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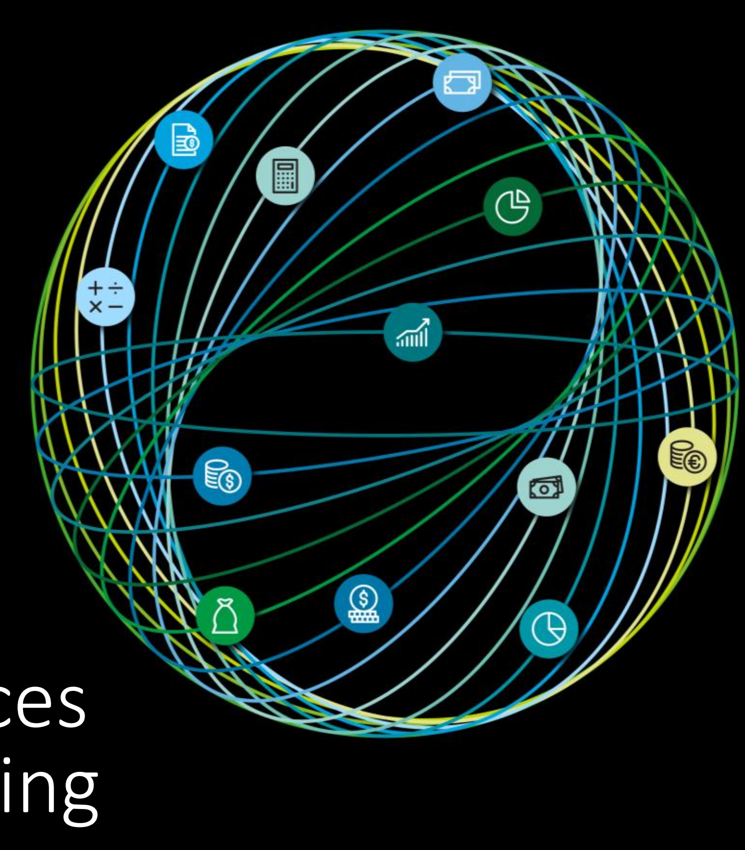

FinTax hour
Year-end tax compliances and Supreme Court ruling on Employee's Pension Scheme

16 March 2023

Simplified tax regime – Changes proposed

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Budget update

Simplified personal tax regime – new tax rates proposed from FY 23-24

Income slabs (in INR)	Rates of tax under simplified personal tax regime		*Marginal tax rate under simplified personal tax regime		Impact on marginal tax rate
	FY 22-23	FY 23-24 (proposed)	FY 22-23	FY 23-24 (proposed)	
Up to 250,000	NIL	NIL	NIL	NIL	No Impact
250,001 to 300,000	5%	NIL	5.20%	NIL	(5.20%)
300,001 to 500,000	5%	5%	5.20%	5.20%	No Impact
500,001 to 600,000	10%	5%	10.40%	5.20%	(5.20%)
600,001 to 750,000	10%	10%	10.40%	10.40%	No Impact
750,001 to 900,000	15%	10%	15.60%	10.40%	(5.20%)
900,001 to 1,000,000	15%	15%	15.60%	15.60%	No Impact
1,000,001 to 1,200,000	20%	15%	20.80%	15.60%	(5.20%)
1,200,001 to 1,250,000	20%	20%	20.80%	20.80%	No Impact
1,250,001 to 1,500,000	25%	20%	26.00%	20.80%	(5.20%)
1,500,001 to 5,000,000	30%	30%	30% + applicable Surcharge & cess	30% + applicable Surcharge & cess	Income <= 5 crore – No impact Income > 5 crore – (3.74%)

*without considering impact of marginal relief

- Highest surcharge rate proposed to be capped at 25% (from earlier 37%), under simplified personal tax regime - *w.e.f. FY 23-24*. This will result in lowering highest marginal tax rate from 42.744% to 39%, under simplified personal tax regime
- Benefit of standard deduction up to INR 50,000 to be available on salary/pension income even under new tax regime
- Deduction up to INR 15,000 to be available on family pension
- Rebate threshold proposed to be increased to 7 lakh (from earlier 5 lakh), under simplified personal tax regime - *w.e.f. FY 23-24*

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Simplified tax regime

Implications on current practice of opting for simplified tax regime

Opting of Simplified tax regime - Currently

Finance Act 2020 introduced Simplified tax regime

Default - Old tax regime for withholding of taxes on employment income

Employee can intimate to employer opting Simplified tax regime only once in a FY

Right to change again available at return filing stage (assuming no business/profession income)

Amended simplified tax regime

Introduced in Budget 2023

Default – Amended simplified tax regime for withholding of taxes

Employee will have to intimate the employer, if he wants to opt for old tax regime. If not intimated, it may result in excess tax paid/refundable situation at the end of the year

Right to change again available at return filing stage (assuming no business/profession income)

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Employee’s Pension Scheme –Salient features of the recent Supreme Court ruling

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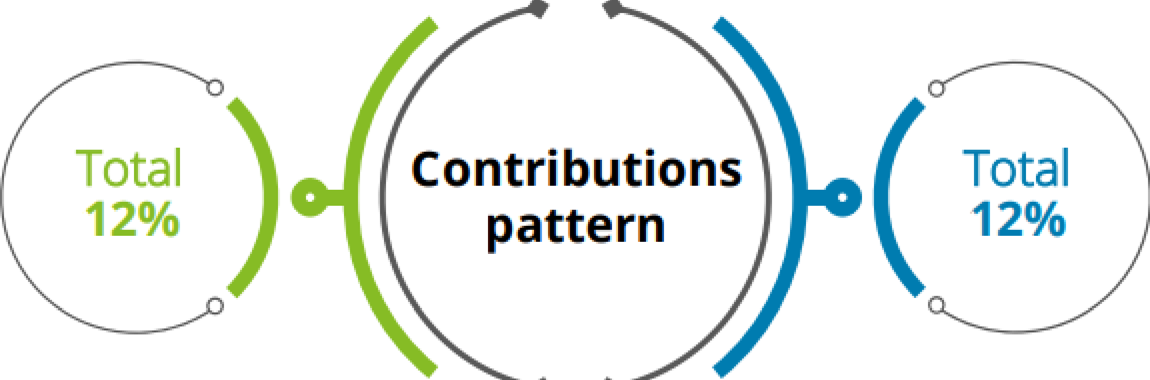
Employee's Pension Scheme

