

33
years of competence

A Monthly E-Newsletter

Vol 05 Issue 3
March 2024

The Bottom Line

WHAT'S INSIDE

- Direct Taxes **2**
- Indirect Taxes **3**
- Corporate & Allied Laws **4**
- CFO Watch & M&A **5**
- In the News **6**
- Glossary **7**
- About Us **8**

KEY METRICS

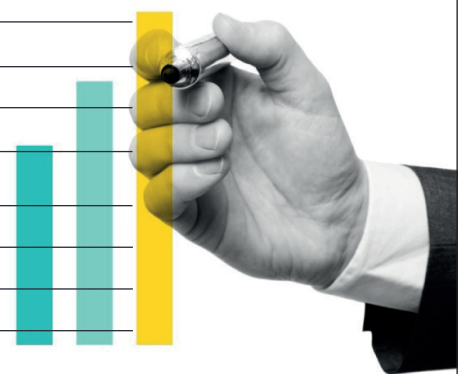
Indices

BSE SENSEX	72,500	1.04%	▲
NSE NIFTY50	21,983	1.18%	▲
NASDAQ Composite	16,092	6.12%	▲
NIKKEI 225	39,166	7.94%	▲

Currency

USD/INR	82.90	0.23%	▲
Euro/INR	89.56	0.35%	▲
GBP/INR	104.65	0.69%	▲
JPY/INR	0.55	2.27%	▲

Note: The month-on-month movement as on February 29, 2024 is represented in percentages
Source: NSE.com, BSE.com, NASDAQ.com, NIKKEI.com, Investing.com



DIRECT TAX

Notifications/Circulars

India-Samoa tax treaty implemented

Ministry of Finance notified implementation of DTAA between India and Samoa regarding the exchange of tax related information. The agreement defines terms, outlines procedures for exchanging information upon request, ensures confidentiality, addresses costs, and mandates legislative compliance.

Notification No. 21 dated February 23, 2024

Mauritius treaty to be a covered tax agreement

Mauritius cabinet agreed to the signing of a Protocol to amend the DTAA between Mauritius and India in order to comply with the Base Erosion and Profit Shifting minimum standards of the OECD. This modification will provide the status of covered tax agreement to Mauritius DTAA and can impact the anti-abuse and limitation of benefit rules, principal-purpose test, and inclusion of arbitration in the mutual agreement procedure.

Mauritius cabinet meeting dated February 23, 2024

Judicial Rulings

Marketing fees not taxable as royalty

The Tribunal deleted the additions made by the AO considering marketing contribution and reservation fees received as part of royalty income. It held that similar receipts in previous cases were

deemed not taxable as royalty, as they were considered trust funds with an obligation to use for agreed purposes, not directly linked to IP use. It also referred to past rulings in the assessee's own cases and noted the absence of any PE in India.

Six Continents Hotels, Inc (Mumbai ITAT)

Effective date of share transfer determines nature of capital gain

The Tribunal held that the effective date of transfer determines the nature of capital gain and not the date of share purchase agreement. Additionally, it emphasized the importance of the actual transfer date and the conditions specified in the agreement. It clarified that the effective date of sale was determined by the completion of stipulated conditions, not the execution date of the agreement. This ruling highlights the significance of accurately determining the transfer date in capital gain taxation cases involving share transactions.

Citicorp International Finance Corporation (Mumbai ITAT)

Mere pendency of appeal does not prevent release of refund

The Court ruled in favour of the assessee, allowing the refund of deposits made as a pre-condition for stay on demand and interim protection during assessment proceedings, highlighting that mere pendency of appeal preferred by assessee against the order of the Tribunal would clearly not reduce

