

# Tax Street

A flagship publication that captures key developments in the areas of Tax and Regulatory environment

Presenting

**Easy Remittance Tool**  
Our Automated Solution  
for Foreign Remittances


January 2023



WORLD TAX

RECOMMENDED  
FIRM

2023



## Introduction

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We are pleased to present the latest edition of Tax Street – our newsletter that covers all the key developments and updates in the realm of taxation in India and across the globe for the month of January 2023.

- The **'Focus Point'** sheds light on the GST aspects surrounding co-working spaces.
- Under the **'From the Judiciary'** section, we provide in brief, the key rulings on important cases, and our take on the same.
- Our **'Tax Talk'** provides key updates on the important tax-related news from India and across the globe.
- Under **'Compliance Calendar'**, we list down the important due dates with regard to direct tax, transfer pricing and indirect tax in the month.

We hope you find our newsletter useful and we look forward to your feedback.

You can write to us at [taxstreet@nexdigm.com](mailto:taxstreet@nexdigm.com). We would be happy to hear your thoughts on what more can we include in our newsletter and incorporate your feedback in our future editions.

Warm regards,  
The Nexdigm Team

## Focus Point

### No space for co-working spaces in the GST regime

Post the eruption of COVID-19, the world shifted to digitalization, and work from home became a norm. Various companies started adopting a hybrid (digital/physical) working arena approach where employees chose to work from the office or home. Largely, companies shifted from traditional rental office spaces to shared/co-working spaces to reduce admin and rental costs. Such spaces also allowed access to flexible office space where a physical layout could be altered to accommodate fewer people, and the community shifted to digital realms.

Despite these benefits, a roadblock was the denial of GST registration when the 'Principal Place of Business' was applied for such shared/co-working spaces. The tax authority's cautious approach was owing to the increased revenue leakages where the GST registrations were fraudulently obtained and misused for fake invoicing, thereby transferring "paper input tax credit."

While the taxpayers are adopting modern business practices, the Department has also rightly contested that there is no stability in registrations obtained at such co-working places considering the limited/no documentation/records available at the place of business and also the permanency of such addresses.

Thus, as a standard practice, the officers started calling for extensive documentation such as the original registered lease agreement, notarized lease agreement between the co-working space companies, NOC from the original owner in the name of the companies, and KYC of the original owner, etc. Although these documents look preliminary, they are very difficult to obtain considering the complicated structure of the co-working space arrangement discussed below.

For a better understanding, let's examine the structure of co-working spaces. Generally, an original owner leases his property to a co-working space developer who further provides space and other services to multiple companies. Obtaining spaces differ from getting a single desk/cabin to getting the entire floor. Furthermore, it is worth noting that a co-working space not only rents out space but also certain allied services such as internet connection, phone and fax numbers, house-keeping services, kitchen amenities/drinking water, electricity usage, parking area, access to conference rooms, printing credits, etc. As this is more of a bundled service than only space rental, the co-working spaces enter into a 'Membership/Service Agreement' with the companies, not a lease rent agreement.

As against the service agreement, the authorities are adamant about approving the registrations only if registered leave and license agreements are uploaded, which are derived from applicable state laws (E.g., Maharashtra Rent Control Act). The agreement between a co-working space and an applicant is a 'Service Agreement' for sharing premises and is not a 'lease' /'leave and license' agreement which does not require registration under the State Rent Control Act. Furthermore, GST law nowhere mandates a registered leave and license/lease agreement for obtaining registration. In fact, the GST portal and CBIC FAQs recognize shared/co-working spaces and GST registrations are allowed basis of NOC from the original owner and a copy of the electricity bill.

A general condition in the service agreement restricts the applicant from creating tenancy interest, leasehold estate or real property interest. On one hand, the taxpayer is getting rejections vis-à-vis registration applications and thus litigating with the tax authorities, while on the other hand, persuading the original owners and co-working space providers for documentation. This has led to severe hardships for the taxpayer resulting in a delay in obtaining registrations owing to the piling of requirements/multiple rejections.

It is worth noting that even though Kerala Authority for Advance Ruling had affirmed that GST registration can be allowed to multiple firms operating from the same address, the Tamil Nadu Authority for Advance Ruling had rejected the same. This highlights the different mechanisms adopted by different states, adding to the agony of the taxpayers burdening them with impractical requirements.

There is no doubt that there has been a tremendous increase in bogus invoicing and detection of fraud, and it needs to be controlled and prevented, but the current practice is making genuine taxpayers willing to do business in India suffer.

There might come a point where foreign companies stop investing in India, considering the stringent registration provisions in a hybrid workflow model like today. The need of the hour is a prudent clarification by the GST Council to clear the air on the GST registration issues and devise a mechanism to check credit frauds without impacting genuine taxpayers for as fundamental a thing as to get registered for paying GST.

