



NAGPUR BRANCH OF WIRC OF ICAI



E-NEWSLETTER

JANUARY 23



The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
Email : nagpur@icai.org | Website : www.nagpuricai.org

Chairperson's Message



CA. Jitendra Saglani

Dear Professional Colleagues, “

Luck is what happens when preparation meets opportunity

– Seneca

Foreword

As we welcome the new calendar year 2023 with big smiles and open mind, I feel that the year 2022 gone by has taught me a lot. The teachings had been more in terms of handling people and situations over and above balancing time between various commitments of life by prioritising things. The learnings had been extremely profound and has certainly added value which I believe would have only been possible by being a part of the extremely vibrant Nagpur Branch.

December - 2022

Patrons, the month of December 2022 was truly eventful wherein we at Nagpur branch had a distinct opportunity to receive and welcome Hon. President CA (Dr.) Debasish Mitra, Hon. Vice President CA Aniket Talati and respected Chairperson of WIRC CA Murtuza Kachwala along with WIRC office bearers Vice Chairman CA Yashwant Kasar, Secretary CA Shweta Jain & Treasurer CA Piyush Chandak all the leaders in a span of just two days i.e. 7th & 8th Dec 2022. The month was more power packed due to plethora of programmes both academic & non academic and the branch takes pride in hosting more than 50 CPE hours seminars in physical & virtual mode in single month of December. The overall participation of members had also been extremely encouraging as branch was able to engage in excess of 2000 members from across the country through various seminars, events and VCMs. In these events the speakers invited were from across the nation and various dignitaries in the form of Central & Regional Council Members that graced the occasion was also phenomenal. The month ended on a very high note with activities throughout for members as well as students. A gist of events of Dec includes Seminar on Labour Laws, Full day GST Conclave, Full Day Seminar on Real Transactions, All Vidarbha Box Cricket Tournament, 2 Days FDP with BOS, 2 Days RRC on Insolvency & Bankruptcy Code at Pench, Seminar on AQMM, Half Day Seminar on Systems & Security Upgrade, VCM on Code of Ethics, Full Day Women's Conference, VCM on Adopting Automation in GST Compliance, VCM on Emerging Global Opportunity in Ind AS, VCM on Networking Guidelines & Multi-Disciplinary Partnership, IAP on Creating Alternate Source of Income Through Trading & Seminar on Emerging Areas of Practice.

January - 2023

The month of January 2023 began with the preparations of most sought-after sporting event of Nagpur



Chairperson's Message

branch – CAPL which witnessed the best participation till date of total 12 teams. The event was very well received by the fraternity at large and all the more from members who love sports. We then various study circle meets during the month. Furthermore we had a mega extra-curricular event in the form Chorus-2022 organised by team WICASA wherein around 250 students participated and showcased their talents in various personality, arts and talent showcasing events. The team WICASA 2022 gave their best shot as this was their final event of the year before they hand over the baton to the new incoming team for the year 2023.

Adieu

Friends, the opportunity to serve alma mater as an office bearer and then as a chairman of this most happening member cum student centric Nagpur branch of WIRC & entire central India has been phenomenal. This being my last message as an editor in chief to you all, I wish to bade an adieu and look forward to stay in touch with you forever. I further wish to thank all doer God & Guru for imparting me this responsibility of Chairing the branch and further giving me this opportunity to give back to my profession of which I m proud of. I am grateful to the entire managing committee, the Team Nagpur for the unstinted efforts and support at all times. I am further humbled by the continuous guidance and hand holding by two Past Presidents and galaxy of past chairmen who anchored my journey as a committee member and my tenure as a chairman during the year 2022. Lastly, I thank each and everyone of you for being there a part of this wonderful expedition.

A few lines to epitomise

मैं अकेला ही चला था जानिब-ए-मंज़िल मगर
लोग साथ आते गए और कारवाँ बनता गया

Professionally Yours

Joint Editor's Message



CA. Yash Verma

Team Nagpur Branch again wishes all the members a very Happy New Year 2023. In this calendar year, we wish our economy becomes 4 trillion economy !

The Economic Survey 2022-23 –

On last day of this month, Hon'ble FM has presented the economic survey 2022-23. Such survey presents a bright picture before us. Following are the highlights of this survey:

- ♦ India to witness GDP growth of 6.0 per cent to 6.8 per cent in 2023-24, depending on the trajectory of economic and political developments globally;
- ♦ Economic survey 2022-23 projects a baseline GDP growth of 6.5 per cent in real terms in FY24;
- ♦ Economy is expected to grow at 7 per cent (in real terms) for the year ending March 2023, this follows an 8.7 per cent growth in the previous financial year;
- ♦ Credit growth to the micro, small, and medium enterprises (MSME) sector has been remarkably high, over 30.5 per cent, on average during Jan-Nov 2022;
- ♦ Capital expenditure (Capex) of the Central Government, which increased by 63.4 per cent in the first eight months of FY 23, was another growth driver of the Indian economy in the current year;
- ♦ RBI projects headline inflation at 6.8 per cent in FY 23, which is outside its target range;
- ♦ Return of migrant workers to construction activities helped housing market witnessing a significant decline in inventory overhang to 33 months in Q3 of FY 23 from 42 months last year;
- ♦ Surge in growth of exports in FY 22 and the first half of FY 23 induced a shift in the gears of the production processes from mild acceleration to cruise mode;
- ♦ Private consumption as a percentage of GDP stood at 58.4 per cent in Q2 of FY 23, the highest among the second quarters of all the years since 2013-14, supported by a rebound in contact-intensive services such as trade, hotel and transport;
- ♦ Survey points to the lower forecast for growth in global trade by the world trade organisation, from 3.5 per cent in 2022 to 1.0 per cent in 2023.

