

A Monthly E-Newsletter

Vol 04 Issue 9

September 2023

The Bottom Line

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KEY METRICS

Indices

BSE SENSEX	64,831	-2.55%	▼
NSE NIFTY50	19,254	-2.53%	▼
NASDAQ Composite	14,035	-2.17%	▼
NIKKEI 225	32,619	-1.67%	▼

Currency

USD/INR	82.70	-0.56%	▼
EURO/INR	89.66	0.86%	▲
GBP/INR	104.81	0.71%	▲
JPY/INR	0.57	1.76%	▲

Note: The month-on-month movement as on August 31, 2023 is represented in percentages
Source: Yahoo Finance, Investing.com



DIRECT TAX

Notifications/Circulars

Forms for furnishing preliminary expenses and audit report, notified

Form No. 3AF has been notified for furnishing statements regarding preliminary expenses incurred by a taxpayer. The same is required to be furnished electronically, one month prior to the due date for filing the income tax return. Further, the Form to be used for furnishing audit reports in respect of the above has also been notified.

Notification No. 54 dated August 1, 2023

Safe Harbour Rules extended to AY 2023-24

The applicability of Safe Harbour Rules has been extended to include AY 2023-24 as well.

Notification No. 58 dated August 9, 2023

Income from life insurance with higher premium taxable, computation rule notified

Finance Act 2023 withdrew the exemption from tax on income from life insurance policies, other than ULIP, issued from 1 April 2023, where the amount of premium exceeds INR 5 lakhs. In this regard, a new rule has been notified for the manner of computation of such income. Additionally, detailed guidelines alongwith examples have also been notified. Notably, the taxation of amounts received upon death remains unchanged and continues to be exempt.

Notification No. 61 & Circular No. 15 dated August 16, 2023

Valuation of accommodation perquisite amended

The rules pertaining to valuation of rent-free / concessional residential

accommodation provided by an employer have been modified based on the 2011 census data, including the rates of perquisites (revised from 15, 10 and 7.5% to 10, 7.5 and 5% of salary, respectively) and the size of the population. Further, the value of the perquisite in cases where an employee has two accommodations (in the event of transfer) or where the employee occupies same accommodation for more than 1 year, has also been clarified. The revised rules shall apply w.e.f. September 1, 2023

Notification No. 65 dated August 18, 2023

Form for claiming TDS credit, notified

Finance Act 2023 introduced a new provision allowing the claim of tax credit by the Assessee in prescribed format where the year of offering income in the return of income is different from the year of deduction of TDS. CBDT has recently notified the rules and form (Form No. 71) for this purpose. Such form is to be filed electronically with the AO within 2 years from the end of the FY in which such tax was deducted at source. This rule shall apply w.e.f. October 1, 2023.

Notification No. 73 dated August 30, 2023

Judicial Rulings

Time limits for assessment / reassessment subsumes the time limit for DRP proceedings

While disposing a batch of writ petitions in favour of the Assessee, the Court held that the assessment time limits prescribed under the

Safe Harbour Rules extended to AY 2023-24

Valuation of accommodation perquisite amended

Time limits for assessment / reassessment subsumes the time limit for DRP proceedings

general provisions shall prevail and include the time limits prescribed under the specific provisions relating to DRP proceedings. It was clarified that where the law has intended to provide for extra time, it has been expressly provided viz. for passing a fresh Transfer Pricing order pursuant to the directions of Income Tax Appellate Tribunal.

Shelf Drilling Ron Tappmeyer Ltd (Bombay High Court)

Income classifiable under other clauses, cannot be taxed under residuary provisions

The Tribunal held that the revenue erred in taxing the sub-licensing fees received by the US entity from its Indian AEs as income from other sources, when such income was earned in the course of its business and was not taxable in the absence of a PE. In this regard, it was held that if an income falling in a particular article of a tax treaty is not taxed due to non-fulfillment of underlying conditions, the same cannot be automatically re-categorized as other income and brought to tax.