An in-depth evaluation that captures various aspects of Union Budget 2023-24



[Read More](#)

## Webinars and Events

### Taxation on unlisted equity investment simplified

11 February 2023

Maulik Doshi

### UAE Corporate Tax

9 February 2023

### Tax Strategy & Planning Summit 2023

8 February 2023

Maulik Doshi

### Union Budget 2023

7 February 2023

Maulik Doshi, Saket Patawari

### Union Budget 2023

3 February 2023

Saket Patawari, Sanjay Chhabria, Sneha Pai

### Union Budget 2023

2 February 2023

Maulik Doshi, Saket Patawari, Sanjay Chhabria, A.K. Viswanathan

### Conference on GST and Customs- Contemporary Issues

24 January 2023

Saket Patawari



## From the Judiciary

### Direct Tax

#### Whether a Liaison Office would constitute a Permanent Establishment where employees conduct preparatory or auxiliary coordination?

S.R. Technics Switzerland Limited  
TS-1018-ITAT-2022(Mum)

##### **Facts**

The taxpayer is a foreign company incorporated in Switzerland and is engaged in the maintenance, repair, and overhaul business for aircrafts, engines, and components. The assessee also has a Liaison Office (LO) in India, which was established with RBI's approval for communication/coordination functions. The Revenue alleged that the LO in India constituted a Service Permanent Establishment (PE) or an Agency PE; accordingly, a certain portion of its income was alleged to be attributable to the Indian PE.

It was contended by the taxpayer that there is no PE in India as the LO is functioning strictly under the RBI directions and is engaged in only coordination functions, which are of preparatory/auxiliary nature. An appeal was filed with the Tribunal after not receiving relief from the Department.

##### **Held**

The Tribunal agreed with the taxpayer's contention. The LO did not carry out any activities which were beyond what was permitted by the RBI, i.e., it was not engaged in any business or trading and was just a part of the coordination and communication functions. Thus, it was held that the activities carried out by the LO are preparatory(auxiliary) in nature, which is under the specific exclusions provided under Article 5 of the India-Switzerland tax treaty. Furthermore, it was also observed that the employees of the LO do not negotiate, finalize or discuss the mechanics of contracts, including pricing, with the assessee's customers, and as such, the employees of LO merely act as a communication link between the assessee and the airline companies.

##### **Our Comments**

The Mumbai Bench of the Tribunal held that the LO was only conducting preparatory and auxiliary functions of communication and coordination.

#### Whether IT and admin services provided to AE would constitute FTS despite of make available clause?

Bio Rad Laboratories Inc.  
TS-1009-ITAT-2022(DEL)

##### **Facts**

Bio Rad Laboratories Inc. is incorporated under USA laws and is engaged in manufacturing and supplying life science research, healthcare, analytical chemistry systems, etc. It rendered information technology services and some administrative services to its associated enterprise pursuant to a service agreement. The Revenue alleged that these services were in the nature of managerial services provided by the taxpayer to its Indian Associated Enterprise (AE), and such technical knowledge, experience, skill, know-how, etc., were 'made available' by the taxpayer to its Indian affiliate and, therefore, they are in the nature of FTS being liable to tax at 10% under the India-USA tax treaty.

**Held**

The Tribunal ruled that in order to bring the managerial services within the ambit of FTS, the said services would have to satisfy the 'make available' test, and such services should enable the person acquiring the services to apply the technology contained therein.

The Tribunal further observed that it is evident that Indian AE is not enabled to provide the same services without recourse to the taxpayer, and mere incidental advantage to Indian AE is not enough to satisfy the 'make available' test. It was opined that the real test is the transfer of technology, which the Revenue failed to consider. The following observation was made by the Tribunal "in order to invoke make available clauses, technical knowledge and skill must remain with the person receiving the services even after the particular contract comes to an end....".

**Our Comments**

The Delhi Bench of the Tribunal concluded that to invoke 'make available' provision, the technical knowledge and skill must remain with the person receiving the services even after the service ends.

**Transfer Pricing****Can the valuation of shares, where the future cash flow projections are uncertain, be valued as per the DCF method?**

Aaradhana Realities Limited (earlier known as Essar Investment Limited)<sup>1</sup>  
TS-899-ITAT-2022(Mum)-TP

**Facts**

The taxpayer has sold equity shares of Essar Capital Limited to its AE, i.e., Essar Capital Holdings Limited, Mauritius. The taxpayer has benchmarked the transaction using the external Comparable Uncontrolled Price (CUP) method basis the valuation certificate from the external valuer. However, the Transfer Pricing Officer (TPO) recomputed the arm's length value of the shares using Discounted Cash Flow (DCF) method as per actual published figures and proposed an adjustment. The view of the TPO was upheld by the Dispute Resolution Panel (DRP).

**Held by ITAT**

The Income Tax Appellate Tribunal (ITAT) noted that Essar Capital Limited had an inconsistent revenue/cash flow stream over the years. Placing reliance on the valuation norms prescribed by the Indian Valuation standard 2018 issued by the Institute of Chartered Accountants of India (ICAI) it upheld the taxpayer's view that the discounted cash flow with DCF method cannot be applied in the instant case. The ITAT also relied on the case of Tally Solutions (P.) Ltd<sup>2</sup> to state that the projections should be adopted during valuation rather than placing reliance on actual figures.