Budget 2023

Budget will be presented on 1st February 2023 by Hon'ble Finance Minister. There are lots of expectations from this budget by general public. The budget will provide direction of growth and focus of Union Government. As Chartered Accountants, we are desperately waiting for some sort of amnesty scheme for

Joint Editor's Message

GST. Lets keep our fingers crossed.

State Budget

Finance Minister of State of Maharashtra will also be presenting state budget in the month of March of 2023. This budget also assumes significance since our area of practice is mostly in the state of Maharashtra. Lets expect some good policy related announcements on this front as well.

Whats New-

Following circulars / notifications have been issued by CBDT which should be kept in our mind as professionals-

[Circular No. 1/2023 :Extension of time limit for compliance to be made for claiming any exemption under Section 54 to 54GB of the Income-tax Act, 1961 \('Act'\) in view of the then-Covid-19 pandemic 6 January 2023](#)

[Notification No. 1/2023 :Addendum to Notification 2 of 2021 Format, Procedure and Guidelines for submission of Statement of Financial Transactions \(SFT\) for Interest income \(Abolishing of limit of Rs 5,000\) 5 January 2023](#)

GST-

On GST front, following circulars/notifications have been issued recently-

[No. 1/2023 - Dated: 4-1-2023 - CGST](#) Seeks to amend Notification No. 14/2017-Central Tax, dated the 1st July, 2017-To assign powers of Superintendent of central tax to Additional Assistant Directors in DGGI, DGGST and DG Audit.

FAQs on CBDT Portal:

There are various FAQs available on portal of CBDT. Same are being enlisted for benefit of members-

- ♦ FAQs for e-Verification Scheme 2021
- ♦ FAQs on Direct Tax Vivad Se Vishwas Act, 2020
- ♦ FAQs in respect of filling-up of the Income-tax return forms for Assessment Year 2022-23
- ♦ General FAQs
- ♦ FAQs on Computation of Tax
- ♦ FAQs on the Income Declaration Scheme, 2016

Joint Editor's Message

- ♦ FAQs on filing the return of income
- ♦ FAQs on Tax Deducted at Source (TDS)
- ♦ FAQs on Salary Income
- ♦ FAQs on Income from house property
- ♦ FAQs on Tax on Presumptive Taxation Scheme
- ♦ FAQs on Gifts received by an individual or HUF
- ♦ FAQs on Capital Gains
- ♦ FAQs on Clubbing of Income
- ♦ FAQs on Set Off and Carry Forward of Losses
- ♦ FAQs on Assessments under the Income-tax Law
- ♦ FAQs on Provisions useful for non-residents
- ♦ FAQs for Senior Citizens
- ♦ FAQs on Tax audit
- ♦ FAQs on TAN
- ♦ FAQs on Permanent Account Number
- ♦ FAQs on Statement of Financial Transactions and Reportable Accounts
- ♦ FAQs on e-Filing and Related Issues
- ♦ FAQ on Advance Tax
- ♦ FAQs on Authority for Advance Ruling/Board for Advance Rulings

(Source : <https://incometaxindia.gov.in/Pages/faqs.aspx>)

With this, I again wish you all a very happy year ending and ongoing assessment season both under Income Tax Act and under GST laws.

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Top 10 Judicial Pronouncements in Taxation Laws under Writ Jurisdiction by High Courts

CA. Ram Deepak Heda

1. Order passed u/s 148A(d) without supplying relevant material to assessee is unsustainable under law.

Anurag Gupta Vs Income Tax Officer & others :
Bombay High Court

The Hon'ble Bombay High Court has held that that providing information to the Petitioner, without furnishing the material based upon which the information is provided, would render an assessee handicapped in submitting an effective reply to the show cause notice, thereby rendering the purpose and spirit of Section 148A(b) of the Act totally illusive and ephemeral. The fact that the material also was required to be supplied can very well be gauged from the clear directions issued by the Supreme Court in the case of Union of India V/s. Ashish Agarwal. Therefore, the reassessment proceedings initiated are unsustainable on the ground of violation of the procedure prescribed under Section 148A(b) of the Act on account of failure of the assessing officer to provide the requisite material which ought to have been supplied along with the information in terms of the said section.

2. Notice u/s 148 served on the secondary Email ID instead of the registered primary Email ID is a fatal jurisdictional error.

Lok Developers Vs Deputy Commissioner of Income tax & others : Bombay High Court

The Hon'ble Bombay High Court has held that the AO clearly erred in issuing a notice on the secondary email address when there was a primary email address given by the petitioner. It is common knowledge that a secondary email address has to be used as an alternative or in such circumstances when the authority is unable to effect service of any communication on the primary address. There is no prudence in issuing an email on the secondary email address. In our view the AO ought to have sent the

notice u/s 148 to both the primary address and the email address mentioned in the last Return of Income filed to preempt a jurisdictional error on account of valid service; there was neither any cost to it or any prejudice to any party for sending it on more than one email in a given circumstance as in the present case. We see no wrong with the petitioner's refusal to participate in a proceeding vitiated by valid service of notice. As such the Hon'ble Court proceeded to quash and set aside the impugned notice and all consequential proceedings.

3. Show cause notice issued without granting minimum 7 days to file reply liable to quashed and set aside

Indo Laminates Private Limited Vs Assessment Unit & Others : Delhi High Court

In the present case a show-cause notice was issued by the Assessing Officer (AO) on 09.12.2022, without taking into account the fact that the petitioner had filed a reply on 08.12.2022. Via the show-cause notice dated 09.12.2022, the petitioner was given time to respond by 13.12.2022, up until 11:30 hours. The Hon'ble Court further stated that although the petitioner's reply dated 08.12.2022 was on record, a show-cause notice dated 09.12.2022 was issued, without having regard to the reply, we are inclined to quash the impugned notices and order. There was, to our minds, clearly a failure to adhere to the directions contained in Clause N.1.3 of the Standard Operating Procedure (SOP) for Assessment Unit (AU) dated 03.08.2022; which required a minimum timeframe of seven days to be given to the noticee i.e., the petitioner.