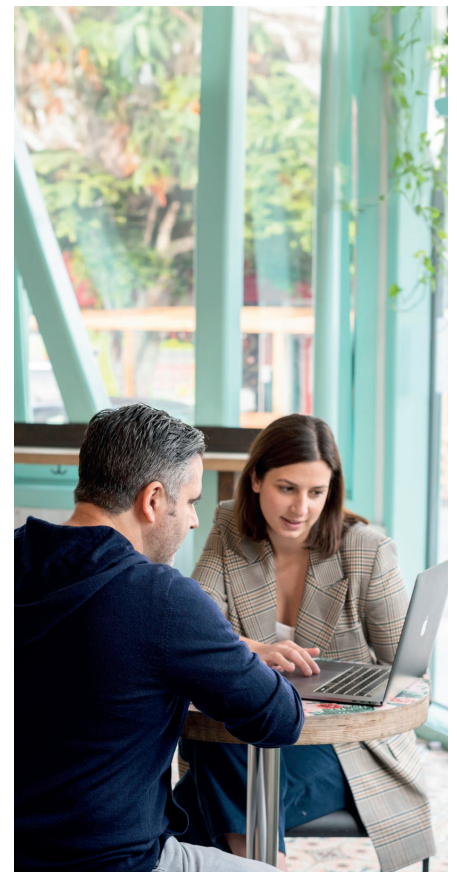
Mauritius treaty to be a covered tax agreement

Marketing fees not taxable as royalty

Mere pendency of appeal does not prevent release of refund

the right of the assessee to claim refunds since those appeals have in any case been rendered infructuous consequent to the period of limitation.

Navisite India Pvt Ltd (Delhi High Court)



INDIRECT TAX

Circulars / Notifications / Press Releases

The Finance Act, 2024

Presidential assent has been received on February 15, 2024. The changes related to GST shall come into force upon being notified by the Central Government. The key highlights are:

- (i) Definition of ISD substituted specifically providing where goods and services or both are received by an office for or on behalf of other offices under the same Permanent Account number of the legal entity, such office to be treated as ISD. Registration as an ISD also made mandatory.
- (ii) The specific provisions relating to manner of distribution of input amended. Now the distribution of credit shall be based upon the manner along with restrictions and conditions as may be prescribed.
- (iii) New section introduced for levy of penalty in cases of failure to register certain machines used in the manufacture of specified goods.

Fraudulent Summons

It has been noticed that some individuals with fraudulent intent are creating and sending fake summons to the taxpayers who may or may not be under investigation by authorities. These summons may look real because they have DIN, but these DIN are not issued by the authorities. Taxpayers can check veracity of any communication by using 'verify CBIC-DIN' window on CBIC website.

Press release dated February 10, 2024

Judicial Rulings

Secondment of expat employees

The High Court grants temporary stay on the Order demanding GST on salary paid to expat employees, till the next hearing date.

Mercedes Benz India Pvt Ltd (Bombay High Court)

Holding of shares in subsidiary

Mere holding of shares by holding company in a subsidiary cannot be treated as supply of service.

Yonex India Pvt Ltd (Karnataka High Court)

Treatment of discounts

Discount offered by the manufacturer to the supplier will impact only the transaction value of manufacturer. Upon further sale of such discounted goods by the supplier to another person, discount received from manufacturer cannot form part of the transaction value of supplier.

Supreme Paradise (Madras High Court)

Transfer of development rights of land

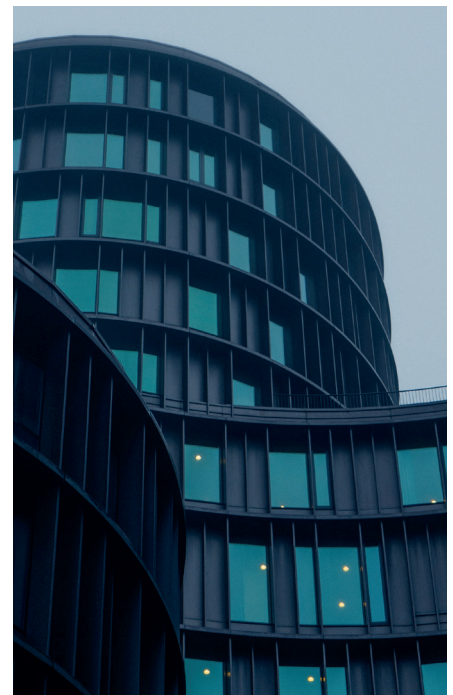
Said transfer by landowner to real estate developer by way of a JDA does not indicate automatic transfer of ownership or title rights over any portion of land belonging to landowner in favour of developer. Thus, such transfer of rights is amenable to GST and is not covered under Entry 5 of Schedule III of the Act.