Furthermore, the ITAT also commented that when the TPO was computing the arm's length value of the shares using the discounted cash flow with DCF method, it considered interest income but neglected the interest payments, which were in the nature of operating expenses since it was an investment company.

**Our Comments**

In the valuation of shares, instead of always considering the income approach, it has been recommended that the use of other valuation approaches can be adopted. This is especially so in cases where there is significant uncertainty in the timing of income, i.e., future cash flows. It also acknowledges that Indian valuation standards 2018 issued by ICAI are the basis for the valuation of shares.

**Internal comparables are to be selected over external comparables for Interest Benchmarking on NCDs**

Dans Energy Private Limited<sup>3</sup>  
TS-906-ITAT-2022(Bang)-TP

**Facts**

The taxpayer was involved in identifying and investing in hydropower projects. The taxpayer had issued non-convertible unsecured, redeemable debentures (NCDs) to its AE. These debentures were on a private placement basis and were unlisted and unrated. The taxpayer had paid interest on these debentures at SBI rate + 5% subject to a maximum of 15%, which is effectively the same at 14.27% (for AY 17-18) and 13.93% (for AY 18-19). The taxpayer benchmarked the interest by adopting the following approaches:

- chose external comparables, which had issued NCDs during each of the relevant periods, which was bearing interest at 15%.

1. Mumbai ITAT – ITA No. 2195/Mum/2014 – AY 2009-2010

2. Tally Solutions (P.) Ltd. v. Dy. CIT [2011] 14 taxmann. com 19/48 SOT 110

3. Bangalore ITAT – ITA No. 830 & 831/Bang/2022 – AY 2017-18 & 2018-19

- chose internal comparables of interest paid on secured loans availed by the taxpayer from unrelated parties, which came to a rate of 13.75%. However, since the loans were secured in nature, an adjustment was made to arrive at the arm's length interest rate, which came to 16.75% (for AY 17-18) and 18.39% (for AY 18-19).

During the assessment proceedings, the TPO rejected the benchmarking analysis conducted by the taxpayer and proceeded to choose comparables identified by searching the Bloomberg database. Few of these comparables included government companies with AAA credit ratings. The TPO determined the Arm's Length Price (ALP) at 10% for both assessment years and proposed an adjustment. The DRP upheld the order of the TPO.

#### ***Held by the ITAT***

ITAT held that internal comparables should be evaluated first for ALP computation – placing reliance on the judgment of Tecnimont ICE Pvt Ltd. It further stated that external comparables can be adopted only if internal comparables fail the comparability test. Additionally, the ITAT noted that the ALP of interest will depend on various factors like:

- nature of the loan,
- purpose of the loan,
- currency in which the loan is provided and in which interest is to be paid,
- security or guarantees offered by the borrower,
- the amount and duration of the loan and
- credit rating of the borrower.

In the instant case, the ITAT noted that the NCD issued to AE was unsecured in nature and loans taken from third parties are secured loans; therefore, internal comparables should be adopted after adjusting to the difference in security. It further adds that if there is a difference in the currency, appropriate adjustments should be made. While the ITAT observed that there is no clarity on whether the NCD issued to AE is denominated in Indian rupees and remitted the matter for verification of the same. However, it held if the loan taken from AE and the loan taken from third parties is denominated in Indian rupees and the interest on such loans is also paid in Indian rupees, the issue related to geographical difference does not arise. In the context of comparability, the ITAT also added that the credit rating of borrowers from the external comparison should be the same as the taxpayer. In the instant case, the taxpayer had incurred losses and comparables selected by the TPO included certain companies with higher credit ratings and which were convertible in nature, which would fetch a lower rate of interest. Hence restored the matter back to the TPO to undertake fresh benchmarking to determine the ALP of interest on NCD's keeping the above points in mind.

#### **Our Comments**

In the case of financial transactions also, internal comparability is to be preferred over external comparables. Even if there are any differences – appropriate adjustments in relation to the currency and difference in security may be made. Furthermore, it is imperative to understand key characteristics of such financial transactions as currency, the borrower's credit rating, security, etc.

## Alerts

### Key Highlights of GST Notifications and Clarification Circulars - December 2022

11 January 2023

<https://bit.ly/3w37RCd>

### The Reserve Bank of India simplifies the reporting in Single Master Form on the FIRMS portal

5 January 2023

<https://bit.ly/3iuZs7H>



## Indirect Tax

### Whether the recipient could claim ITC beyond the statutory limit where the supplier had erred in disclosing the GSTIN in its invoices as well as GST returns?

Circular No. 183/15/2022-GST provides clarification to deal with differences in ITC availed in Form GSTR-3B as compared to that detailed in Form GSTR-2A for FY 2017-18 and 2018-19

Wipro Ltd India vs. The Assistant Commissioner of Central Taxes and Ors  
TS-02-HC(KAR)-2023-GST

#### Facts

- During the period FY 2017-18 to FY 2019-20, Wipro Limited had inadvertently disclosed the wrong GSTIN in the invoices while making supplies to ABB Global Industries and Services Pvt. Ltd., which was carried forward in the relevant GST returns.
- Consequently, the supplier-petitioner approached the Karnataka HC seeking a direction to allow them access to the GST portal to rectify their Form GSTR-1 so that the recipient could take Input Tax Credit (ITC) in respect of the subject invoices, despite the time limit prescribed in Section 16(4) of the CGST Act, 2017.
- The supplier-petitioner placed reliance on Circular No. 183/15/2022-GST dated 27 December 2022, to substantiate their stand.