4. Applications For Refund Of ITC Cannot Be Denied On Mere Suspicion.

M/s Balaji EXIM vs Commissioner, CGST and Ors :

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Delhi High Court

The Delhi High Court held that it is apparent from the information given that the petitioner's refund applications were denied solely on the basis of the petitioner's supplier issuing fraudulent invoices. There is no definitive determination based on compelling evidence that the invoices issued by the supplier to the petitioner are forgeries. The invoices issued by the petitioner's supplier are reflected in the AIO system, and there is no dispute on whether the supplier has issued an invoice or not. There is no accusation that the petitioner failed to pay the invoices (which contain IGST and Cess). Furthermore, no claims were made that the commodities in question were not exported internationally. Hence, the petitioner has proven not only that the items were exported but also that they were paid for, including the IGST and Cess. The court observed that the accusation of availing fake credit by the supplier could not be a ground for rejecting the petitioner's refund application of ITC unless it is proved that the petitioner has not received the delivery of goods or had not paid for them. The court directed the department to initiate the refund of ITC on goods exported by the petitioner.

5. **Reassessment Notices Issued After Elapse Of Six Years for AY 2013-14 & 2014-15 are not maintainable under law.**

Keenara Industries Private Limited Versus Income Tax Officer : Gujarat High Court

The case of the petitioner was that the notice under Section 148 can be issued on or after April 1, 2021, in cases where the limitation for issuing such notice under the old regime of reopening had not expired prior to the Finance Act of 2021 coming into force. However, the new provisions relating to reopening introduced by the Finance Act, 2021 came into force with effect on April 1, 2021. Furthermore, the court held that CBDT could not have the power to extend the time period under the first proviso to Section 149(1) of the Income Tax Act and the time limit as per unamended Section 149(1)(b) was six years from the end of the assessment year. The Taxation and Other Laws (Relaxations and Amendments of Certain Provisions) Act 2020 (TOLA) has not altered the time limit provided in clause (b) of unamended Section 149 of the Income Tax Act. As such notices issued under section 148 of the act for the A.Y 2013-14 & 2014-15 are barred by limitation.

6. **Reversal of ITC At Midnight During Search And Seizure Operation under threat, coercion and without the Will of the petitioner Can't Be Treated As Voluntary Payment.**

Shree Ganesh Molasses Trading Company Versus Superintendent : Gujarat High Court

On February 11, 2022, a search and seizure operation was carried out by a team of CGST officials. On February 12, 2022, at about 1.00 a.m., the department reversed the ITC in the electronic credit ledger and corrosively and illegally filed Form DRC-03 under Section 74(5), although it was not voluntary. The petitioner's stand was that there was no tax evasion on the part of the petitioner's firm, and there arises no question of admitting any wrongdoing.

It was alleged that the department had forcibly reversed the ITC of GST and CGST lying in the electronic credit ledger to the tune of Rs. 18,84,150 and Rs. 18,84,150 after reversing the credit of ITC. It proceeded to file Form DRC-03, for which it needed an OTP, which was sent to the partner's son.

The court noted that the conduct of the department was contrary to the instructions issued by the board, and therefore, the action of the petitioner, which is termed to be voluntary, did not have any element of voluntariness. As such the respondent revenue was directed to reverse the ITC to the tune of Rs. 37,68,300/- along with 6% interest.

7. **Department ordered to refund penalty as they were vacillating between Sections 67 and 68 of the GST Act, depending on whether the goods are in transit or in the godown.**

Sandip Kumar Singhal Versus Deputy Commissioner, Revenue, Bureau of Investigation North Bengal Headquarter & Ors. : Calcutta High Court

The goods of the petitioner were seized on February 22, 2022, at 2 p.m. from a godown upon invoking the provisions of Section 67(2). The adjudicating authority opined that the goods were transported and stored while they were in transit in contravention of Section 129 and calculated the applicable penalty under Section 129 (1) (a). The AA was of the opinion that the goods were transported in contravention of Section 68 and confirmed the penalty imposed under Section 129 (1)(a). On payment of the penalty amount, the goods of the petitioner were released. The court noted that it was not the case of the respondent that the goods that were seized from the godown were the goods that were transported by the expired e-way bill.

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On the contrary, the e-way bill number is recorded in the report filed by the concerned officer. The petitioner admitted that the rest of the goods were sold out by him. It does not appear that the petitioner had the intention to evade tax, as the petitioner already paid the taxable amount at the time of the generation of the e-way bill. The department has also failed to make out a case that there was any connivance between the buyer and seller in dealing with the goods without the payment of necessary taxes. Accordingly the Hon'ble Court directed respondent to refund the amount collected from the petitioner as penalty positively within four weeks from the date of communication of this order.

8. **Personal Hearing To Be Granted In All Matters Prior To Finalization Of Assessment under GST Laws.**

SKS Builders and Promoters Versus Assistant Commissioner (ST) : Madras High Court

In the present case, the petitioner asked for a hearing in person prior to the issue being decided. The officer has brushed aside the request for a personal hearing, instead proceeding to pass the order without hearing the petitioner. Section 75(4), which deals with the general procedure to be followed in the determination of tax, specifically mandates that an opportunity for a hearing shall be granted where a request is received in writing from the person chargeable to tax or penalty or where any adverse decision is contemplated as against such a person. The court held that the personal hearing had not been fixed and that there was a gross flaw in the order and as such set aside the impugned orders

9. **GST Act Can't Be Interpreted To Deny Right To Carry Trade And Commerce By Citizens.**

