



News Letter

Volume-6, December' 2023

1. Guidelines under section 194-O of the Income-tax Act 1961

Circular No. 20 of 2023

Background

- Finance Act, 2020 introduced section 194-O, requiring e-commerce operators (ECO) to deduct income tax at 1% of the gross amount from the sale of goods or provision of services facilitated through their digital platforms.
- Exemption from deduction is provided for certain individuals or Hindu undivided families meeting specific conditions.

Key Points:

- Deduction Timing:
 - Deduction occurs at the time of credit of the sale or service amount to the e-commerce participant's account or at the time of payment, whichever is earlier.
 - Buyer's payment to the seller in a transaction facilitated by the e-commerce operator is deemed payment by the e-commerce operator to the seller.

2. Exemption for Specified Persons under Section 10 of the Income-tax Act

Notification No.89/2023/F. No. 500/PF11/S10(23FE)/FT&TR-II(2)

Background

- Clause (23FE) of section 10 provides income tax exemption for specified persons for dividend, interest, or long-term capital gains arising from investments made in India.

Conditions for Exemption:

- **Return Filing:**
 - The assessee must file a return of income for all relevant previous years during the investment period.
 - The return should be filed on or before the due date specified under section 139(1) of the Act.

- **Certificate Submission:**
 - Along with the return, the assessee should furnish a compliance certificate (Form No. 10BBC) from an accountant defining adherence to clause (23FE) of section 10 during the financial year.
- **Quarterly Investment Details:**
 - The assessee must intimate investment details made in India for each quarter within one month from the quarter-end using Form No. 10BBB.
- **Segmented Accounting:**
 - Maintain a segmented account of income and expenditure for qualifying investments under clause (23FE) of section 10.
- **Regulation and Responsibility:**
 - The assessee should remain regulated under the laws of the Government of the Netherlands.
 - Responsible for administering or investing assets to meet statutory obligations and contributions for funds or plans established for various purposes.
 - Ensure earnings and assets are utilized only for statutory obligations and defined contributions without benefitting private persons.
- **Loans and Borrowings:**
 - No loans or borrowings for making investments in India.
- **Non-Participation in Operations:**
 - Assessee should not participate in the day-to-day operations of the investee.
 - Monitoring mechanisms for protecting investments, including the right to appoint directors, shall not be considered participation in day-to-day operations.
- **Consequences of Violation**
 - Violation of conditions renders the assessee ineligible for tax exemption.

1. Amendment in CGST Rules

a. Amendment in Rule 28 - Value of supply of goods or services or both between distinct or related persons, other than through an agent

In response to the recommendations made in the 52nd GST Council Meeting, Rule 28 has undergone a significant change:

- Sub-rule (1):
 - No changes; retains existing content.
- Sub-rule (2):
 - This new sub-rule is introduced to provide clarity on the calculation of the value of supply involving a corporate guarantee.
 - For services provided by a supplier to a related person, where a corporate guarantee is extended to a banking company or financial institution on behalf of the recipient:
 - The value shall be deemed as either one percent of the guarantee amount or the actual consideration, whichever is higher.

b. Amendment in Rule 142 - Notice and Order for demand of amounts payable under the Act

Rule 142 has been amended to streamline the process for taxpayers making payments under specific sections:

- If the person liable for tax makes the payment under section 73(8) or 74(8) or the amount under section 129(1) within the prescribed time:
- They must intimate the proper officer using FORM GST DRC-03.
- The proper officer will issue an intimation (instead of an order) in FORM GSTDRC-05, concluding the proceedings.

c. Amendment in Rule 159 – Provisional Attachment of Property

Rule 159(2) has been amended:

- The Revenue Authority, Transport Authority, or any such Authority placing encumbrance on movable or immovable property, on the order of the Commissioner:
- Shall remove such encumbrance on written instructions from the Commissioner or on expiry of one year from the date of issuance of the order under sub-rule (1), whichever is earlier.
- Consequent amendments have been made in Form GST DRC-22.

d. Amendment in Form REG-01 – Application for Registration

The Registration application Form REG-01 has been updated:

- "One Person Company" has been added to the constitution of the business.

e. Substitution of Form REG-08 - Order of Cancellation of Registration as Tax Deductor at source or Tax Collector at source

Form REG-08 is now classified into two categories:

- Where the order is issued on an application by the tax deductor or tax collector.
- Where the order is issued by the department after serving a show cause notice to the tax deductor or tax collector.

f. Amendments in Form GSTR-8 - Statement for tax collection at source

Several amendments have been made to Form GSTR-8:

- S. No. 5, asking for details of interest, has been omitted.
- S. No. 7 and S. No. 9 have been amended to include details of both interest and late fee payments.

g. Amendment in Form PCT-01 - Application for Enrolment as Goods and Services Tax Practitioner

The eligibility criteria for enrolling as a GST Practitioner have been revised:

- The criteria now include a graduate or postgraduate or its equivalent degree in law for advocates.
- The qualification requirements for various professions have been detailed, ensuring a diverse pool of eligible practitioners.

2. Amendment in Notification No. 01/2023-IT dt. 31.07.2023 - Supplies and class of registered person eligible for refund under IGST Route

The amendment broadens the scope of goods and services eligible for export on payment of integrated tax:

- All classes of goods or services (excluding pan-masala and tobacco) are notified for export, allowing the supplier to claim a refund.
- All suppliers to a Developer or a unit in a Special Economic Zone undertaking authorized operations are also notified for refund eligibility.