#### Ruling

- HC noticed that the language employed in the Circular contemplates rectifying the bona fide and inadvertent mistakes committed by the persons at the time of filing of Forms and submission of returns during FY 2017-18 and FY 2018-19.

- Hence, considering the peculiar and special facts and circumstances in the present case, HC opined that the error committed by the supplier-petitioner in showing the wrong GSTIN in the invoices and ensuing GST returns was clearly a bona fide error that occurred due to unavoidable circumstances, sufficient cause and consequently, the aforesaid Circular was squarely applicable in the instant case.
- Moreover, HC observed that the procedure prescribed in the Circular was complied with by the parties and therefore directed the Revenue to follow the prescribed procedure.
- HC emphasized that though the Circular refers only to the years 2017-18 and 2018-19, a justice-oriented approach should be adopted since there are identical errors committed in the year 2019-20.

#### Our Comments

This order rightly adopts a 'justice-oriented' approach to extend the benefit of the guidelines prescribed by the Central Board of Indirect Taxes and Customs (CBIC) beyond the contemplated period.

With an increase in scrutiny and audits by the Department, this ruling and the Circular have come as a respite for the taxpayers.

## M&A Tax Update

### Assessment order passed in the name of non-existing entity held to be null and void-ab-initio

Barclays Global Service Centre Private Limited (Formerly: Barclays Shared Services Pvt. Ltd.)  
TS-29-ITAT-2023(PUN)

In a recent decision, the Pune ITAT upheld that any order passed by the assessing officer in the name of a non-existing company is null and void-ab-initio.

Pursuant to amalgamation, any assessment proceeding will be carried out against the amalgamated entity as the amalgamating company ceases to exist. The Tribunal noted that the fact of amalgamation was brought to the notice of the Assessing Officer (AO) and despite knowing the fact, the AO passed the assessment order in the name of the amalgamating company. In this regard, it relied on the decision of the Hon'ble Supreme Court in the case of Maruti Suzuki India Ltd.<sup>4</sup>

#### Our Comments

This decision reiterates the settled position that upon a merger, the existence of amalgamating company comes to an end and no further proceeding shall be carried out where the fact of the merger is brought to the notice of Revenue. In another Supreme Court decision<sup>5</sup>, where the fact of the merger was not brought to the notice of the AO, the validity of the assessment proceeding in the name of the amalgamating company was upheld.

On perusal of the decisions, it can be noted that the critical factor for deciding the validity of the assessment order is whether the taxpayer has intimated the fact of the merger to the tax authorities. This is an important aspect to be noted by the taxpayers contemplating or undergoing merger exercises. Furthermore, due disclosures should be made in the communications to the tax authorities, return forms, other income tax filings, etc., about the merger.

4. 107 taxmann.com 375 (SC)

5. PCIT vs. Mahagun Realtors (P) Ltd., 443 ITR 194 (SC)



## Introduction of goodwill with credit to current accounts of partners of LLP post-conversion of the company into LLP does not vitiate exemption conditions

[2023] 146 taxmann.com  
109 (Mumbai - Trib.)

The ITAT has held that exemption under Section 47(xiiiib) applicable on the conversion of a company into LLP can't be withdrawn on the introduction of goodwill with credit to current accounts of partners of LLP on the admission of new partner post-conversion of private company into an LLP.

Of the conditions to be satisfied for the availability of an exemption, one is that no direct or indirect benefit should be passed on to the shareholders in any form or manner other than by way of share of profit and capital contribution in the LLP. Another condition is that no amount be paid directly or indirectly to any of the partners out of the balance of accumulated profits standing in the company accounts on the date of conversion for a period of three years.

The ITAT held that the introduction of goodwill in books of LLP post-conversion by credit to partners' current accounts does not amount to receipt by the shareholders of any consideration or benefit as this condition has to be seen till the date they are shareholders, i.e., date of conversion and based on the factual matrix, there was no such benefit received by shareholders directly or indirectly. Furthermore, this also cannot be considered as a distribution out of accumulated profits on the date of conversion, as the accumulated profits on the date of conversion did not include the amount of goodwill.

## Regulatory Updates

### SEBI Regulations

#### SEBI extends relaxation on dispatching hard copies of financial statements

SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations) mandates Equity as well as Debt Listed Companies to dispatch a hard copy of the statement containing salient features of all the documents as prescribed in Section 136 of the Companies Act, 2013 (financial statements, Board's report, Auditor's report, etc.), to those shareholders who have not registered their email addresses. However, relaxation was provided from this requirement during the outbreak of COVID-19. The said relaxation was initially provided till 31 December 2021 and was subsequently extended upto 31 December 2022.