Rohit Enterprises Versus The Commissioner State GST Bhavan : Bombay High Court

In the present case The State Tax Officer, Aurangabad, issued a show-cause notice, calling upon the petitioner to furnish his explanation within a period of seven working days. The notice stipulated that the registration of the petitioner stood suspended. The petitioner replied to the show cause notice on March 3, 2022. Citing the reason for the financial crunch, he requested the revocation of the notice. However, the State Tax Officer canceled the registration with effect from August 21, 2021. The department contended that the petitioner was given a reasonable opportunity before the cancellation of the registration. On

February 28, 2022, he received a show cause notice, as well as an order suspending his registration. The petitioner was given the opportunity to furnish the documents while dealing with his application for revocation or cancellation of registration. Because the petitioner did not take advantage of the opportunity, his application for revocation or cancellation of registration was denied. The Hon'ble Court held that even looking at the object of the provisions under the GST Act, it is not in the interest of the government to curtail the rights of entrepreneurs like the petitioner. The petitioner must be allowed to continue business and contribute to the state's revenue since the petitioner is ready and willing to pay all the dues, along with penalty and interest as applicable. Therefore the registration of petitioner was declared as valid.

10. **Reassessment Notice u/s 148 issued beyond a period of 3 years without sanction of Pr. CCIT is unsustainable in the eyes of law.**

Mrs. Chitra Supekar Vs The Income Tax Officer & others: Bombay High Court.

The petitioner challenged the order passed under section 148A(d) of the Act principally on the ground that the notice requires a separate approval from the PCCIT since it was passed after expiry of three years from the end of the relevant AY 2018-19 i.e. by 31st March 2022 and the notice u/s. 148 of Act seeking to reopen the petitioner's assessment for AY 2018-19 came to be issued on dated 13 April 2022. The Hon'ble High Court stated No approval from PCCIT was taken as contemplated u/s 151(ii) as the reopening was caused beyond three years and is therefore vitiated. We also find no averments responding to the ITRV dated 29 April 2022 filed for A.Y. 2018-19 by the petitioner in response to the notice u/s. 148 dated 13 April 2022 nor with regard to the compliance of the stipulations by the respondents u/s. 148 of the IT Act. Accordingly, the impugned order u/s 148A(d) and the notice u/s 148 deserves to be quashed and set aside.

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Section 206(1G) : TCS on Outward Remittance under Liberalized Remittance Scheme (LRS) (After Budget 2023)

CA. Rahul Sharma

Government always try to combat the situation of tax avoidance and evasion, all TDS and TCS provisions are made part of our Direct Tax Regime with this object. With changed economic Scenario it seems inevitable to introduce new entries and modification in existing provisions. In this series Finance Act 2020 introduced new section (1G) in section 206C of Income Tax Act 1961 w.e.f. 01.10.2020. Recently budget 2023 has introduced some significant changes, I have tried to incorporate my view on the same in following analysis.

The purpose of this clause is to collect tax on (a). Remittances made under Liberalized Remittance Scheme (LRS) of Reserve Bank of India and (b). Remittance made towards Overseas Tour Program Package.

Liberalized Remittance Scheme (LRS) : - Under LRS Scheme, an Individual person who is resident in India as per FEMA is permitted to remit outside India fund up to US\$ 2,50,000 per financial year (April to March)

without any approval of RBI for any permitted current account or capital account transactions or both such as opening foreign currency account abroad, purchase of property or making investments abroad, private visit, gift/donation, business trip, medical treatment, studies abroad, going abroad on employment, etc. This scheme is available only to Individuals (including minors) and not to corporates, Partnership firms, LLP, HUF, etc.

Overseas Tour Program Package means any tour package which offers visit to a country or countries or territory or territories outside India and includes expenses for travel or hotel stay or boarding or lodging or any other expenditure of similar nature or in relation thereto.

Who Has to Collect Tax : (a). An Authorized Dealer who remit amount out of India and (b). Seller of Overseas Tour Program Package.

Rate of Tax to be Collected:

S.No.	Particulars	Upto 30.06.2023		On and After 01.07.2023	
		If PAN is Available	If PAN is not Available	If PAN is Available	If PAN is not Available
1.	Overseas Tour Program (Payment for Purchase of Ticket, Booking Hotel, etc.)	Flat 5% of Remittance Amount	@10% instead of 5% of Remittance Amount	Flat 20% of Remittance Amount	Flat 40% of Remittance Amount
2.	LRS – For Education and Medical Treatment	5% of Remittance Amount in Excess of Rs. 7.00 Lacs during FY	@10% instead of 5% of Remittance Amount in Excess of Rs. 7.00 Lacs during FY	5% of Remittance Amount in Excess of Rs. 7.00 Lacs during FY	@10% instead of 5% of Remittance Amount in Excess of Rs. 7.00 Lacs during FY

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3.	Remittance related to Studies abroad, Where source of Fund is Educational Loan	0.5 % of the remittance amount in excess of 7.00 Lacs during FY	@5% instead of 0.5% of Remittance Amount in Excess of Rs. 7.00 Lacs during FY	0.5 % of the remittance amount in excess of 7.00 Lacs during FY	@5% instead of 0.5% of Remittance Amount in Excess of Rs. 7.00 Lacs during FY
4.	LRS – Other than Education and Medical Treatment	5% of Remittance Amount in Excess of Rs. 7.00 Lacs during FY	@10% instead of 5%	Flat 20% of Remittance Amount	Flat 40% of Remittance Amount

No Tax is Collectible:

- The Authorized Dealer shall not collect the sum if the amount or aggregate of the amounts being remitted by a buyer is less than seven lakh rupees in a financial year (Only If payment is for Medical and Education Purpose).
- Sum to be collected by an authorized dealer from the buyer shall be equal to five per cent of the amount or aggregate of the amounts in excess of seven lakh rupees remitted by the buyer in a financial year, if amount remitted is more than Seven Lacs.
(Only If Payment is for Medical and Education Purpose).
- The Authorized Dealer shall not collect the sum on an amount in respect of which the sum has been collected by the seller.
- Person responsible for Tax Collection is liable to deduct tax at source under any other provision of this Act and has deducted such amount.
- Payment is collected from the Central Government, a State Government, an embassy, a High Commission, a legation, a commission, a consulate, the trade representation of a foreign State, a local authority as defined in the Explanation to clause (20) of section 10. and
- Any other person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein.