GE Precision Healthcare LLC (Delhi ITAT)

INDIRECT TAX

Circulars / Notifications / Press Releases

Applicability of provisions related to Finance Act 2021 and 2023

Various provisions of Finance Act 2021 and 2023 have now been made applicable from the dates as specified in Notification. These include:

- a) Option to export with payment of tax has been withdrawn. Now, exports can only be carried out under cover of letter of undertaking without payment of tax.
- b) ITC not eligible on good or services used for meeting CSR obligations. Further, for calculating ITC reversal, the value of exempt supply to now include the value of sale of land and supply of warehoused goods to any person before clearance for home consumption.
- c) No option of compounding to any person engaging in fraudulent transaction for passing ITC without making any supply.
- d) Transactions in the nature of merchant trade, high sea sales and supply of warehoused goods before home clearance shall be not be considered as supply under GST with retrospective effect from July 01, 2017.
- e) The definition of OIDAR services amended to exclude the words “essentially automated and involving minimum human intervention”.

Notification No. 27/2023 and 28/2023-GST dated July 31, 2023

Exemption from filing annual return GSTR-9

The registered persons whose aggregate turnover in FY 2022-23 is up to two crores rupees, are exempted from filing annual return GSTR-9 for this FY.

Notification No. 32/2023-GST dated July 31, 2023

Various notifications for supplies through ECO

Mandatory registration for specified persons making supplies through ECO done away with, subject to fulfilment of conditions specified in the Notification. Various precautions to be taken by Composition dealer while making supplies through ECO. Further, the ECO needs to ensure specified conditions while permitting supplies through its portal.

Notification No. 34/2023-GST dated July 31, 2023 and Notification No. 36 & 37/2023-Central Tax dated August 04, 2023

Various amendment made in the CGST Rules

The key changes relate to physical verification of the premises for GST registration, suspension of registration if bank account details not furnished or are incorrect, supply from duty-free shops to be exempt supply, amongst others.

Notification No. 38/2023-Central Tax dated August 04, 2023

GST Acts amended to cover online gaming

Significant changes have been made to the CGST and IGST Acts. These include changes in the definition of online gaming, online money gaming, specified actionable claims and virtual digital asset and taxability thereof.

Presidential assent received on August 18, 2023

Judicial Rulings

Non-payment of tax by seller and availment of ITC

Applicability of various provisions relating to Finance Act 2021 and 2023 notified

Online gaming covered under GST

Courts give contrary rulings in respect of non-availability of ITC for non-payment of tax by seller

The recipient shall not be allowed to claim the ITC where the supplier has not deposited the tax to the Government despite collection of tax from the recipient.

Aastha Enterprises (Patna High Court)

No automatic reversal of ITC from buyer on non-payment of tax by the seller. In case of default, recovery shall be made from the seller. Reversal of ITC by the recipient only under exceptional circumstances like missing supplier etc.

Suncraft Energy Pvt Ltd (Calcutta High Court)

Intermediary services

Services provided by an Indian entity to a foreign recipient, in the nature of identifying potential opportunities for investment in India, analysing investment risks & returns etc., basis which foreign recipient makes investment in India are advisory services and cannot be construed as intermediary services.

Cube Highways and Transportation Assets Advisor Pvt Ltd (Delhi High Court)

CORPORATE & ALLIED LAWS

Circulars / Notifications

New online Form RD-1 introduced

MCA has notified the Companies (Incorporation) Second Amendment Rules, 2023, wherein new online Form RD-1 have been introduced to replace the existing Form RD-1, for filing an application to the Central Government (Regional Director) on the V3 portal. Apart from change in financial year, rectification of name/ allotment of new name to existing company and conversion of an already existing company, the new Form includes a new purpose, 'Notice of approval of the scheme of merger', wherein details of the transferor company, namely the Name and Corporate Identity Number have to be also furnished.