Now, after considering representations from listed entities, SEBI has decided to further extend these relaxations until 30 September 2023. SEBI extension comes after the Ministry of Corporate Affairs (MCA) has also provided similar relaxations to companies dispatching physical copies of financial statements to shareholders through a circular on 28 December 2022.

However, Listed Companies will still be required to send hard copies of annual reports to those shareholders who request the same. SEBI also requires companies to disclose the weblink to the annual report in the notice of AGM published by advertisement to enable shareholders to access the full annual report.

### Our Comments

Relaxations brought in by MCA and SEBI during the pandemic, like allowing the dispatch of financial statements, Board's report, Auditor's report, etc., in electronic mode, has been accepted as a new normal by all the stakeholders because of its convenience, environment friendliness and cost-effectiveness. Extension of this COVID time relaxation will reduce the administrative and compliance burden of listed entities to a great extent and has been welcomed with open arms.

### Quotes and Coverage

#### CBDT issues new guidelines to streamline digital economy tax

9 February 2023 | LiveMint

Sneha Pai

<http://bit.ly/3ldr81K>

#### TDS/TCS Amendments in Finance Bill, 2023 - A Snapshot!

6 February 2023 | Taxsutra

Sneha Pai, Mital Patel

<https://bit.ly/3DZdTbB>

#### Custom duty proposals are largely aligned to government's vision of Make of India

6 February 2023 | Times of India

Saket Patawari

<http://bit.ly/3YwnzSW>

#### Indirect Tax Proposals - Devil lies in the details!

3 February 2023 | Taxsutra

Saket Patawari, Aditya Nadkarni

<https://bit.ly/3JYIURM>



# Tax Talk

## Indian Developments

### Direct Tax

#### CBDT extends the time limit for compliance to be made for claiming any exemption under section 54 to 54GB of the Income Tax Act, 1961

Circular No. 1 OF 2023  
F. NO. 225/49/2021-ITA-II  
dated 6 January 2023

- The Central Board of Direct Taxes (CBDT) via Circular No. 12 of 2021, had provided relaxation in respect of certain compliances to be made by taxpayers, including investments, deposits, payments, acquisitions, etc., to claim an exemption under Section 54 to 54GB.
- Point 7 of the above-mentioned Circular provided that the aforementioned compliances for which the last date of such compliance fell between 1 April 2021 to 29 September 2021 may be completed on or before 30 September 2021.
- However, in consideration of the restrictions imposed during the COVID-19 pandemic causing genuine hardship faced by taxpayers in making the compliances, CBDT provides that the compliances to be made by the taxpayers for the purpose of claiming exemption under Section 54 to 54GB for which the last date of such compliance falls between 1 April 2021 to 28 February 2022, may be completed on or before 31 March 2023.

### Indirect Tax

#### GST Updates

#### Clarifications regarding GST rates and classification of certain goods

Circular No. 189/01/2023-GST  
dated 13 January 2023

Based on the recommendations of the GST Council in its 48<sup>th</sup> meeting, the CBIC issued a Circular clarifying the levy of GST vis-à-vis the following supply of goods:

Sr. No.	Category of goods	Clarification	Applicable Rate
1	Rab (product of sugarcane)	Classifiable under HSN code 1702 in lieu of 1701	GST - 18%
2	By-products of milling of Dal / Pulses such as Chilka, Khanda and Churi / Chuni	W.e.f. 1 January 2023, supply of subject goods shall be exempt irrespective of end use.  As a relief measure, the matters that arose during the intervening period would stand regularised on "as is" basis from the date of issuance of Circular No. 179/11/2022-GST dated 3 August 2022 till the date of coming into effect of the above amendment.	GST - Nil
3	Carbonated Beverages of Fruit Drink or Carbonated Beverages with Fruit Juice	Classifiable under HSN code 2202 99	GST - 28% Compensation Cess - 12%

Sr. No.	Category of goods	Clarification	Applicable Rate
4	Snack pellets manufactured through an extrusion process (such as fryums)	Classifiable under HSN code 1905 90 30	GST - 18%
5	Sports Utility Vehicles (SUVs)	Compensation Cess is applicable on motor vehicles, falling under heading 8703, which satisfy all four specifications:  a. Popularly known as 'SUVs' b. Engine capacity exceeds 1500 cc c. Length exceeds 4000 mm d. Ground clearance is 170 mm and above.	Compensation Cess - 22%
6	Specified goods falling under any Chapter required in connection with Petroleum operations/Coal bed methane operations, under Notification No. 3/2017-Integrated Tax (Rate) dated 28 June 2017. These goods include inter alia:  a. Land Seismic Survey Equipment and accessories b. All types of drilling rigs etc. c. Helicopters, including assemblies/parts d. All types of marine vessels e. X-band radar transponders	The importer can claim the benefit of a lower rate under Schedule I (5%) of Notification No. 1/2017-Integrated Tax (Rate) or any other IGST rate Notification.	IGST - 5% or 12%

