



A Monthly E-Newsletter

Vol 05 Issue 6
June 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	73,961	-0.70%	▼
NSE NIFTY50	22,531	-0.33%	▼
NASDAQ Composite	16,735	6.88%	▲
NIKKEI 225	38,488	0.21%	▲

Currency

USD/INR	83.42	0.03%	▲
Euro/INR	90.44	-1.63%	▼
GBP/INR	106.27	-1.95%	▼
JPY/INR	0.53	-0.25%	▼

Note: The month-on-month movement as on May 31, 2024 is represented in percentages
Source: NSE.com, BSE.com, NASDAQ.com, NIKKEI.com, Investing.com



DIRECT TAX

Notifications/Circulars

Cost Inflation Index for FY 2023-24 notified

The Cost Inflation Index for FY 2024-25 has been notified as 363 for indexation purposes while computing capital gains.

Notification No. 44 of 2024 dated May 24, 2024

Guidelines released for compulsory selection of returns for scrutiny

Parameters and procedures for compulsory selection of certain cases for complete scrutiny during FY 2024-25 have been notified. These include cases pertaining to search, seizure and survey, cases where no return is furnished in response to a notice or where re-assessment notice is issued, cases involving addition in earlier years or on a recurring issue of law or fact, cases related to specific information regarding tax evasion, amongst others.

Notification No. 225 of 2024 dated May 3, 2024

Judicial Rulings

Software development costs revenue in nature on obsolescence

Assessee had invested significantly in developing software for advertising purposes. However, due to rapid technological advancements, the software became obsolete, leading the Assessee to abandon further development. It was ruled by the High Court that such expenditure should be treated as revenue

expenditure and hence allowable to the Assessee. The Apex Court upheld this decision and dismissed the SLP filed by Revenue.

Adadyn Technologies Pvt Ltd (Supreme Court)

Revenue's SLP dismissed over delayed filing and lack of evidence

During the year, the Assessee claimed business loss from share trading which was initially disallowed as bogus by the Assessing Officer. The Tribunal overturned this disallowance, noting that transactions were conducted through authorized brokers on the Stock Exchange and payments were properly documented in bank accounts. Furthermore, there was no evidence of the scrips being blacklisted or sham. The High Court supported the Tribunal's decision, stating the issue was a factual matter with no substantial question of law, leading to the dismissal of the SLP in favour of the Assessee. Further, Apex Court also dismissed the Revenue's SLP considering the delay in its filing and insufficient reasons for condonation.

Genuine Finance Pvt Ltd (Supreme Court)

Tribunal rules in favour of Assessee on multiple grounds in complex case

In a case involving various issues, the Tribunal ruled in favour of the Assessee on multiple grounds. First, they allowed the expenditure incurred for the registration of old and new patents to be considered as business expenditure of a

Cost Inflation Index for FY 2023-24 notified

Guidelines released for compulsory selection of returns for scrutiny

Software Development costs revenue in nature on obsolescence

revenue nature. Secondly, they determined that tax deduction is not applicable on commission paid to foreign agents for services that are to be rendered wholly outside of India. Additionally, they decided that foreign exchange loss due to mark to market loss at the year-end for outstanding contracts is eligible for deduction. Lastly, they concluded that income received from the sale of carbon credits is a capital receipt and not chargeable to tax as business income.

ITC Ltd. (Kolkata Income Tax Appellate Tribunal)



INDIRECT TAX

Circulars / Notifications / Press Releases

Initiation of recovery proceedings

The recovery proceedings before 3 months from the date of service of demand order can be initiated only in exceptional cases after obtaining permission from jurisdictional Principal Commissioner/ Commissioner of Central Tax and recording the reasons for the same in writing.

Instruction No. 01/2024-GST dated May 30, 2024

Judicial Rulings

Service of Notice

Issue of Notice on the GST portal shall not suffice. It should also be served offline to fulfil the essential requirements of principal of natural justice.

Chemsilk Commerce Pvt Ltd (Allahabad High Court)

Where the Order of demand was made available on the GST portal, it shall be deemed that it has been served to the assessee. There is no need for physical communication of said Order

Laxmi Construction Ltd (Orissa High Court)

Corporate Guarantee by related party

Effect and operation of Circular No. 204/16/2023-GST dated 27-10-2023 regarding taxability of corporate guarantee by a person on behalf of another related person, or by holding company for sanction of credit facilities to its subsidiary company, to bank/ financial institutions, where such guarantee is given without any consideration, shall remain stayed.

Acme Cleantech Solutions Pvt Ltd (Punjab & Haryana High Court)

Denial of ITC and initiation of proceedings is unjustified

In case recipient of supply paid tax to the supplier but the same was not deposited to the government by the supplier, the ITC of the recipient cannot be denied without taking any action against the supplier. Such actions are arbitrary, illegal and without jurisdiction.