MCA Notification dated August 2, 2023

One time relaxation to LLPs for delayed filing

LLPs who could not file Form 3, 4 and 11 within due date, have been granted a one-time amnesty / relaxation in additional fees, the details of which are as follows-

- ▶ Form 3 and 4 can be filed without additional fee for the event dates January 1, 2021 and onwards. Likewise, Form 11 can be filed without additional fee for the financial year 2021-22 onwards.
- ▶ For events prior to January 1, 2021, Form 3 and 4 can be filed with additional fee which is 2 times the normal filing fee for small LLPs and 4 times the normal filing fee for other than small LLPs.

- ▶ For the financial year 2020-21 and prior years, Form 11 can be filed with additional fee which is 2 times the normal filing fee for small LLPs and 4 times the normal filing fee for other than small LLPs.

MCA General Circular No. 08/2023 August 23, 2023

Process prior approval for change in control of Merchant Bankers and Bankers to an issue

SEBI has streamlined the process for obtaining prior approval from it in case of any proposed change in control of certain intermediaries including merchant bankers and bankers to the issue. Detailed guidelines have been specified to effect the change when filing application for such change through the SEBI Intermediary Portal as well as on matters involving schemes of arrangement needing sanction of the NCLT in terms of provisions of the Companies Act, 2013. This would be effective from September 1, 2023.

Circular No. SEBI/HO/CFD/PoD-2/P/ CIR/2023/141 dated August 10, 2023

Additional disclosures by FPIs

To mitigate the risk of opportunistic takeover / acquisition of Indian companies through FPI route, the Government of India issued Press Note 3, requiring an entity of a country which shares land border with India or where the beneficial owner of an investment into India is situated in or is a citizen of any such country, to invest only under the Government approval route, so as to allay concerns that entities with large Indian equity portfolios could

Additional disclosures by FPIs to mitigate opportunistic takeover

Framework for Cyber Security and Cyber Resilience for MIIs

Process prior approval for change in control of Merchant Bankers and Bankers to an issue

disrupt the functioning of the Indian securities market by misusing the FPI route. Granular information, as per SEBI Regulations, have to be disclosed for such objectively identified FPIs.

Circular No. SEBI/ HO/ AFD/ AFD -PoD -2/ CIR/ P/ 2023/148 dated August 24, 2023

Framework for Cyber Security and Cyber Resilience for MIIs

SEBI has prescribed the Cyber Security and Cyber Resilience framework for MIIs, viz., stock exchanges, clearing corporations and depositories, including mandatory cyber audit at least 2 times in a financial year. Comprehensive measures have been put in place for detection and reporting of vulnerabilities in the organisation's IT systems.

Circular No. SEBI/HO/MRD/TPD/P/ CIR/2023/147 dated August 24, 2023

CFO WATCH

Timeline for listing of public issues shortened from T+6 to T+3 Days

SEBI issues clarifications via FAQ on BRSR Core and registration of ERPs

IASB clarifies the accounting w.r.t. currency exchangeability

SEBI cuts listing timeline for public issues to T+3 Days

SEBI has updated the listing schedule for public issues, introducing a voluntary phase from September 1, 2023, and mandatory phase from December 1, 2023. The post-closure listing period will be cut to 3 working days (T+3 days) from the current 6 days (T+6 days), aiming to expedite capital access and offer investors early credit. Registrar will cross-verify applications using PAN data from DEMAT and bank accounts and mismatches will lead to invalid allotments.

SEBI enhances clarity on Online Dispute Resolution framework

SEBI enhances transparency in online dispute resolution within India's securities market. Listed companies, intermediaries, and regulated entities in the securities market (Market Participants) must enrol on the ODR Portal by September 15, 2023, executing electronic agreements with MIIs and ODR Institutions. Investor grievances should first be raised directly with the market participant, then escalated through the SCORES Portal if unresolved. If still dissatisfied, the ODR Portal can be used for dispute resolution.