## Quotes and Coverage

### Expansion of Angel Tax on 'Non-Resident' Investors

2 February 2023 | Taxsutra

Maulik Doshi

<https://bit.ly/3RR1FYg>

### Union Budget 2023 Highlights Live News: FM Nirmala Sitharaman Budget 2023 Top Announcements Live Updates

1 February 2023 | Financial Express

Maulik Doshi

<https://bit.ly/3XsSJtg>

### Budget 2023: Agriculture accelerator fund to increase productivity

1 February 2023 | LiveMint

Sanjay Chhabria

<http://bit.ly/3RPk07W>

### Budget 2023: Top Five Direct Tax Changes

1 February 2023 | BQ Prime

Maulik Doshi

<http://bit.ly/3XmgOCa>

### Union Budget 2023: Here's what the startup community wants

28 January 2023 | ET Retail

Saket Patrawari

<http://bit.ly/3jlor8h>



### Clarifications regarding the applicability of GST on certain services

Circular No. 190/01/2023-GST dated 13 January 2023

Similar to the clarifications in respect of the supply of goods, the CBIC has clarified the applicability of GST on the following services:

Category of services	Clarification provided
Accommodation services supplied by Air Force Mess or other similar messes, like Army Mess, Navy Mess, Paramilitary and Police Forces Mess, to their personnel or any person other than a business entity.	Such services are considered as services supplied by the Central/State Government, Union Territory, or local authority and, therefore, are exempt from GST vide Sl. No. 6 of Notification No. 12/2017-Central Tax (Rate) dated 28 June 2017.
Incentive paid by MeitY to acquiring banks under Incentive scheme for promotion of RuPay Debit Cards and low-value BHIM-UPI transactions.	Such incentives are in the nature of subsidies directly linked to the price of the service and, thus, are not taxable under the GST law.

### Powers of Additional Assistant Directors in DGGI, DGGST, and DG Audit

Notification No. 1/2023-Central Tax dated 4 January 2023

The powers of the Superintendent of Central Tax have been assigned to Additional Assistant Directors in Directorate General of Goods and Services Tax Intelligence (DGGI), Directorate General of Goods And Services Tax (DGGST), and Directorate General (DG) Audit.

### Customs

#### Extension of import duty exemption on COVID-19 vaccines

Notification No. 1/2023-Customs dated 13 January 2023

The exemption of the entire customs duty leviable on the COVID-19 vaccine, when imported into India by the Central Government or State Government, has been further extended for the period starting from 14 January 2023 to 31 March 2023.

#### Government notifies second tranche of tariff concessions under India-Australia ECTA

Notification No. 64/2022-Customs dated 29 December 2022

The Central Government has notified the second tranche of tariff concessions for 8500 items, from 1 January 2023, under the India-Australia Economic Cooperation and Trade Agreement (ECTA).

#### Customs (Assistance in Value Declaration of Identified Imported Goods) Rules, 2023 (CAVR, 2023)

Notification No. 3/2023-Customs (NT) and Circular No. 1/2023-Customs, both dated 11 January 2023

The Central Government has notified CAVR, 2023, which will come into force from 11 February 2023 to address the undervaluation of specified imported goods. The specified goods will be identified by the CBIC where it has reason to believe that the value of such goods may not be declared truthfully or accurately. The list will be prepared and recommended by a Screening Committee and Evaluation Committee.

### Foreign Trade Policy

#### Relaxation under the EPCG scheme pursuant to the COVID-19 pandemic

Public Notice No. 53/2015-2020 dated 20 January 2023

DGFT has allowed one-time relaxation from maintaining Average Export Obligation under EPCG authorizations for the years 2020-21 and 2021-22 to Hotel, Healthcare and Educational sectors. Furthermore, for these sectors, the Export Obligation (EO) period has been extended from the date of expiry for the duration equivalent to the number of days the EO period falls between 1 February 2020 and 31 March 2022. For EPCG authorizations issued to other than aforesaid sectors, the EO period may be extended from the date of expiry for the number of days the existing EO period falls between 1 February 2020 and 31 July 2021, subject to 5% additional EO in value terms on balance as on 31 March 2022. This is in addition to the EO extensions facility (upon payment of the composition fees) already provided in FTP/HBP.

#### DGFT simplifies Composition Fee for Export Obligation extension under the Advance Authorization Scheme

Public Notice No. 52/2015-20 dated 18 January 2023

The Directorate General of Foreign Trade (DGFT) has amended the HBP 2015-2020 to simplify the process of levying the Composition Fee for extending the Export Obligation under the Advance Authorization Scheme. Accordingly, the said fee shall be leviable basis the Cost, Insurance, and Freight (CIF) value of Advance Authorizations issued and the number of extensions sought. The revised fee shall be applicable only for requests made on or after 19 January 2023.