Lokenath Constructions Pvt Ltd (Patna High Court)

Proceedings for fraudulent availment of ITC under Section 74 of the CGST Act cannot be initiated against the recipient if he has produced all the invoices from the supplier. It was duty of the supplier to file their returns, which they have not done.

Mr. Subhash Singh (Uttarakhand High Court)

Order not to be issued without application of mind and seeking relevant details

Where the officer found that the reply filed by the assessee is not satisfactory and was not supported by relevant documents, the officer was required to seek further clarifications and documents from assessee before passing demand Order.

Spinclabs Pvt Ltd (Delhi High Court)

Assessee filed a detailed reply against the SCN issued but the officer issued the demand Order merely stating that the reply is unsatisfactory, which ex-facie showed that officer has not applied

Conflicting rulings on aspect of service of notice

Exhibition held outside India is taxable under RCM Order not to be issued without application of mind and seeking relevant details

his mind. Matter remanded back to the officer.

Vishal Chem (India) (Delhi High Court)

Exhibition held outside India is taxable under RCM

Where an assessee is registered under GST law in India and it participated in a jewellery exhibition outside India, tax under RCM needs to be discharged even when the services are received outside the taxable territory of India.

Savio Jewellery (Rajasthan High Court)



CORPORATE & ALLIED LAWS

Circulars / Notifications

Foreign Exchange Management (Deposit) (Fourth Amendment) Regulations, 2024

RBI has notified amendments to the Foreign Exchange Management (Deposit) Regulations of 2016. The amendments allow authorized dealers in India to permit non-residents to open interest-bearing accounts in Indian Rupees and/ or foreign currency for the purpose of posting and collecting margin in India for permitted derivative contracts.

RBI Notification No. FEMA 5(R)/(4)/2024-RB dated May 06, 2024

SEBI (Employees' Service) (Second Amendment) Regulations, 2024

Notification has been issued by SEBI to reinforce accountability, transparency and ethical conduct within its workforce. The key amendments are:

- The Competent Authority retains the power to recover pecuniary losses caused to the Board from former employees, utilizing all available legal means.
- Any proceedings initiated against an employee during their tenure with SEBI will continue even after their retirement or repatriation, ensuring that no individual escapes accountability by leaving the service.
- Addressing allegations of corrupt practices against former employees, outlining a structured procedure approved by the Competent Authority to investigate such allegations, defining 'corrupt practices' as per the Prevention of Corruption Act, 1988.

- Introducing provisions to withhold gratuity payments during the pendency of proceedings initiated against an employee under specified regulations. This temporary withholding ensures that any potential liabilities or recoveries arising from the proceedings can be effectively addressed before disbursing the gratuity.

SEBI Notification No. SEBI/LAD-NRO/GN/2024/172 dated 06th May 2024

Instructions on Money Changing Activities

Full fledged money changers and non-bank authorised dealers (Category-II) are required to keep balances in foreign currencies at reasonable levels to avoid build-up of idle balances. In that direction, effective July 1, 2024, value of foreign currency notes sold to the public for permitted purposes by such money changers and non-bank authorised dealers must not be less than 75% of the value of currency notes purchased from other money changers and dealers on a quarterly basis. Data of such sale and purchase will have to be maintained for future inspection or audit.

RBI/2024-25/39 A.P. (DIR Series) Circular No. 08 dated May 27, 2024

Industry Standards for verification of market rumours

For effective implementation of the requirement to verify market rumours under SEBI LODR Regulations, 2015, the Industry Standards Forum comprising members from specified industry associations, has formulated industry standards on a pilot basis, in consultation with SEBI. These standards shall be published in the websites of these industry associations and by the stock exchanges. All listed entities

SEBI brings in accountability, transparency and ethical conduct within its workforce

Industry Standards for verification of market rumours

Instructions on Money Changing Activities

shall follow the industry standards to ensure compliance with the aforesaid SEBI Regulations. The requirement to verify market rumours shall be applicable to top 100 listed entities with effect from June 1, 2024 and to the next top 150 listed entities from December 1, 2024.

SEBI/HO/CFD/CFD-PoD-2/P/CIR/2024/52 dated May 21, 2024

Framework for considering unaffected price for transactions

SEBI LODR (Amendment) Regulations, 2024, require all listed entities to verify market rumours, upon material price movement. As per the regulations, unaffected price shall be considered for transactions on which pricing norms specified by SEBI or stock exchanges are applicable, provided the rumour pertaining to such transactions has been confirmed within 24 hours from the trigger of material price movement. Detailed framework for considering unaffected price have been issued for this purpose.