SEBI shares valuable insight on BRSR Core and ERP Registration

In order to provide further clarifications on BRSR Core and registration of ERPs, SEBI has issued certain FAQs with respect to the same. The clarification is with respect to qualification and eligibility of assurance, restriction on internal auditor or statutory auditor provider, non-permissible and permissible activities/services, eligibility criteria for registration of ERP rating providers, SEBI registration and application requirements and categories in which registration can be obtained.

IASB publishes amendments to IAS 21

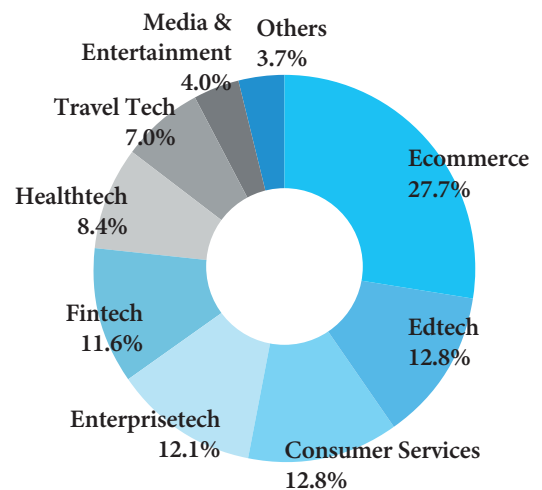
Effective January 1, 2025, the currency exchangeability amendment which ensures transparency and understanding, introduces a two-step process for evaluating exchangeability and estimating spot exchange rates. Currencies are deemed exchangeable if obtained within a timeframe through enforceable mechanisms. When not exchangeable, companies estimate spot rates using observable rates or adjusted techniques. Disclosure requirements focus on explaining how non-exchangeability impacts financials.

MERGERS & ACQUISITIONS

Consolidation by Unicorns driving M&A in Indian startup ecosystem

Indian venture capital funding has been witnessing a slump in 2023, however, the mood among founders is still one of cautious optimism. Given the paucity of free-flowing venture capital, consolidation, organic growth and sustainable business model is driving the expansion of the world's third-largest startup economy. Between 2014 and 2023, the Indian startup landscape witnessed 1,200 M&As, of these, more than 110 unicorns led over 400-plus acquisitions.

430 M&As by Unicorns



Around 33% of the total startup acquisitions in the country have been driven by a handful of unicorns, with Cure.Fit, a fitness and health platform, leading the charge with 28 startups acquisitions. Mensa Brands (21), Flipkart (19), BYJU'S (18), Zomato (16), and GlobalBees (16) are among the other prominent leaders in M&A activity.

Going ahead

Given the macro challenges, consolidation becomes the only means of survival for smaller companies that need cash to sustain and grow and are unable to obtain finance. The timing is favourable for larger firms with cash on their balance sheet to acquire strategically aligned businesses due to lowered valuations and accessible assets.



Events/Webinars

CEOs Interaction with H.E. Dukgeun Ahn, Minister of Trade, Republic of Korea

August 26, 2023

Ajay Sethi, Managing Partner, ASA, joined the closed-door exclusive CEOs Interaction with H.E. Dukgeun Ahn, Minister of Trade, Ministry of Trade, Industry & Energy (MOTIE), Republic of Korea, which FICCI hosts at the Federation House.

The panel discussion on Exposure Drafts of 7 Standards

August 24, 2023

The panel discussion on “Exposure Drafts of 7 Standards,” was moderated by Vinay K S, Partner, Assurance, ASA.

He discussed the evolving auditing landscape, technology’s role, and ethical considerations. Sunil Bhumralkar, Senior Advisor, ASA provided valuable insights for auditors and firms to navigate

these changes effectively. The session was organized by the Southern India Regional Council of The Institute of Chartered Accountants of India.