# Tax Talk

## Global Developments

### Direct Tax

#### OECD releases results that show further progress in countering harmful tax practices

Excerpts from OECD.org,  
5 January 2023

At its November 2022 meeting, the OECD Forum on Harmful Tax Practices (FHTP) reached new conclusions on 13 regimes as part of implementing the BEPS Action 5 minimum standard on harmful tax practices. The results are as follows: two regimes were found to be not harmful (Cabo Verde and Hong Kong (China)), four regimes are now in the process of being amended (Armenia) and two regimes have been amended to be in line with the standard and are now not harmful (amended) (Jamaica and North Macedonia). Furthermore, two regimes were abolished (Honduras and Pakistan), and two regimes were concluded as potentially harmful (Albania), for which the FHTP will assess at its next meeting if these regimes are actually harmful.

### Transfer Pricing

#### Draft UK transfer pricing documentation regulations published for consultation, but Summary Audit Trail (SAT) delayed<sup>6</sup>

The UK Government issued a draft statutory instrument to introduce new transfer pricing documentation requirements. The draft statutory instrument requires Multinational Enterprises (MNEs) with a turnover of EUR 750 million or more, operating in the UK, to keep and preserve a master file and local file in accordance with the OECD Transfer Pricing Guidelines commencing on or after 1 April 2023.

The regulations have an effect on the following:

- for Corporation Tax purposes, in relation to accounting periods beginning on or after 1 April 2023
- for Income Tax purposes in relation to the tax year 2024 to 2025 and subsequent years.

The regulations also provide HM Revenue and Customs (HMRC) with the power to require MNEs to produce a Summary Audit Trail (SAT) - a document covering the steps taken by members of an in-scope MNE in completing their local file.

HMRC will undertake a separate public consultation on the SAT in 2023, therefore, the SAT requirement will not come into force on 1 April 2023.

A decision on the SAT's commencement will be made following the conclusion of the public consultation.

#### Singapore - Indicative margin for related party loans for 2023<sup>7</sup>

The Inland Revenue Authority of Singapore (IRAS) published the indicative margin for related party loans not exceeding SGD 15 million obtained or provided from 1 January 2023 to 31 December 2023 for which the base reference rates are Risk-Free Rates (RFRs) as + 230 bps (2.30%).

#### Brazil: Draft legislation to align transfer pricing rules with OECD Transfer Pricing Guidelines<sup>8</sup>

The Brazilian government issued draft legislation to align its transfer pricing system, which is currently in force with the OECD Transfer Pricing Guidelines. For the fiscal year 2023, the taxpayers have the liberty to choose from the existing transfer price rules or the new OECD-based rules. However, beginning 1 January 2024, it is imperative for taxpayers to apply the new transfer pricing rules.

6. Draft regulations: The Transfer Pricing Records Regulations 2023 - GOV.UK ([www.gov.uk](http://www.gov.uk))

8. MPV1152 ([planalto.gov.br](http://planalto.gov.br))

7. <https://bit.ly/3YroEM2>

## Indirect Tax

Some of the key highlights of the points addressed include:

- Introduction of the Arm's length principle by the Brazilian Legislation.
- Definition of related party subject to Transfer Pricing (TP) rules.
- The scope of TP rules has been broadened to include any commercial or financial relationship between two or more related parties. The current transfer pricing rules focused on tangible goods, services and rights.
- Implementation of TP methods according to the OECD rules. The Comparable Independent Price method will be considered the most appropriate method where reliable price information is available.
- Business Restructuring would come under the gamut of transfer pricing rules.
- Analysis of the contractual terms, functions performed, the characteristics of the goods, rights or services, economic circumstances and business strategies to be undertaken to outline the transaction.
- Transfer Pricing documentation is now required for compliance purposes and lack of TP documentation will attract a penalty of five percent of the value of the corresponding transaction.

### Changes in Spain's 'use and enjoyment' VAT rule from 1 January 2023

Excerpts from various sources

From 1 January 2023, the application of the "use and enjoyment rule" for services under the Spanish VAT law has been restricted to B2C cases, leaving most of the B2B services outside the scope. In B2B cases, it will only apply to certain financial services and leasing of means of transport. Accordingly, most services supplied by Spanish businesses to non-EU customers will no longer be subject to VAT.

### Dubai reduces the threshold for imposing customs duty on imports

Excerpts from vatupdates.com

Starting 1 January 2023, Dubai Customs authority has lowered the threshold for imposing customs duty. The threshold is reduced from an earlier consignment value of SAR 1000 to AED300. The new rule applies to parcels or shipments up to 70kg that is transported through courier companies. However, consignments of cards, mail, visually impaired leaflets, and print materials would remain outside the levy's scope.

### Amendments to Bulgarian VAT law

Excerpts from various sources

The National Assembly of Bulgaria has adopted the Bill to amend the VAT Act. The key amendments are summarized below:

- The taxpayers are now allowed to offset the VAT on the original invoice against output VAT in the return of the period in cases where the customer does not settle their debt.

- The VAT rates of 9% (applicable to supplies of tourist, restaurant and catering services) and 0% (applicable to bread and flour), which were earlier extended till 31 December 2022 and 1 July 2023 respectively, will now apply 31 December 2023. On the other hand, VAT rate of 9% on supplies of books, textbooks, baby food, hygiene products, etc., has been made permanent.
- New obligations have been introduced for payment service providers from 1 January 2024, in relation to the collection and reporting of data on cross-border payments.

