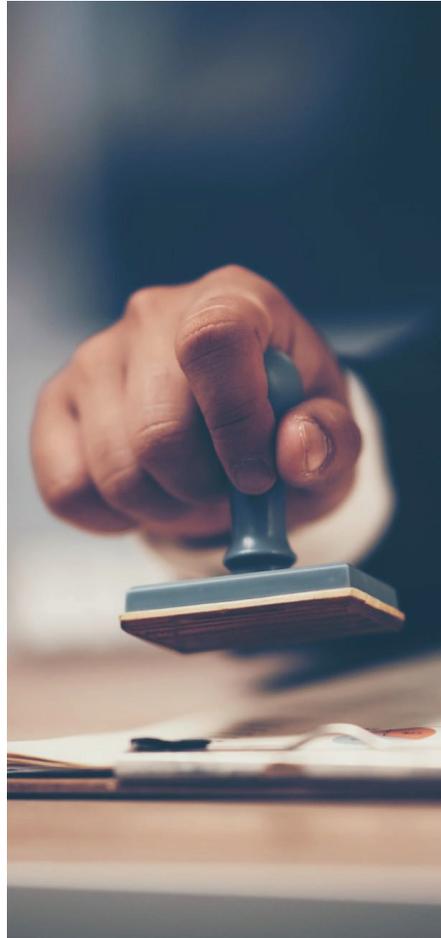
RBI has replaced the previous regulations of 2016 relating to Foreign Exchange Management (Manner of Receipt and Payment) with new regulations of 2023. The key changes include:

- Crucial definitions, including 'Act' and 'Authorised Bank'
- The manner in which the residents in India can make or receive payments from individuals outside India
- Outlining specific procedures for trade transactions in Indian Rupees or foreign currency based on the involved countries and trade policies
- Payments for transactions other than trade are defined for the countries like Nepal, Bhutan etc.
- Special provisions for current account transactions, restricting payments and receipts in Indian Rupees, especially for non-trade transactions between residents in India and foreign visitors.

*MCA Notification dated December 21, 2023*

### Streamlining requirements for grant of accreditation to investors

To provide flexibility and facilitate ease of accreditation of investors, SEBI has simplified the requirements, wherein accreditation agencies, which are also KYC Registration Agencies, can access KYC documents of applicants available with them



and also access the same from the database of other such agencies for the purpose of accreditation. The accreditation agencies shall grant accreditation certificate solely based on the KYC and financial information of the applicants.

However, market intermediaries and pooled investment vehicles can carry out necessary due diligence of the accredited investors at the time of onboarding them as their clients. The validity period of the certificate will depend on the applicant meeting the eligibility criteria for the preceding one / two financial years.

*Circular No. SEBI/HO/AFD/PoD1/CIR/2023/189 dated December 18, 2023*

### RBI revamps Foreign Exchange Management (Manner of Receipt and Payment) Regulations

Streamlining requirements for grant of accreditation to investors

Extension of timeline for redressal of investor grievances

### Extension of timeline for redressal of investor grievances

The implementation of the SEBI guidelines for redressal of investor grievances through the SEBI online platform were to be effective from December 4, 2023. The designated bodies were also required to apply for SCORES authentication and for API integration with SCORES so that they can comply with the provisions of the guidelines. The timeline has been extended and will now be effective from April 1, 2024

*Circular No. SEBI/HO/OIAE/IGRD/CIR/P/2023/183 dated December 1, 2023*



# CFO WATCH

[SEBI approves flexibility in framework for SSE for NPOs](#)

[SEBI issues revised FAQs pertaining to ESG rating providers](#)

[FASB enhances segment reporting and disclosure requirements](#)

## Flexibility of framework for SSE for NPOs

SEBI approved changes to the SSE for NPOs. Some of the key changes include reducing the minimum issue and application size for ZCZP, replacing ‘Social Auditor’ with ‘Social Impact Assessor,’ allowing NPOs to disclose past social impact in fundraising documents and expanding eligibility for entities under specific Income Tax Act sections to register and raise funds on SSE. The amendment aims to enhance flexibility and transparency in SSE for NPOs.

## SEBI issues revised FAQs pertaining to ESG rating providers

SEBI released revised FAQs providing crucial insights into ESG ratings regulations. The FAQs clarify the expansive definition of ESG ratings, encompassing rule-based and algorithmic scores, aligning with international standards. Notably, foreign ERPs outsourcing or utilizing back/middle office support in India for services outside India are exempt from certain regulations, while those covering Indian asset classes must establish a locally incorporated entity. The FAQs further elaborate on the definition of ‘Core ESG Rating’ and determination of an ‘Indian ESG rating user.’

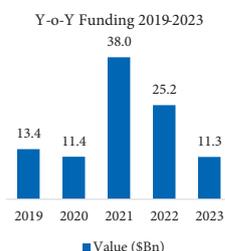
## FASB enhances segment reporting and disclosure requirements

The FASB issued an accounting standard update, enhancing segment reporting requirements. The update mandates public entities to disclose significant segment expenses regularly provided to the Chief Operating Decision Maker. Additional requirements include disclosing other segment items and providing interim period disclosures and also clarify disclosure expectations for entities with a single reportable segment.. All public entities will be required to comply with the enhanced segment disclosure and reporting requirements commencing in annual periods beginning after December 15, 2023.

# MERGERS & ACQUISITIONS

## December 2023 garners highest startup investments amidst prevailing funding winter

2023 proved out to be an arduous year for Indian startups as the funding crunch continued, hitting a five year low with venture capital money drying up. The year saw mass layoffs at different startups and complete shut down for few companies like ZestMoney, Striker, Anar, Quizy, Frontrow, Fantok and Akudo. However, December emerged as busiest month of 2023, raising around \$1.7 billion of startup investment, re-kindling a hope of recovery.