3. Goods and Services Tax Appellate Tribunal (Appointment and Conditions of Service of President and Members) Rules, 2023

The Ministry of Finance has notified comprehensive rules for the Appointment and Conditions of Service of President and Members of GSTAT:

- Chapter I– Preliminary
- Chapter II- Appointment of President and Member
- Chapter III– Removal of President or Member
- Chapter IV– Salary and Allowances
- Chapter V– Pension, Provident Fund, Gratuity and Leave
- Chapter VI– Powers of President and Vice-President
- Chapter VII– Miscellaneous

Refer to egazette.gov.in for the complete document.

Insolvency and Bankruptcy Board of India - Clarification on IRP PGCD Rules

Subject: Clarification regarding submission of particulars and declaration by insolvency professionals in the application filed by creditor(s) in Part IV of Form C of the IRP PGCD Rules.

Background:

- Section 95 of the Insolvency and Bankruptcy Code (Code) along with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 (IRP PGCD Rules) empowers creditors to initiate the insolvency resolution process of personal guarantors to corporate debtors.

Key Points:

- Filing through Resolution Professional (RP):
 - The creditor can file an application through an RP using Form C of the IRP PGCD Rules.
 - The RP's particulars and declaration are provided in Part IV of Form C.
 - The Adjudicating Authority (AA) confirms the absence of disciplinary proceedings against the RP before appointing them under section 97(5) of the Code.
- Filing by the Creditor Recommending an Insolvency Professional:
 - In cases where the creditor files the application, recommending the insolvency professional for RP appointment:
 - The proposed RP must provide particulars and declarations in Part IV of Form C for AA's consideration.

Authority:

- Issued under the powers vested in the Insolvency and Bankruptcy Board of India under section 196 of the Code.

Amendment in moratorium section 14 of IBC

Notification Under Section 14(3)(A) of IBC for Transactions, Arrangements or Agreements, Under the Convention and the Protocol, Relating to Aircraft, Aircraft Engines, Airframes, and Helicopters

MINISTRY OF CORPORATE AFFAIRS

Notification Dated 3rd October, 2023

S.O. 4321(E).

Background

- The Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment were adopted in Cape Town on 16th November 2001.
- India acceded to the Convention and the Protocol on 31st March 2008.

Provisions Notification:

- In exercise of the powers under clause (a) of sub-section (3) of section 14 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016):
- Provisions of sub-section (1) of section 14 of the Code shall not apply to transactions, arrangements, or agreements under the Convention and the Protocol, related to aircraft, aircraft engines, airframes, and helicopters.

The Companies (Incorporation) Third Amendment Rules, 2023

MINISTRY OF CORPORATE AFFAIRS

Notification Dated 20th October, 2023

G.S.R. 790(E).

Amendments Introduced:

- Title and Commencement:
 - These rules are titled the Companies (Incorporation) Third Amendment Rules, 2023.
 - They came into force on 21st October 2023.
- Rule 30 Amendment
 - In Rule 30, Sub-rule (9):
 - Omitted the words "and may include such order as to costs as it thinks proper."
 - Inserted a proviso allowing the shifting of the registered office under specific conditions related to a resolution plan approved under section 31 of the Insolvency and Bankruptcy Code, 2016.

Note:-

- Principal rules were last amended on 2nd August 2023 (vide number G. S. R. 584(E)).

Key Legal Updates in Corporate Affairs - October 2023

1. Companies (Incorporation) Third Amendment Rules, 2023

- Effective Date: 21st October, 2023
- Amendments
 - Rule 30, sub-rule (9) modifications
 - Omission of words "and may include such order as to costs as it thinks proper"
 - Addition of a proviso allowing shifting of the registered office if the company's management is taken over under a resolution plan, as specified.

2. Companies (Management and Administration) Second Amendment Rules, 2023

- Effective Date: Date of publication in the Official Gazette
- Amendments
 - Rule 9 changes
 - Insertion of sub-rules (4) to (8) necessitating the designation of a person responsible for furnishing information about beneficial interest in shares.
 - Designation options: company secretary, key managerial personnel, or every director.
 - Requirement to inform details of the designated person in the Annual return.
 - Intimation to Registrar in case of a change in designated person.

3. Commencement of Section-5 (Companies Amendment Act, 2020)

- Effective Date: 30th October, 2023
- Details:
 - Activation of the provisions of section 5 of the Companies (Amendment) Act, 2020 (29 of 2020) from this date.

Regulatory Updates in Securities and Exchange Board of India (SEBI) Guidelines

1. SEBI (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2023

- Effective Date: October 1, 2023
- Changes
 - Amendment in Regulation 30, sub-regulation (11) proviso
 - Removal of symbols, words, and numerals "(with effect from October 1, 2023)"
 - Substitution with "(with effect from April 1, 2024)" replaced by "with effect from the date as may be specified by the Board."

2. SEBI (Listing Obligations and Disclosure Requirements) (Sixth Amendment) Regulations, 2023

- Effective Date: Date of publication in the Official Gazette
- Changes
 - Amendment in Regulation 61A, sub-regulation (3)
 - Substitution of symbol "." with ":" after the words "in terms of section 11 of the Act"
 - Addition of a new proviso stating that the amount transferred to the Investor Protection and Education fund shall not bear any interest.
 - Addition of sub-regulation (4) allowing the claim of unclaimed amount transferred to the Investor Protection and Education Fund.

3. SEBI (Listing Obligations and Disclosure Requirements) (Seventh Amendment) Regulations, 2023

- Effective Date: Date of publication in the Official Gazette
- Changes
 - Amendment in Regulation 91E, sub-regulation (2)
Substitution of words "audited by a Social Audit Firm employing Social Auditor" with "assessed by a Social Impact Assessment Firm employing Social Impact Assessor(s)."

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