### Peru extends VAT exemption and introduces a temporary early VAT recovery regime

Excerpts from various sources

The Peruvian VAT authorities have announced two measures:

- Extension of VAT exemption until 31 December 2025 on certain goods such as fish, crustaceans, mollusks, fresh or refrigerated potatoes, etc., as well as services like public transportation within the country, cargo transportation from Peru to /from foreign countries, live cultural shows, and interest from the collection of credits transferred by banking entities to securitization companies, trusts or investment funds.
- A temporary and exceptional VAT early recovery regime until 31 December 2024 will allow taxpayers to elect to apply for the early VAT recovery system if the investment is at least USD 2 million.

# Compliance Calendar

- Direct Tax
- Indirect Tax

## 7 February 2023

Due date for the deposit of tax deducted/collected for January 2023. However, all sum deducted/collected by a government office shall be paid to the credit of the Central Government on the same day when tax is paid without the production of an Income-tax Challan.

## 11 February 2023

GSTR-1 to be filed by registered taxpayers for the month of January 2022 by all registered taxpayers, not under the QRMP scheme.

## 14 February 2023

Due date for issuing of TDS Certificate for tax deducted under Section 194-IA, Section 194-IB, Section 194M in December 2022.

## 20 February 2023

- GSTR-5A for January 2022 to be filed by a non-resident service provider of Online Database Access and Retrieval (OIDAR) services.
- GSTR-3B for January 2022 to be filed by all registered taxpayers not under the QRMP scheme.

## 2 March 2023

Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA, Section 194-IB, Section 194M in January 2023.

## 10 March 2023

- GSTR-7 for February 2022 to be filed by the taxpayer liable for Tax Deducted at Source (TDS).
- GSTR-8 for February 2022 to be filed by the taxpayer liable for Tax Collected at Source (TCS).

## 13 March 2023

- GSTR-6 for February 2022 to be filed by ISD.
- Uploading B2B invoices using Invoice Furnishing Facility under the QRMP scheme for February 2022 by taxpayers with aggregate turnover of up to INR 50 million.
- GSTR-5 for February 2022 to be filed by a non-resident foreign taxpayer.

## 10 February 2023

- GSTR-7 for January 2022 to be filed by taxpayer liable for Tax Deducted at Source (TDS).
- GSTR-8 for January 2022 to be filed by taxpayer liable for Tax Collected at Source (TCS).

## 13 February 2023

- GSTR-6 for January 2022 to be filed by Input Service Distributor (ISD).
- Uploading B2B invoices using Invoice Furnishing Facility under the QRMP scheme for January 2022 by taxpayers with aggregate turnover of up to INR 50 million.
- GSTR-5 for January 2022 to be filed by a non-resident foreign taxpayer.

## 15 February 2023

- Due date for furnishing Form 24G by a government office where TDS/TCS for January 2023 has been paid without the production of a challan.
- Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending 31 December 2022.

## 25 February 2023

Payment of tax through GST PMT-06 by taxpayers under the QRMP scheme for January 2022.

## 7 March 2023

Due date for the deposit of tax deducted/collected for February 2023. However, all sum deducted/collected by a government office shall be paid to the credit of the Central Government on the same day when tax is paid without the production of an Income-tax Challan.

## 11 March 2023

GSTR-1 to be filed by registered taxpayers for February 2022 by all registered taxpayers not under the QRMP scheme.

# Easy Remittance Tool

by Nexdigm



## Form 15CA/CB Automation



Review of tax position by experts



Issuance of bulk certificates through Automated tool



Repository - Access to entire set of documents



Access to Detailed transaction wise reports



Representation Support



Generation 15CA bulk files & utility to generate Form A2



# About Nexdigm

Nexdigm is an employee-owned, privately held, independent global organization that helps companies across geographies meet the needs of a dynamic business environment. Our focus on problem-solving, supported by our multifunctional expertise enables us to provide customized solutions for our clients.

We provide integrated, digitally driven solutions encompassing Business and Professional Services, that help companies navigate challenges across all stages of their life-cycle. Through our direct operations in the USA, Poland, UAE, and India, we serve a diverse range of clients, spanning multinationals, listed companies, privately-owned companies, and family-owned businesses from over 50 countries.

Our multidisciplinary teams serve a wide range of industries, with a specific focus on healthcare, food processing, and banking and financial services. Over the last decade, we have built and leveraged capabilities across key global markets to provide transnational support to numerous clients.

From inception, our founders have propagated a culture that values professional standards and personalized service. An emphasis on collaboration and ethical conduct drives us to serve our clients with integrity while delivering high quality, innovative results. We act as partners to our clients, and take a proactive stance in understanding their needs and constraints, to provide integrated solutions. Quality at Nexdigm is of utmost importance, and we are ISO/ISE 27001 certified for information security and ISO 9001 certified for quality management.

We have been recognized over the years by global organizations, like the International Accounting Bulletin and Euro Money Publications.

Nexdigm resonates with our plunge into a new paradigm of business; it is our commitment to *Think Next*.

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