Notification for Exemption Issued are as follows :

MINISTRY OF FINANCE
(Department of Revenue)
(CENTRAL BOARD OF DIRECT TAXES)
NOTIFICATION
New Delhi, the 17th August, 2022
INCOME-TAX

S.O. 3878(E).—In exercise of the powers conferred by clause (ii) to fifth proviso to sub-section (1G) of section 206C of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as “Act”) and in suppression of the notification of the Government of India, Central Board of Direct Taxes published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) vide number S.O. 1494(E), dated the 30th March 2022, except as respects things done or omitted to be done before such suppression, the Central Government hereby notifies that the provisions of sub-section (1G) of section 206C of the Act shall not apply to a person (being a buyer) who is a non-resident in terms of section 6 of the Act and who does not have a permanent establishment in India.

2. This notification shall come into force with effect from the date of publication of this notification in the Official Gazette.

[Notification No. 99/2022/F. No. 370142/9/2022-TPL
Part (2)]

MRINALINI KAUR SAPRA, Director



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MINISTRY OF FINANCE
(Department of Revenue)
(CENTRAL BOARD OF DIRECT TAXES)
NOTIFICATION
New Delhi, the 30th March, 2022
INCOME-TAX

S.O. 1494(E).—In exercise of the powers conferred by clause (ii) to fifth proviso to sub-section (1G) of section 206C of the Income-tax Act, 1961 (43 of 1961)(hereinafter referred to as 'Act'), the Central Government hereby notifies that the provisions of sub-section (1G) of section 206C shall not apply to an individual who is not a resident in India in terms of clause (1) and clause (1A) of section 6 of the Act, and who is visiting India.

2. This notification shall come into force with effect from the date of publication of this notification in the Official Gazette.

[Notification No. 20/2022/F. No.370142/9/2022-TPL]
ANKIT JAIN, Under Secy.

Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
New Delhi, 31st March, 2022

PRESS RELEASE

Central Government relaxes provisions of TCS under section 206C(1G) of the Income-tax Act, 1961 in respect of non-resident individuals visiting India

Section 206C (1G) of the Income-tax Act, 1961 ("the Act") provides for collection of tax by a seller of an overseas tour program package from a buyer, being a person purchasing such package, at the rate of 5% of the amount of the package.

Representations were received from domestic tour operators who were facing difficulties in collection of tax from non-resident individuals visiting India who were booking overseas tour package from such domestic tour operators. Since such persons may not have a PAN, tax is required to be collected at higher rates. Further, such non-residents may find it difficult to furnish their ITR and claim refunds.

In order to remove such difficulties, the Central Government, in exercise of powers conferred under section 206C(1G) of the Act, has specified that the provisions of the said section shall not apply to a buyer being an individual who is not a resident in India in terms of clause (1) and clause (1A) of section 6 of the Act and who is visiting India. Hence, a domestic tour operator is not required to collect tax on sale of overseas tour package to non-resident individuals visiting India.

Notification No. 20 of 2022 dated 30.03.2022 has also been issued and is available on www.incometaxindia.gov.in under the Notification Section.

(Surabhi Ahluwalia)
Commissioner of Income Tax
(Media & Technical Policy)
Official Spokesperson, CBDT

Illustrations:

Customer : Mr. X

Transaction Date	Amount Remitted	Cumulative Remitted Amount	Purpose of Remittance	Applicable TCS
03.07.2022	800000	800000	Medical	2500 (5% of remitted amount - 700000)
05.10.2022	650000	1450000	Gift	32500(5% of Remitted Amount)
22.10.2022	120000	1570000	Travel	6000 (5% of Remitted amount)

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10.11.2020	525000	2095000	Education (Out of Education Loan)	2650 (0.5% of remitted amount)
12.01.2023	400000	2495000	Family Maintenance	20000 (5% of remitted amount)
25.01.2023	700000	3195000	Education (Out of Personal Savings and not out of Loan)	35000 (5% of remitted amount)

Customer : Mr. Y

Transaction Date	Amount Remitted	Cumulative Remitted Amount	Purpose of Remittance	Applicable TCS
03.07.2023	800000	800000	Medical	2500 (5% of remitted amount - 700000)
05.10.2023	650000	1450000	Gift	130000(Flat 20% of Remitted Amount)
22.10.2023	120000	1570000	Travel	24000 (Flat 20% of Remitted amount)
10.11.2023	525000	2095000	Education (Out of Education Loan)	2650 (0.5% of remitted amount in Excess of Rs. 700000 of remitted amount)
12.01.2024	400000	2495000	Family Maintenance	80000 (20% of remitted amount)
25.01.2024	700000	3195000	Education (Out of Personal Savings and not out of Loan)	35000 (5% of remitted amount in excess of Rs. 700000 of remitted amount)

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ESOP - Guide for Start-Ups

CA Shubham V. Patel

INTRODUCTION

- ✓ ESOPs in India and globally have been used by businesses to encourage employees to buy shares and own a part of the company while aligning their performance and hard work to the same.
- ✓ ESOP has gained enough popularity after young start-ups struggle to attract suitable human capital.
- ✓ Start-ups start losing the workforce when they become unable to provide lucrative offers to retain and boost up their employees but are willing to share the future prosperity of the company.
- ✓ A solution to this problem could be solved by implementing ESOP in the company as part of the compensation package which does not only play a major role in liquidating capital but also motivates employees to perform better and helps in the growth of the company.

OBJECTIVE OF ISSUING ESOP?