Prahitha Construction Pvt Ltd (Telangana High Court)

ISD provisions amended in Finance Act, 2024

Holding of shares in subsidiary is not supply of service

JDA does not indicate automatic transfer of ownership



Manner of receipt of foreign exchange

Receipt of payment in foreign currency by an intermediary and then transferring the same in India currency to the Indian exporter shall qualify as payment of foreign currency received by the export supplier.

Afortune Trading Research Lab LLP (Madras High Court)

CORPORATE & ALLIED LAWS

Circulars / Notifications

SEBI mandates centralization of FATCA & CRS certifications at KYC Registration Agencies⁴

SEBI has mandated the centralization of certifications under the FATCA and CRS at KRAs, directing the intermediaries to upload the certifications under FATCA and CRS obtained from the clients in the system of KRAs from July 1, 2024. The existing certifications obtained from clients prior to July 1 will be uploaded by the intermediaries onto the systems of KRAs within a period of 90 days of implementation of the new rule.

Circular No. SEBI/HO/MIRSD/SECFATF/P/CIR/2024/12 dated February 20, 2024

Introduction of Change Request Form on MCA-21 website

MCA has provided for deployment and usage of Change Request Form on MCA-21 V3 portal. This web-based Form is to be used only under exceptional circumstances, primarily for purposes like master data correction and to comply with certain directions of Courts/Tribunals, which ordinarily cannot be complied with through existing forms or services on MCA-21 website.

Circular No. 04/130/2021 F.No. 04/130/2021-EGov dated February 19, 2024

Establishment of CPC for processing of various applications / forms

MCA has issued the Companies (Registration Offices and Fees) Amendment Rules, 2024. They shall come into force with effect

from February 16, 2024. The Rules provide for establishing a CPC for examining all applications, e-forms or documents for approval or registration regarding various matters including share capital alterations, name change, and conversions of company type etc. Decisions is to be made within 30 days of filing, excluding cases requiring approval from higher authorities.

MCA Notification dated February 14, 2024

Revised Pricing Methodology for InvIT Institutional Placements

SEBI has introduced revised pricing guidelines for Institutional Placements of Privately Placed InvITs under which they can undertake institutional placement based on net asset value of its assets. InvITs are infrastructure developer-sponsored trusts that own, operate, and invest in completed and under-construction infrastructure projects. These infrastructure assets include roads and highways, power distribution networks, telecom towers, fiber optic networks, etc. .

Circular No. SEBI/HO/DDHS/DDHS-PoD/P/CIR/2024/10 dated February 08, 2024

Bharat Bill Payment System 2024

Effective April 1, 2024, Bharat Bill Payment System Directions, 2024 rationalises existing regulations and seeks to streamline process of bill payments, enhance customer protection and enable greater participation. This system will be an integrated bill payment platform which enables payment / collection

Centralization of FATCA & CRS certifications at KRAs

Introduction of Change Request Form on MCA-21

Establishment of CPC for processing of various applications / forms

of bills through multiple channels and payment using different payment modes. The bill will be fetched before payment initiation which will only be done through the platform.

RBI Notification No. RBI/DPSS/2023-24/111CO.DPSS.POLC.No.S1114/02-27-020/2023-2024 dated February 29, 2024

PPIs for making payments in public transport systems

In order to provide convenience, speed and safety of digital modes of payment to commuters in public transportation services, RBI has permitted authorised banks and non-bank PPI issuers to issue PPIs for making payments across various public transport systems.

