

NewsBites

Fifty-third Edition

Greetings!

We are delighted to present our news bite for the month of August 2022. This News Bites intends to give an overview of what is happening in the sphere of direct and indirect taxation, company law, government incentives, FEMA and other regulatory laws.

We hope you find this useful. For any feedback you can reach to us at info@sanca.in.

Best Regards,
S A N & CO.
Chartered Accountants

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Income Tax

CBDT Notifies New Form 29D For Refund of Tax Deducted:

On 24 Aug 2022, The Central Board of Direct Taxes (CBDT) has notified the new Form 29D for refund of tax deducted. The Board has notified the Income-tax (26th Amendment) Rules, 2022. The amendment added a new Rule 40G to the Income-tax Rules of 1962 relating to Refund Claim under Section 239A.

In the Income-tax Act, a new section 239A was added by the Finance Act of 2022. Section 239A states that if no tax deduction was required, a taxpayer may apply to the Assessing Officer for a refund of tax deducted under Section 195 on any income (except interest).

As per Rule 40G, a claim for refund under section 239A shall be made on Form No. 29D. The claim shall be accompanied by a copy of the agreement or other arrangement referred to in section 239A. The claim may be presented by the claimant himself or through a duly authorised agent.

Form No. 29D deals with the application by a person under section 239A of the Income-tax Act, 1961, for a refund of tax deducted.

CBDT amends income tax rule for foreign tax credit claims:

The income rule for providing relief to taxpayers claiming foreign tax credit (FTC) has been amended. The Central Board of Direct Taxes (CBDT) has made changes to rule 128 under Income Tax Rules 1962, for FTC. The pre-amended rule required taxpayers to file their FTC claims by the due date for furnishing income tax returns (ITR).

Income Tax department through its Twitter account, notified CBDT's amendment in the rule for FTC. The department said, "The pre-amended Rule required the FTC claim to be filed by the due date of furnishing the Income Tax Return. The amendment operates retrospectively so that this benefit is available to all FTC claims filed during the current Financial Year." Also, it added, "The Statement in Form No. 67 can now be furnished on or before the end of the relevant Assessment Year."

As per the CBDT notification, "the statement in Form No 67 shall be furnished on or before the end of the assessment year relevant to the previous year in which the income referred in the sub-rule (1) has been furnished within the time specified under sub-section (1) or sub-section (4) of section 139."

The Central Board of Direct Taxes (CBDT) issued income tax refunds totaling more than Rs. 1.14 lakh crore to more than 1.97 crore taxpayers:

The Central Board of Direct Taxes (CBDT) has issued income tax refunds totaling more than Rs. 1.14 lakh crore to more than 1.97 crore taxpayers **between 1 April 2022 and 31 August 2022.**

According to a recent income tax department tweet, "CBDT issues refunds of over Rs. 1.14 lakh crore to more than 1.97 crore taxpayers between 1st April, 2022 to 31st Aug, 2022. Income tax refunds of Rs.61,252 crore have been issued in 1,96,00,998 cases & corporate tax refunds of Rs. 53,158 crore have been issued in 1,46,871 cases"



Tax payers can now update their Income Tax Returns for the last 2 years:

The central government introduced Income Tax Return - **Updated (ITR-U)**, which enables a taxpayer to comply with their tax responsibilities without getting into hassles of the law. Finance Minister Nirmala Sitharaman made an announcement in this regard while presenting the union budget in February 2022.

ITR-U is the tax return form in which tax payers can file tax returns for assessment year two years prior to the current assessment year i.e. tax payer can file an updated return for AY: 2020-21 in FY: 2022-23 to offer to tax additional income. Thus an updated income tax return gives a chance to the tax payer for coming clean to the authorities if they have missed filing a tax return in the earlier year or have missed reporting some income. One would need to pay additional income-tax of 25 per cent of if the return is filed within 1 year and gets enhanced to 50 per cent

You can file ITR-U for FY 2019-20 by 31st March 2023 and so on for subsequent assessment years. Only one ITR-U can be filed for each assessment year. The government is giving the facility through ITR-U to voluntarily disclose any income which was unaccounted for and come clean after paying an additional 25 per cent / 50 per cent tax of the amount of income missed to be reported. According to the reports, taxpayers have started using the facility and about 1 lakh ITR-U have been filed by now.

Taxpayers filing ITR-U form, which can be filed within 2 years of the end of the relevant assessment year, will have to give reasons for updating the income – return previously not filed or income not reported correctly or wrong heads of income chosen or reduction of carried forward loss.