ESOPs are actively deployed by Start-ups to achieve the following objectives

- a. A start-up requires funds and so, the capital requirement of the company can be increased by offering stocks of the company to employees, keeping them within the business.
- b. ESOP turns out to be a perfect alternative for appealing, encouraging, and retaining employees instead.
- c. It is similar to a profit-sharing plan. Employees being aware that they are shareholders and owners are bound to work with more enthusiasm and feel responsible for the growth of the company.
- d. Provided with the limited marketability, it is better to utilize the scheme rather than listing

shares on a stock exchange.

Thus, the emotional connection to the Start-up is much higher vis-a-vis full cash compensation.

WHAT IS ESOP?

The word ESOP is generally used in two contexts:

- ✓ First, is the literal meaning which is the Employee Stock Option Plan, this is usually a plan or scheme under which options are given to the employees in a company.
- ✓ The second meaning is the Employee Stock Options. It's important to note that options are NOT shares themselves. Rather this signifies the 'option or right' of the employee to purchase the shares of the company at a pre-determined price at a future date.

ESOP is given to the employee via a grant letter with grant date, vesting details, exercise price, etc clearly mentioned on it.

ESOPs, give the employee a right to purchase the share, but not an obligation, to buy a certain amount of shares in the company at a predetermined price for a certain number of years.

Therefore, if the shares of the company are valued at less than the option exercise price, then the employee need not exercise the right to buy the shares of the company.

REGULATORY FRAMEWORK

1. Companies Act, 2013
2. Income-tax Act, 1961
3. SEBI (Share-based Employee Benefits) Regulations, 2014
4. ICDR (Amendment) Regulations, 2021
5. FEMA, 1999

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6. IFRS 2 and Ind AS 102

STEPS FOR CREATING ESOPs

1. The first step is to get an ESOP scheme prepared through a professional.
2. The next step is to get the board approval for adopting this ESOP scheme
3. The ESOP scheme also needs to be approved through a special resolution at the shareholders' meeting (EGM)
4. The board resolution and EGM resolutions need to be filed with the Registrar of Companies (ROC) website using form MGT14. Your company secretary can do this. There is no other filing required with the ROC
5. Now, you are ready to formally grant ESOPs to your employees through a grant letter.

The steps required if your Start-up is registered in India are as follows:

This scheme document covers various legal clauses governing -ESOP administration, pool size, grants, vesting, employee cessation, exercise period, etc.

You need to send out an EGM notice for the same and then finally conduct the EGM and pass the shareholder resolution.

Note that this needs to be a special resolution (votes in favor of the resolution at least three times than votes against) as compared to an ordinary resolution (simple majority).

Note that ESOPs are only options and not shares, therefore there is NO need to increase the authorized share capital of the company at the time of ESOP grants. It only needs to be done when an employee goes for exercise, which is usually much later.

Note Many a time we come across founders trying to issue a grant letter to the employees backdated to an earlier date because the employee was promised these long before the ESOP scheme got approved by shareholders. This is not legal; the grant date must be greater than the ESOP shareholder resolution date.

PROCEDURE:

✓ **First stage: GRANT,**

Share options are issued to eligible employees on a date called grant date.

✓ **Second stage: VESTING**

The option holder is given the right to apply for the shares of the company according to the rules laid out in the employee stock option scheme. The vesting period is referred to as the period from the date of grant till the date on which such option becomes a vested option, i.e. when the option holder is eligible to exercise the option.

Vesting can be based on duration, milestones, or performance.

✓ **Third and final stage: EXERCISE**

Once an option becomes vested, which means the relevant vesting period is over (or milestone is achieved), the employee has the right to exercise the option. The date on which the employee exercises his/her options is called the exercise date. Upon exercise of the option by the employee, the company allots the shares to the eligible employee in accordance with the employee stock option scheme.

LEGAL DOCUMENTS REQUIRED:

1. Employment agreement: The employment agreement usually specifies that the board has the discretion to grant such options to the employees as it deems fit.
2. ESOP Plan: The ESOP Plan is the plan which lists out the features and the terms of the ESOP scheme.
3. Trust Deed (if the ESOP is administered by a trust): If the trust route is used for the ESOP Plan, a trust deed for the creation of a trust to hold the shares is required.
4. Letter of grant of options: Options are conferred by a letter to the employees furnished by the board of directors of the company.
5. Letter of acceptance by employees

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ESOPs – THE EMPLOYER OUTLOOK

A. Cost of Implementation of ESOP to Company:

Apart from dilution in the shareholding of promoters, the company should keep the following expenses in mind:

- ✓ Fees payable to the Registered valuer and the Merchant Banker for Valuation of shares
- ✓ Fees are payable to the consultant for implementation and supervision of ESOP.
- ✓ Administration cost throughout its tenure

B. Taxation of ESOPs in the hands of Employer–

There is no specific section that specifies whether it will be allowed as a deduction or not. It is allowed as business expenditure u/s 37 as other business. However, the deductibility of expenditure relating to ESOPs has frequently been the subject of litigation in India.

The discount (i.e., the difference between the market price of the shares as at the date of grant of the options and the allotment price) is a deductible business expense of the employer company.

The employer should be careful in calculating the deduction of ESOP expense every year and should keep in mind the guidance provided by the appellate.

ESOPs – THE EMPLOYEE OUTLOOK

ESOP valuation plays a vital role in the success of the ESOP Scheme. ESOP Valuation affects the EPS of the company and higher valuation may result in higher tax pay-out by employees as a perquisite and may turn ESOP scheme unattractive thus appropriate plan & scheme is required for success ESOP.

Employee Stock Options Plans are wealth creation plans that essentially give an employee the option to buy a certain amount of company shares either at market value or at a discounted price.

As per the stipulated time-frame defined in their ESOP scheme document, employees can actually buy the shares that were once provided to them as an option.