RBI Notification No. RBI/2023-24/126 CO.DPSS.POLC No.S1092/02-14-006/2023-2024 dated February 23, 2024

CFO WATCH

RBI raises non-executive directors' remuneration ceiling in banks

RBI calls for comprehensive technology solutions for enhanced compliance monitoring

Direct listing and trading on international exchanges permitted subject to Rules

RBI enhances remuneration ceiling in REs for non-executive directors

Acknowledging the crucial role of non-executive directors and attract qualified individuals to bank boards, RBI revised the limit of fixed remuneration from INR 20 to 30 lakh per annum effective from February 9, 2024. The circular also mandates banks to disclose director remuneration in their annual financial statements

RBI directs REs to upgrade compliance monitoring by June 30, 2024

RBI urges the adoption of comprehensive, integrated technology solutions for enhanced compliance monitoring in supervised entities, addressing ongoing automation challenges. These solutions should facilitate efficient communication, streamlined processes, issue escalation, deviation recording, and provide a unified compliance dashboard for senior management, with a deadline set for June 30, 2024.

Direct listing and trading on international exchanges permitted

The Ministry of Finance has amended the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, introducing pivotal changes. These include the incorporation of new definitions, the establishment of Chapter X enabling permissible holders to engage in the trading of equity shares of Indian companies on international exchanges, and the addition of Schedule XI outlining specific provisions for the Direct Listing of Equity Shares of Companies Incorporated in India on International Exchanges Scheme.

MERGERS & ACQUISITIONS

Unveiling India's space sector potential with liberalised FDI policy

The government has approved the amendment in the FDI policy for the space sector by prescribing liberalized FDI thresholds for various sub-sectors and activities which were earlier permitted through the government approval route only.

The percentage of equity a foreign entity may now acquire under the automatic route is:

- **Up to 100%** in manufacturing of components and systems/ sub-systems for satellites, ground segment and user segment
- **Up to 74%** in satellites manufacturing and operation, satellite data products and ground segment and user segment
- **Up to 49%** in launch vehicles manufacture and its associated systems, creation of spaceports for launching and receiving spacecraft

FDI above this revised threshold will require approval of Government.

This will not only attract foreign investments but also enable global collaborations contributing to growth in M&A sector resulting in faster development and growth of the industry in the following ways:

- **Increased investment and deal flow:** The liberalized route will encourage capital infusion, thereby resulting in companies expanding their market share both organically and inorganically.
- **New strategic partnerships:** The strategic collaboration between Indian and foreign entities will unlock the road for joint ventures.
- **Technology enhancements and research innovations:** Reforms will not only bring an economic shift but also promote technology transfer and research innovations.

Overall, the policy represents a bold move with the potential to unlock significant growth and advancements. This will further augment the 'Make In India' and the 'Atmanirbhar Bharat' initiatives of the Government. The reforms are expected to create a good ecosystem for manufacturing facilities, generate more employment and foster self-reliance. India can leverage this policy to propel its space program to new heights and establish itself as a major player in the global space arena.

IN THE NEWS

4th India Japan Intellectual Conclave - February 12, 2024

Ajay Sethi, Managing Partner, ASA, chaired an interactive session 'Towards creating Industrial Value Chains - Voices from the Industry' as a member of Governing Council Asian Confluence; joined by Prof. Shahidul Haque, Former Foreign Secretary of Bangladesh, and Makoto Hayashi, Deputy Assistant Minister, Japan's Ministry of Foreign Affairs at the 4th India Japan Intellectual Conclave in Shillong.

Japan India Business Confluence February 21, 2024

Ajay Sethi, Managing Partner, ASA, shares insights from his vast experience of working with Japan – on blending cultures and understanding Japanese workplaces at the "Japan India Business Confluence" in New Delhi. Esteemed speakers like Suzuki Takashi from JETRO - Japan External Trade Organization, Ko Yamamoto from Meiden T&D (India) Limited, Ambassador Deepa Wadhwa, and Nikhil Singh from the Japan Centre at New Delhi Institute of Management, also shared valuable firsthand experience in bridging cultural gaps, especially in international business settings.

16th Edition of CFO Vision & Innovation Summit & Awards 2024 - February 09, 2024

The Great Indian Tax Leader Award

Sunil Arora, National Head, Taxation, ASA received the Best Tax Leader Award, a testament to his exemplary leadership and contribution to the field.

Roundtable on "Indian Economy and FEMA"

Himanshu Srivastava, Director, Business Advisory, ASA led the roundtable conversation and provided valuable industry perspectives during the session titled 'Exploring the Indian Economy & FEMA'.