The uptick in funding was spearheaded by late-stage rounds led by Flipkart, which raised a massive \$600 million from its parent company Walmart, and Udaan raising \$340 million from M&G Prudential and Lightspeed.

Notably, late-stage deals dominated the market in commitment size with more than 85 per cent of fund flows in December, showcasing a concentrated and impactful distribution, defying the prevailing trend of a slowdown in growth and late-stage funding. Despite larger tech companies experiencing a slowdown in growth metrics and high valuations, consumer brands have seen notable interest. Making a dent in India’s startup growth story, the country slipped to fourth position in the global ranking among the highest-funded geographies this year, from third spot in 2021 as well as in 2022. However, investors believe that a comparatively better funding environment is expected in 2024 with a significant focus on enabling genuine companies to go public and create wealth for retail investors.



**Capacity-building workshops for senior officials of the Ministry of Rural Development, Government of India and representatives from the State Rural Livelihood Mission**  
*December 11, 2023*

Gaurav Bhatia, Executive Partner, Risk Advisory Services and Arvind Agarwal, Manager, Risk Advisory Services conducted a series of capacity-building workshops for senior officials of the Ministry of Rural Development, Government of India and representatives from the State Rural Livelihood Mission. The workshops focused on key best practices to adopt for fraud detection and prevention in government projects.

**Hybrid session for the Consumer Goods and Services Committee of the Indo-French Chamber of Commerce & Industry -**  
*December 12, 2023*

ASA collaborated in organizing a hybrid session along with the Indo-French Chamber of Commerce & Industry's Consumer Goods and Services Committee. Himanshu Srivastava, Director, Business Advisory Services provided valuable perspectives on India's Production-Linked Incentive schemes, highlighting the financial advantages and tax incentives accessible to the Fast Moving Consumer Goods industry in India.



**MFN clause under the India-France Tax Treaty -**  
*December 1, 2023*

*Author:* Sunil Arora, National Head, Taxation & Léa Parmentier, French Desk

This article delves into the key provisions and their impact on bilateral tax relations, shedding light on potential benefits and challenges for both nations, with insights into the intricacies of this crucial clause and its significance in shaping the taxation landscape between India and France. The article also covers the evolving dynamics of international tax agreements through a comprehensive examination of this specific treaty provision.

**CBDT Issues Instructions for withholding of Income Tax Refunds - Will this make the process of refunds easier? -**  
*December 11, 2023*

*Author:* Ashwath Pai, Executive Partner, Taxation

The article covers the recently issued new guidelines by CBDT, aimed at streamlining the withholding process for income tax refunds. As taxpayers await implementation, the question looms: Will these instructions truly simplify the often-cumbersome process of securing income tax refunds? The article delves into the details and implications of CBDT's latest directives.



# GLOSSARY



## AO

Assessing Officer

## AY

Assessment Year

## CBDT

Central Board of Direct Taxes

## CGST

Central Goods & Services Tax

## ERP

ESG Rating Providers

## ESG

Environmental, Social and Governance

## FAQ

Frequently Asked Question

## FASB

Financial Accounting Standards Board

## GST

Goods & Services Tax

## HSN

Harmonized System of Nomenclature

## ITC

Input Tax Credit

## KYC

Know Your Customer

## MCA

Ministry of Corporate Affairs

## MFN

Most Favoured Nation

## NPO

Not-for-profit Organization

## RBI

Reserve Bank of India

## SCORES

SEBI Complaints Redress System

## SEBI

Securities and Exchange Board of India

## SLP

Special Leave Petition

## SSE

Social Stock Exchange

## TDS

Tax Deducted at Source

## ZCZP

Zero Coupons, Zero Principal Instruments

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## ASA Corporate Catalyst India

**New Delhi (Corporate Office)**  
 Aurobindo Tower  
 81/1 Third Floor Adchini  
 Aurobindo Marg  
 New Delhi 110 017 INDIA  
 T +91 11 4100 9999

**Ahmedabad**  
 306 - B, Pinnacle Business Park  
 Corporate Road, Prahlad Nagar  
 Ahmedabad, 380 015 INDIA  
 T + 91 79 4891 5409

**Bengaluru**  
 53/B, LOLS Citadel Level 2 & 3  
 1st Main Road, 3rd Phase  
 Sarakki Industrial Layout  
 J P Nagar, Bengaluru – 560078  
 T +91 80 4907 9600

**Chennai**  
 Unit No. 709 & 710,  
 7th Floor 'Beta Wing'  
 Raheja Towers, New Number 177  
 Anna Salai, Chennai 600 002 INDIA  
 T +91 44 4904 8200

**Gurgaon**  
 Times Square Fourth Floor  
 Block B, Sushant Lok 1  
 Gurgaon 122 002 INDIA  
 T +91 124 4333 100

**Hyderabad**  
 Vasavi's MPM Grand  
 11th Floor, Unit No 1204  
 Yella Reddy Guda Road, Ameerpet  
 Hyderabad Telangana 500 073 INDIA  
 T +91 40 2776 0423

**Kochi**  
 Pioneer Tower  
 207-208 Second Floor, Marine Drive  
 Kochi 682 031 INDIA  
 T +91 484 410 9999

**Mumbai**  
 Lotus Corporate Park  
 G-1801 CTS No.185/A  
 Graham Firth Compound  
 Western Express Highway, Goregaon East  
 Mumbai 400 063 INDIA  
 T +91 22 4921 4000

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