SEBI/HO/CFD/CFD-PoD-2/P/CIR/2024/51 dated May 21, 2024

CFO WATCH

SEBI's issues key amendments to LODR and ICDR regulations

SEBI's master circular on regulating ERPs

SEBI's issues key amendments to LODR regulations

Key amendments to the SEBI LODR regulations have been notified by SEBI. These are effective immediately. The key aspects are:

- Verification of market rumors - Aim to standardize how equity-listed entities verify market rumors. These changes broaden the verification criteria to include significant price movements, introduce the consideration of unaffected prices within 24 hours of rumor confirmation, and require prompt responses from key individuals such as promoters, directors, KMP, and senior management for verifying market rumors.
- Average Market Capitalization Criteria - Market cap requirements based on July 1 to December 31 averages; provisions apply from April 1 or next financial year.
- Gap between RMC Meetings - Maximum gap extended from 180 to 210 days for consecutive RMC meetings, effective immediately.
- Timeline for HVDLEs - Deadline extended to March 31, 2025, for LODR compliance by High Value Debt Listed Entities.
- KMP Vacancies - Timeline for filling KMP vacancies extended from three to six months; includes CEO, MD, CFO roles.
- Prior Intimation of Board Meetings - Prior intimation reduced to two working days; exceptions for certain fundraising proposals.

SEBI amends ICDR Regulations for enhanced regulatory efficiency

SEBI's amends ICDR Regulations, 2018, allowing non-individual shareholders to contribute to MPC, include compulsorily convertible securities for MPC computation, reduce bid/offer closing date extensions, and streamline OFS filings. These changes aim to enhance regulatory efficiency in the capital market.

SEBI issues comprehensive master circular for ESG rating providers

SEBI's master circular, effective immediately, regulates ERPs under the CRA Regulations, 1999. It outlines registration guidelines, obligations, and a code of conduct which ERPs must comply, along with oversight by their Board of Directors. The circular aims to protect investor interests and regulate the securities market. Monitoring will be conducted through yearly internal audits.

MERGERS & ACQUISITIONS

India leads Asia-Pacific Financial Sector M&A Deals in Q1 2024

In Q1 of 2024, India stood out in the Asia-Pacific region's financial sector by closing 27 M&A deals, compared to 13 in Japan, 12 in Australia, 11 in South Korea, and only 9 in Mainland China. While the number has increased as compared to last year for India, it has been either declining or stagnant for other countries.

Four of the top 10 deals in value were closed in India, with a combined deal value of \$845.79 million. The biggest of them all was Sumitomo Mitsui Financial Group's (SMFG's) acquisition of SMFG India Credit, a specialty finance company, for \$700 million. Other major deals from the Q1 are as below:

- Acquisition of 9.85% stake in Annapurna Finance, a leading NBFC in micro finance by Piramal for \$36 million.
- Rajiv Rattan acquired 50% stake in joint venture Lone star funds in RattanIndia Finance for \$74 million in an all cash deal ending the long and bitter dispute.
- Muthoot Finance completes off-market acquisition, increasing stake in Belstar Microfinance to 66.13%, acquiring 2.27% equity in an all cash deal.

India is expected to remain the bright spot for Asia-Pacific BFSI M&A in 2024. India's economic growth, favorable demographics, strong forecast and resilience, supportive regulatory system and vibrant business ecosystem is expected to further increase the deal activity in coming quarter.



IN THE NEWS

Closed-door interaction with H.E. Mr. Philip Green OAM, High Commissioner of Australia

May 7, 2024

Ajay Sethi, ASA, joined a closed-door dialogue with H.E. Mr. Philip Green, Australian High Commissioner to India. The discussion focussed on sector specific issues targeted at building new synergies in Indo-Australian relations.

Exclusive meeting with Ambassador of India to South Korea, at the Embassy of India in Seoul

May 28, 2024

Ajay Sethi and Nitin Arora, ASA, met with Mr. Amit Kumar, Ambassador of India to South Korea, at the Embassy of India in Seoul. They discussed how to facilitate successful entry and operations for Korean companies in India, as well as strategies to bolster South Korean investments in the country.

3rd Series of Chennai Members Networking Meet of IFCCI

May 7, 2024

Sathyabama Rangarajan, ASA, shared her insights on Risk Management, specifically internal audit, and financial controls, during the 3rd Indo-French Chamber of Commerce & Industry (IFCCI) Chennai Networking Breakfast Meet. ASA, as knowledge partners, facilitated discussions among IFCCI Chennai's members.

India in the fast lane

May 16, 2024

Author: Ajay Sethi, ASA

While India outpaced UK to claim position as the 5th largest economy, it will ascend to the prestigious 3rd spot, overtaking economic powerhouses like Japan and Germany by 2027. Interestingly, supply chain enhancement and infra spends are not the only growth drivers. It is fuelled by private consumption, which contributes 60% to the GDP unlike China where it is 38%. India is at the cusp of its golden era of economic growth.