Goods & Services Tax

E-Invoice applicable for turnover exceeding 10 Crore under GST as per Notification No.17/2022-C.T. Dated 1st August 2022:

On 1st August, 2022, CBIC has issued Notification No.17/2022-Central Tax-dated.01.08.2022, in exercise of the powers conferred by sub-rule (4) of rule 46 of the CGST Rules, 2017, as per amendment that with effect from 1st day of October, 2022, any registered taxable person with aggregate turnover exceeding Rs.10 Crores in any financial year 2017-18, onwards by including such particulars contained in Form GST INV-01 after obtaining an Invoice Reference Number by uploading information contained therein on the Common GST Electronic Portal in such manner and subject to such conditions and restrictions as may be specified in the notification.

GST-Investigation Wing has issued guidelines for arrest and bail in relation to offences punishable under CGST Act, 2017:

These guidelines emanate from the judgment of Supreme Court dated 16.08.2021 in Siddharth v. The State of Uttar Pradesh & Anr. (2021) 8 TMI 977 (Madras) [SLP (Criminal) No. 5442/2021; Criminal Appeal No. 838/2021] Supreme court held that merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused.

CBIC (GST- Investigation Wing) has issued Instruction No. 3/2022-23 dated 17.08.2022 on issuance of summons u/s

70 of the CGST Act, 2017. Accordingly, following are some of the important points to be noted:

- Where summons are issued by Superintendent, prior written permission of officers not below the rank of DC/AC will be required.
- Reasons to be recorded in writing for issue of summons.
- Summons to be avoided to call for statutory documents already available on GSTN portal.
- Repeated summons without ensuring service of earlier summons to be avoided.
- Senior management /promoters (CMD, MD, CEO, CFO etc) of company or PSU should not be summoned unless their involvement is suspected or in the first instance.
- Summoned person should be aware as to whether he is being summoned as an accused, co-accused or witness.
- If the person summoned does not cooperate and join investigation even after repeated summons (generally three), complaint shall be filed u/s 172 and 174 of Indian Penal Code (IPC) before the Magistrate.

CBIC directed to open portal for two months for transitional credit:

Supreme Court has directed CBIC to open GST portal for two months for claiming transitional credit under GST law for taxpayers. Availing transitional credit via TRAN-1 and TRAN-2 form shall open from 1.9.2022 to 31.10.2022 for two months. Any aggrieved registered assessee can file the relevant form or revise the already filed form irrespective of whether the taxpayer has filed writ petition before the High Court or whether the case of the taxpayer has been decided by Information Technology Grievance Redressal Committee (ITGRC).



GSTN has to ensure that there are no technical glitch during the said time. The concerned officers are given 90 days thereafter to verify the veracity of the claim/transitional credit and pass appropriate orders thereon on merits after granting appropriate reasonable opportunity to the parties concerned. Thereafter, the allowed Transitional credit is to be reflected in the Electronic Credit Ledger.

Changes to keep in mind while filing GSTR-3B from Aug-22 onwards:

- The Government vide Notification No.14/2022 – Central Tax dated 05th July, 2022 has notified few changes in Table 4 of Form GSTR-3B for enabling taxpayers to correctly report information regarding ITC availed, ITC reversal and ineligible ITC in Table 4 of GSTR-3B.
- All the non-reclaimable reversals i.e., reversal of ITC in cases where it can never be claimed in future such as reversal of ITC in case of damaged stock, stock sold free of cost and other cases of similar nature is to be reported in table 4(B)(1).
- All reclaimable ITC reversals such as reversal of ITC in case of non-payment to vendor within 180 days where ITC can be reclaimed once the payment is made to the vendor and other such reclaimable nature transactions, may be reported in table 4(B)(2). It should be noted that ITC reversed under 4(B)(2) can be reclaimed in table 4(A)(5) at appropriate time and the break-up detail of such reclaimed ITC should be provided in 4(D)(1) in the same return.
- The ITC not-available mentioned in GSTR-2B of the taxpayer has to be reported in 4(D)(2) of table 4. Any ITC availed inadvertently in Table 4(A) in previous tax periods due to clerical mistakes or some other inadvertent mistake maybe reversed in Table 4(B)2.



Companies Act, 2013

MCA prescribed charge forms to be signed by insolvency resolution professional or resolution professional or liquidator for companies under resolution or liquidation:

MCA has published the Companies (Registration of Charges) Second Amendment Rules, 2022 to further amend the Companies (Registration of Charges) Rules, 2014.

Through this amendment, a new Rule 13 has been notified which deals with the signing of charge e-forms by insolvency resolution professional or resolution professional or liquidator for companies under resolution or liquidation.

The Form No. CHG-1, Form No. CHG-4, Form No. CHG-8 and Form No. CHG-9 shall be signed by an Insolvency resolution professional or resolution professional or liquidator for companies under resolution or liquidation as the case may be and filed with the registrar.

Further, the above said forms have been substituted with new forms. Form CHG-1 which is an application for registration of creation, modification of charge including particulars of modification of charge by assets Reconstruction Company in terms of securitization and reconstruction of financial assets and enforcement of securities interest act 2002.