Post this, they can either monetize all or some of these shares when the company announces liquidity like a buyback or secondary sale or an IPO (Initial Public Offering).

This complete or partial monetization of ESOPs (if the start-up has done well and has considerable valuation) will far exceed the standard remuneration of the employee. In start-ups, ESOPs that are not exercised will lapse (after a stipulated period) and return to the ESOP POOL. In simple terms, ESOPs empower employees with a monetary edge.

"Employee Stock Options for long have been undervalued in India but many success stories of employees creating wealth through ESOPs and eventually building their own start-ups have slowly started to build a strong culture of wealth creation among employees."

While companies are leveraging ESOPs as a retention tool and growth-multiplier, employees are benefitting in the overall process. To summarise, ESOPs pave a way for employees to:

- ✓ Boost personal wealth through equity ownership.
- ✓ Grow professionally as primary contributors.
- ✓ Improve job security and satisfaction
- ✓ Actively participate in decision making

TAXATION OF ESOPS IN THE HANDS OF EMPLOYEE–

Start-ups should mention tax implications to all new employees before giving them an option to get ESOPs as there will be considerable tax consequences for an employee.

There are many employees or individuals who wanted to become a part of a start-up but are not aware of the implications of tax.

Treatment of tax depends upon various factors such as:

1. Type of option issued
2. Event on which such option is granted or exercised
3. The time of resigning

ESOPs are taxed at 2 instances in the hands of employee–

1. At the time of exercise – as a perquisite.
2. At the time of sale by an employee – as a capital gain

Exercise price <Perquisite> FMV on exercise date
<capital gains> sale price

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At the time of exercise – as a perquisite-

When shares are allotted to the employee after he has exercised his option on completion of the vesting period

- When the employee has exercised the option — the difference between the FMV on exercise date and exercise price is taxed as perquisite employees as per Section 17 of the Income Tax Act, 1961.
- The employer (i.e., Start-up) is liable to deduct TDS on this perquisite depending on the tax bracket in which the employee falls, and deposit the same with the government before the 7th of the next month.
- This amount is shown in the employee's Form 16 and included as part of the total income of Salary in the tax return.

At the time of sale by an employee – as a capital gain

When the employee opts to sell the allotted shares under the ESOP.

- When an employee sells his 'exercised shares,' he will have to pay capital gains tax on the profit that he makes from the share sale.
- The difference between the sale price and FMV on the exercise date is taxed as capital Gain.

Here capital gain would be the difference between sale consideration and cost of acquisition. Where "Cost of acquisition" would be a perquisite value plus amount actually paid by the employee.

Capital gains are of two types:

- Short Term Capital Gain (STCG)
- Long Term Capital Gain (LTCG)

Tax implication on STCG: STCG arises when shares are sold within 24 months of exercising

Tax implication on LTCG: LTCG arises when shares are sold after 24 months of exercising. Rate of tax = 20% (after indexation of cost). Indexation cost is basically factoring in the Cost Inflation Index (CII)

Understanding ESOP Tax – An Example

Imagine Deepika joined a start-up 'Metro Fintech Solutions' as one of the early employees in 2017. Upon joining, Deepika was granted 10,000 ESOPs at an

exercise price of INR 60 per share. As per the policy, the option can be exercised at the end of 3 years i.e., in 2020 at an exercise price of INR 60.

In 2020, Deepika exercised her option.

The FMV of each share on the date of exercise is INR 100

Further, in 2021, she decides to sell the shares @ 120 each.

Assume, she falls in the 30% tax bracket

Now, we will see how the ESOP Taxation will work:

✓ **The first level of taxation (when the option is exercised):**

ESOPs would be taxed as perquisite, the value of which would be (on date of allotment) = (FMV per share – Exercise price per share) x number of shares allotted.

- Perquisite = INR (100 – 60) X 10,000 = INR 400,000
- TDS = 30% X Perquisite = INR 1.2 lakhs (applicable cess & surcharge will be extra)

The amount calculated above as perquisite value of ESOP i.e., INR 4,00,000 shall form part of Deepika's salary and be taxable in the year of allotment of such shares. Employer (Start-up) is liable to deduct TDS on such amount.

✓ **The second level of taxation (when ESOPs are sold):**

- a. after the expiry of 48 months from the end of the relevant assessment year; or
- b. from the date of the sale of such ESOP shares by the assessee; or
- c. from the date of the taxpayer ceases to be an employee of the ESOP allotting employer.

When Deepika decides to sell the share in 2021, she would be liable to pay capital gain tax, which shall be calculated as follows:

Capital gains = Sale proceeds – FMV of shares at the time of allotment of shares



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$$(120 - 100) \times 10,000 = \text{Rs. } 200,000$$

Since the holding period of shares in the hands of Deepika is less than 12 months (will be counted from the date of allotment), gains will be classified as Short-term Capital Gains and will be taxable as per the normal slab rates applicable on Deepika.

India: Tax on ESOPs Deferred for Start-Ups: AMENDMENT MADE IN BUDGET 2020

The newly introduced deference of tax payment on ESOPs will help start-ups attract and retain high-quality employees.

In order to ease the burden of payment of taxes by the employees of the eligible start-ups or TDS by the start-up employer, Government deferred the payment of income tax on ESOPs from the time of exercise of ESOPs.

Now, the tax liability arises within 14 days from any of the following events, whichever is the earliest:

- after the expiry of 48 months from the end of the relevant assessment year; or
- from the date of the sale of such ESOP shares by the assessee; or
- from the date of the taxpayer ceases to be an employee of the ESOP allotting employer.

Liability for deducting tax at source (TDS) on the start-up also stands deferred.

Eligible Startups (under Section 80-IAC) which satisfy these criteria cumulatively will be eligible for the deferred ESOP tax payment benefit.