Audit of Hedge Funds- Complexities & Challenges

May 6, 2024

Author: Sundeep Gupta & Karishma V, ASA

This article explores the complexities and challenges of auditing hedge funds, which require rigorous oversight due to their sophisticated and high-risk nature. Key audit areas include investment valuation, internal controls, and regulatory compliance. Despite challenges like asset valuation and limited transparency, these audits are crucial for ensuring financial market integrity and investor confidence.

Not-for-Profit Entities in USA - Key Audit Considerations

May 23, 2024

Author: Sundeep Gupta & Shivam Agarwal, ASA

This article explores key audit considerations for NFP entities in the USA, emphasizing the importance of financial accountability and transparency. It highlights the crucial role auditors play in assessing internal controls, grants and donations, and regulatory compliance. Additionally, the article underscores the need for thorough scrutiny of related party transactions and revenue recognition to prevent fraud and mismanagement. Ultimately, the piece underscores auditors' pivotal role in ensuring NFPs maintain public trust and adhere to their missions.

To Guarantee or not to Guarantee – That is the question

May 29, 2024

Author: Sundeep Gupta & Lakshay Chhabra, ASA

While GST was launched as a ship set to sail while being built, it is now nearly 7 years, and the ship is sailing in the ocean. As any sailor would know, the calm of the ocean is only transient and there are interludes of thunder and storms making the ship wrestle the massive waves while trying to navigate and stay afloat. One such thunderstorm has arisen in the GST ocean in the form of taxation of Corporate Guarantees given by parent companies to its subsidiaries or group companies. To make the waves even higher and terrifying is the not-so-subtle provision in the GST law to even tax transactions where there is no consideration involved if related parties are involved.

GLOSSARY

CRA

Credit Rating Agency

ERP

ESG Rating Providers

ESG

Environment, Social, Governance

GST

Goods & Services Tax

HVDLE

High Value Debt Listed Entities

ICDR

Issue of Capital and Disclosure Requirements

ITC

Input Tax Credit

KMP

Key Managerial Personnel

LLP

Limited Liability Partnership

LODR

Listing Obligations and Disclosure Requirements

M&A

Mergers & Acquisitions

MCA

Ministry of Corporate Affairs

MPC

Minimum Promoters' Contribution

NBFC

Non-Banking Financial Company

NFP

Not For Profit

OFS

Offer for Sale

RBI

Reserve Bank of India

RCM

Reverse Charge Mechanism

RMC

Risk Management Committee

SCN

Show Cause Notice

SEBI

Securities and Exchange Board of India

SLP

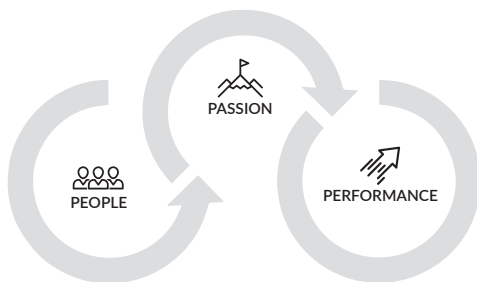
Special Leave Petition

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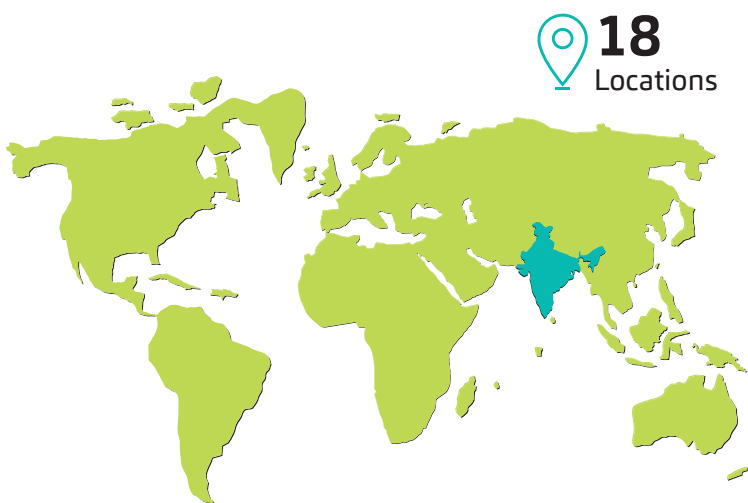
SERVICES

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- Transaction Advisory

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 **141**
Territories

 **\$5.2bn**
Turnover



Disclaimer: This publication has been jointly prepared by ASA & Associates LLP and ASA Corporate Catalyst India Pvt Ltd. We have taken all steps to ensure that the information in this document has been obtained from reliable sources and is accurate. However, this document is not intended to give legal, tax, accounting or other professional guidance. We recommend appropriate advice be taken prior to initiating action on specific issues.



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