Form CHG-4 deals with particulars for the satisfaction of charge and Form CHG-6 deals with notice of appointment or cessation of receiver or manager.

Form CHG-9 deals with the application for registration of creation or modification of charge for debentures or rectification of particulars filled in respect of creation or modification of charge for debentures.

MCA prescribes amendments in Deposit Rules:

MCA has published the Companies (Acceptance of Deposits) Amendment Rules, 2022 to further amend the Companies (Acceptance of Deposits) Rules, 2014.

The ministry of corporate affairs has amended rules to mandate detailed disclosure of funds accepted by companies under the Companies (Acceptance of Deposit) Rules.

MCA also notified new forms for reporting details of deposits. Businesses will now be required to file by 30 June every year a return of deposits as per audited figures. Businesses will also have to report loans or advances received by the company from directors, shareholders, promoters or banks and financial institutions, which are referred to as exempted deposits.

Further, Statutory Auditors will be required to submit a declaration with respect to the exempted deposits and liquid assets.

MCA prescribes the manner in which the books of accounts are required to be kept in electronic mode:

The Ministry of Corporate Affairs has notified the Companies (Accounts) Fourth Amendment Rules, 2022 which shall come into force on the date of their publication in the Official Gazette i.e. 05-08-2022.

Through this amendment, MCA has modified the manner in which the books of accounts are kept in electronic mode. The amendment is brought under Rule, 3 which deals with the manner of books of accounts to be kept in electronic mode in which the books of account and other relevant books and papers maintained in electronic mode shall remain accessible in India, at all times so as to be usable for subsequent reference.

Under sub-rule 5, there shall be a proper system for storage, retrieval, display or printout of the electronic records as the Audit Committee, if any, or the Board may deem appropriate and such records shall not be disposed of or rendered unusable unless permitted by law.

Provided that the back-up of the books of account and other books and papers of the company is maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India on a daily basis.

Further, the company shall intimate to the Registrar on an annual basis at the time of filing of financial statement, the information about the service provider who maintains the books of accounts and other documents in electric mode.

Registrar authorized to carry physical verification of registered office:

MCA has notified the Companies (Incorporation) Third Amendment Rules, 2022 to amend the Companies (Incorporation) Rules, 2014, which shall come into force from the date of publication in the official gazette i.e. 18-08-2022.

In the Companies (Incorporation) Rules, 2014, Rule 25B relating to Physical verification of the Registered Office of the company has been inserted.

The Rule provides that If Registrar has a reasonable cause to believe that the Company is not carrying on any business or operations pursuant to section 12(9) of the Companies Act, 2013, the Registrar may carry out Physical verification of the Registered Office.

The physical verification of the said registered office should be done in presence of two independent witnesses of the locality in which the said registered office is situated and may also seek the assistance of the local Police for such verification if required.

Further, the Registrar shall carry the documents as filed with the MCA while physical verification and shall cross-check with the documents filed by the Company. The Registrar shall take a photograph of the registered office while performing physical verification. The report of such verification shall be prepared and relevant attachments shall be attached.



Companies Act, 2013

Where the registrar is not getting any reply from the Company on the notices sent by it, the Registrar shall send a notice to the Company and its directors of intention to remove the name of the Company from the register of companies within 30 days from the notice.

MCA revised the strike off forms:

MCA has issued the Companies (Removal of Names of Companies from the Register of Companies) Second Amendment Rules, 2022 to further amend the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016, which shall come into force on the date of their publication in the Official Gazette i.e. 24-08-2022.

Through this amendment, MCA has revised Form No. STK-1, Form No. STK-5 and Form No. STK-5A to capture the declaration that the company is not carrying on any business or operations, as revealed after the physical verification, as carried out by the Registrar of companies under the provisions of Section 12(9) of the Companies Act, 2013.

MCA prescribes revised directors KYC filing e-forms:

MCA has notified the Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2022 to further amend the Companies (Appointment and Qualification of Directors) Rules, 2014. The amended Rules shall come into force on the date of their publication in the Official Gazette i.e. 29-08-2022.

Keeping in mind the launch of MCA V3 for Companies Act Forms, MCA has released the amended version of the eForms DIR-3-KYC and web-form DIR-3-KYC-WEB

and the same have been substituted in place of the old forms. It is clarified that in the case of Indian nationals, the Income-tax Permanent Account Number (Income-tax PAN) is mandatory in all cases even if there is no change in Income-tax PAN. In such cases, director details should be as per Income-tax PAN.

In case the details as per Income-tax PAN are incorrect, the director/designated partner is advised to first correct the details in Income-tax PAN.

The new forms would be made available from 01-09-2022 on the MCA portal.



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