The eligibility criteria are:

- It is incorporated on or after the April 1st, 2016 but before April 1st, 2024
- The total turnover of its business does not exceed twenty-five crore rupees in any of the previous years beginning on or after the April 1st, 2016 and ending on the March 31st, 2024
- It holds a certificate of eligible business from the Inter-Ministerial Board of certification as notified in the Official Gazette by the Central Government.

The sore point however is that this benefit ceases when the employee decides to change jobs. This would mean that the employee has to pay from her pocket or allow the options to lapse. The problem remains for employees who decide to change jobs. But, overall, this is a welcome change.

WHEN TO ACCEPT ESOPs?

Few things to be kept in mind before accepting ESOPs from a start-up:

- Understand the terms:
- Scope of a start-up: To check on the viability of the idea, evaluate whether the company has a scope to stay in the market for a period of at least four years. It is important to know the scalability of the idea before accepting ESOPs from an early-stage start-up.
- The uniqueness of its idea: To check if the Business Idea of the Start-up is validated and solves genuine problems.
- Tax implications: These options are considered as a part of an employee's perks and taxed accordingly
- Awareness of Chances– Remember that you will be having ESOPs of a start-up and not a listed company. There are quite a few chances of cashing out till the company goes public. The acquisition would be beneficial, but that is again a chance-game. In case of acquisition, the stocks get transferred to the acquiring company and the ESOP holders will be allowed to encash a portion of their holdings.
- Money matters: Although ESOPs aren't really considered as a cost to the company (CTC), remember that you are sacrificing a part of your salary in the name of ESOP. Since you are not a direct owner, it is no harm to evaluate between the two options—a good CTC or CTC plus ESOPs. Take a step that you won't regret for all the hard work you are going to offer.
- Terms of employment: Read the terms carefully. When in doubt, clarify from a legal expert. Accepting ESOPs is like buying a lottery ticket. They are equal chances of both winning and losing. The excitement and scope that exists in a start-up job make it worth the risk.

Glimpses of Past Events



CAPL-2022



ICAI Startup SAMVAD-9th Jan-23



Study Circle Meet on Basics of Information and Registration of Companies and LLPs-18th Jan-23



Study Circle Meet- Time, Place, Value of Supply and Its Tax Implications



WICASA - Failure A Stepping Stone to Success



WICASA Chorus-2022

Nagpur Branch of ICAI in News

स्टार्टअप ईको-सिस्टम की मेंटरिंग में सीए की भूमिका महत्वपूर्ण : शाह

नगपुर। वर्ष 2019-20 के लिए अपनी पहली कार्यवाही में, आईसीआई नागपुर शाखा ने एकात्मक आई स्टार्ट-अप मेंटरिंग, आईसीआईआई स्टार्टअप मेंटरिंग, आईसीआईआई स्टार्टअप मेंटरिंग की पहल की। आईसीआईआई स्टार्टअप मेंटरिंग की पहल के तहत एक समन्वित और एकीकृत आई स्टार्ट-अप मेंटरिंग के तहत आई स्टार्टअप के विकास में आईसीआईआई के विशेषज्ञों की मदद की जाएगी।

आईसीआई नागपुर शाखा का आईसीआईआई स्टार्टअप संवाद



आईसीआईआई के तहत आई स्टार्टअप के विकास में आईसीआईआई के विशेषज्ञों की मदद की जाएगी। आईसीआईआई के तहत आई स्टार्टअप के विकास में आईसीआईआई के विशेषज्ञों की मदद की जाएगी।

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स्थानीय विद्यार्थी की बात 4

स्टार्टअप ईको-सिस्टम की मेंटरिंग में सीए की भूमिका महत्वपूर्ण - सीए शाह

आईसीआईआई के तहत आई स्टार्टअप के विकास में आईसीआईआई के विशेषज्ञों की मदद की जाएगी। आईसीआईआई के तहत आई स्टार्टअप के विकास में आईसीआईआई के विशेषज्ञों की मदद की जाएगी।



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सीए को पेशे के साथ खेल से भी लगाव : विकास ठाकरे



भारत खेल | नगपुर, आईसीआईआई के तहत आई स्टार्टअप के विकास में आईसीआईआई के विशेषज्ञों की मदद की जाएगी। आईसीआईआई के तहत आई स्टार्टअप के विकास में आईसीआईआई के विशेषज्ञों की मदद की जाएगी।

इसके पुरस्कार वितरण समारोह को संबोधित करते हुए पश्चिम नगपुर के शिक्षक विकास ठाकरे ने कहा कि सीए को पेशे के साथ-साथ खेल से भी जुड़ा होना चाहिए।

Celebrating 75 years of India's Independence

Credit Scheme for MSMEs

Assistance to Re-energize capital
Investments by SMEs

(ARISE)

**5.50% to 6.80% p.a. for
first year with reset
applicable thereafter
(as per internal rating)**

- MSMEs engaged in high growth sectors (including sunrise sectors)
- End-to-End digital journey
- Submission of minimal papers
- E-signing facility for document execution
- Quicker sanction

- TL up to ₹700 Lakh to existing / brownfield entities, subject to maximum of 80% of the project cost
- 100% financing for loans upto ₹3 crore, based on FD upto 25% (interest bearing)
- Facility of TL/FCTL available

Digital Technology
Enabled
Quick Sanction

Attractive
Interest Rate

Target Group /
Ease of Doing

Broad
Features

SIDBI Thematic Assistance for
Purchase of capital Assets in
New Enterprises

(STHAPAN)

**6.00% to 7.30% p.a. for
first year with reset
applicable thereafter
(as per internal rating)**

- MSMEs in identified sectors under Production Linked Incentive Scheme, other high growth sectors etc.
- Quicker sanction
- End-to-End digital journey
- E-signing facility for document execution

- TL upto ₹2000 Lakh, subject to maximum of 75% of the project cost
- New Entities or Greenfield units are eligible

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