Seizing the Wave: India's Rise as a Global GCC Capital

February 07, 2024

Author: Manoj Sharma, Executive Director, Accounting and Business Support, ASA

This article covers India's meteoric rise as the global epicentre for GCCs, boasting over 1600 operational centres employing 1.3 million and counting. Evolving from mere cost-saving units to hubs of innovation and digital prowess, Indian GCCs redefine organizational capabilities and drive economic growth. Despite challenges like

talent retention, India's GCC landscape is poised for exponential growth, with Tier II cities emerging as key centres of excellence. With strategic planning and collaborative efforts, India is primed to lead the charge in this era of evolving business paradigms through its GCC revolution.

Digital Automation in CA Profession: Transforming Audits

February 08, 2024

Author: Parveen Kumar, National Head, Assurance & Balmukund Chaturvedi, Associate Director, Assurance, ASA

This article delves into the transformative impact of digital automation on the auditing profession, addressing both its advantages and challenges. As businesses and auditing practices evolve in the digital age, auditors must adapt to leverage tools like data analytics, audit software, and advanced technologies to enhance efficiency and accuracy. However, they also face hurdles such as the need for continuous training, rising expectation gaps, and the complexity of combating digital fraud. Embracing digital techniques is essential for auditors to navigate this dynamic landscape effectively and maintain the integrity of financial reporting.

GLOSSARY

AO

Assessing Officer

CBIC

Central Board of Indirect Taxes & Customs

CPC

Central Processing Center

CRS

Common Reporting Standard

DIN`

Document Identification Number

DTAA

Double Taxation Avoidance Agreement

FATCA

Foreign Account Tax Compliance Act

FDI

Foreign Direct Investment

GCC

Global Capability Centre

GST

Goods & Services Tax

InvIT

Infrastructure Investment Trust

IP

Intellectual Property

ISD

Input Service Distributor

JDA

Joint Development Agreement

KRA

KYC Registration Agencies

KYC

Know Your Customer

M&A

Mergers & Acquisition

MCA

Ministry of Corporate Affairs

OECD

Organisation for Economic Co-operation and Development

PE

Permanent Establishment

PPI

Prepaid Payment Instruments

RBI

Reserve Bank of India

RE

Regulated Entity

SEBI

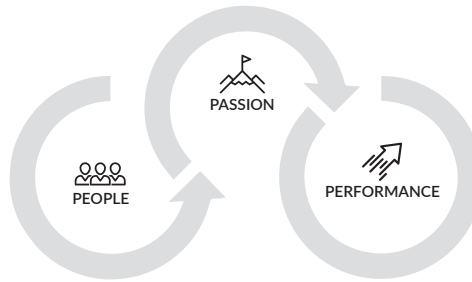
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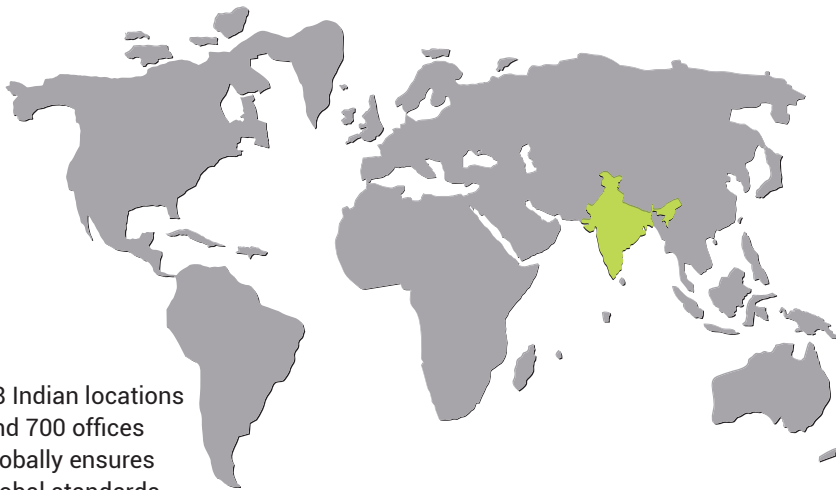
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