How ESG is redefining the M&A landscape?

August 10, 2023

Author: Hemant Agnihotri, Executive Director, Transaction Advisory Services, ASA

This article discusses ESG due diligence which is becoming more common in M&A transactions, as buyers seek to understand the ESG risks and opportunities of potential targets.

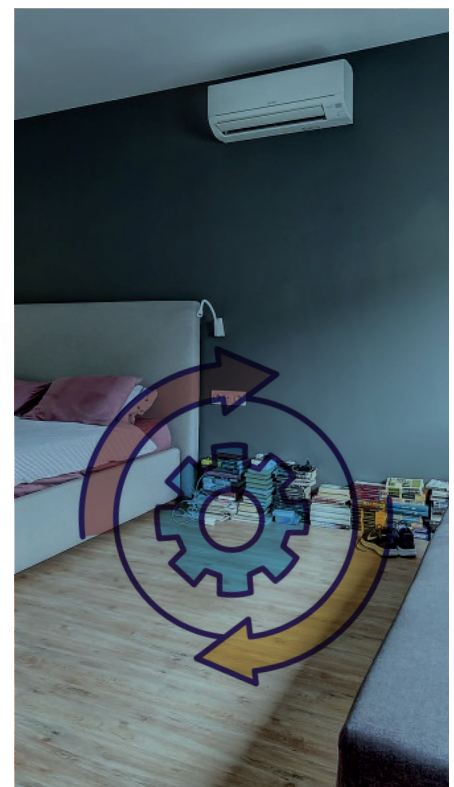
Revolutionizing rules for rent free employee accommodation

August 25, 2023

Author: Pankaj Aneja, Executive Partner, Taxation, ASA

Employers are likely to favor

rent-free accommodation for their employees and may conduct a cost-benefit analysis when compared with House Rent Allowance.



GLOSSARY



AE
Associated Enterprise

AY
Assessment Year

BRSR
Business
Responsibility and
Sustainability Report

CBDT
Central Board of
Direct Taxes

CGST
Central Goods &
Services Tax

CSR
Corporate Social
Responsibility

DRP
Dispute Resolution
Panel

ECO
E-commerce
Operators

ERP
ESG Rating
Service Provider

ESG
Environmental,
Social and
Governance

FAQ
Frequently Asked
Question

FPI
Foreign Portfolio
Investor

FY
Financial Year

GST
Goods &
Services Tax

IASB
International
Accounting
Standards Board

IGST
Integrated
Goods
& Services Tax

ITAT
Income Tax
Appellate
Tribunal

ITC
Input Tax Credit

LLP
Limited Liability
Partnership

M&A
Mergers &
Acquisitions

MCA
Ministry of
Corporate Affairs

MII
Market
Infrastructure
Institution

NCLT
National Company
Law Tribunal

ODR
Online Dispute
Resolution Institution

OIDAR
Online
Information
and Database
Access and
Retrieval

PAN
Permanent Account
Number

PE
Permanent
Establishment

SCORES
SEBI Complaints
Redress System

SEBI
Securities and
Exchange Board
of India

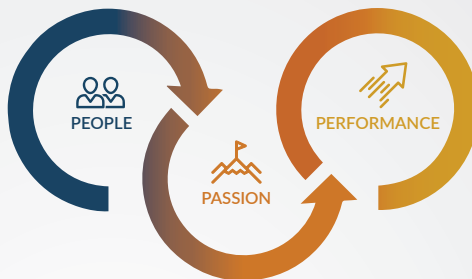
TDS
Tax Deducted at
Source

ULIP
Unit Linked
Insurance Policy

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Vishakhapatnam

International Affiliates
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Belgium, Brazil, Bulgaria, Canada, China,
Denmark, Egypt, France, Finland, Germany,
Hong Kong, Hungary, Israel, Italy, Japan,
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