Existing contribution structure

Employer

- **Pension Fund (EPS) :**
  8.33% of basic salary or 8.33% of INR 15,000 in case of higher pay
- **Provident Fund (PF) :**
  12% of Pay reduced by INR 1,250



Employee

- **Provident Fund (PF) :**
  12% of basic salary

- Say, employee A's basic salary is INR 20,000
- Employee contribution toward PF shall be INR 2,400 (INR 20,000 * 12%)
- The employer shall make equal contribution of INR 2,400. The employer's contribution is allocated to EPS & PF

Provident fund	1,150
Pension fund	1,250

- Let us take another example, the basic salary is INR 12,000.
- Employee's contribution toward PF shall be INR 1,440 (INR 12,000 * 12%)
- The employer shall make equal contribution of INR 1,440. The employer's contribution is allocated to EPS & PF

Provident fund	440
Pension fund	1,000

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Amendment to Employees' Pension Scheme in 2014

Notification of 22 August 2014, effective 1 September 2014

Increase in statutory wage

Statutory wage ceiling increased from INR 6,500 pm to INR 15,000 pm.

New members

New members earning over INR 15,000 pm not eligible to be EPS members, existing EPS members to continue

Higher pension option

Existing pension members contributing on higher pay to submit a joint employer-employee application to continue, else earlier contributions to be earmarked back to PF.

Additional contribution

Higher contributions to pension to attract an additional payout of 1.16% of PF wages exceeding INR 15,000 by the employee, to be allocated from employee's contribution

Pensionable salary

Pensionable salary to be calculated using the average salary over the 60 months prior to the date of retirement instead of last 12 months salary.

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Provident Fund and Pension Scheme

Contributions

Contributions to PF and Pension

Monthly Basic INR 20,000

- Pension contributions currently capped at INR 1,250
- Balance out of 12% employer contributions remains in PF a/c

ER Provident Fund	1,150
ER Pension Fund	1,250
EE Provident Fund	2,400

- Employee contribution of 12% goes entirely to PF
- Statutory wage ceiling is INR 15000 pm effective 1 September 2014
- Para 11(3) provided an option to employees to contribute on wages beyond the statutory wage ceiling from the date the wages exceeded such limit

Change in contributions to opt for higher pension

- Pension contributions to be uncapped i.e. 8.33% of monthly pay to be diverted to Pension
- Balance employer contributions to remain in PF a/c
- Employees may also be required to contribute 1.16% (of monthly pay in excess of INR 15,000) out of their contribution towards pension with effect 1 September 2014*

ER Provident Fund	734
ER Pension Fund	1,666
EE Provident Fund	2,342
EE Pension Fund*	58

- Option to contribute to pension on higher salary retrospective and irreversible.

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Supreme Court ruling

Salient features

Validation of 2014 amendments

- The amendments in pension scheme as per notification dated 22 Aug 2014 are held as valid.
- The aforesaid amendment shall apply to members of the exempted establishment (i.e. where companies have a PF Trust) in same way it applies to regular members
- Members who retired before Sept 2014 without exercising options are no longer members and hence shall not be entitled for benefits / relaxation provided by SC ruling.

Higher contribution option - timelines

- SC allowed four months from date of the order i.e., till 03 March 2023 for members to submit a joint application if they prefer to make pension contribution on higher salary. Eligible members –
  - Members retired before 1 Sept 2014 who exercised option earlier but it was rejected
  - Members retired after 1 Sept 2014 who paid PF contributions on higher salary but the joint application was not made
  - Members who were in service on 1 Sept 2014 and continue in service who pay PF contributions on higher salary but have not exercised the option

Impact on opting for higher pension

- 8.33% of differential salary to be earmarked to EPS out of the employer's PF contribution retrospectively. Impact of PF balances, and interest earned on the same till date.
- Additional contribution of 1.16% (to be moved from employee's share of PF to EPS), as a stop-gap measure, until the legislative changes are made.
- SC directed that the government should make the legislative changes within 6 months from date of the order.

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Supreme Court ruling

Eligible population

Scenario	Employees who retired prior to 1.9.2014 – contributing to PF on higher wages		Employees who joined before 1.9.2014 and are continuing in service – contributing to PF on higher wages		Employees becoming EPF members after 1.9.2014*
	exercised option, rejected by EPFO	Did not exercise option	exercised option under 11(3) but not under 11(4)	Exercised option, rejected or not responded by EPFO / Did not exercise option	
Eligibility for filing joint application for pension contribution on higher wages	Yes	No	No	Yes	Not eligible for EPS membership
Timeline	4 months from date of SC ruling – lapsed on 3 March 2023	Not applicable	Not applicable	• Initially 4 months from date of ruling (i.e. 3 March 2023) • Extended by EPFO by two months (i.e. till 3 May 2023)	Not applicable

*Employee who become EPS member after 1 Sept 2014 on account of salary being below Rs. 15,000 do not have any option to make pension contributions on higher salary even if subsequently their salary increases beyond Rs. 15,000.

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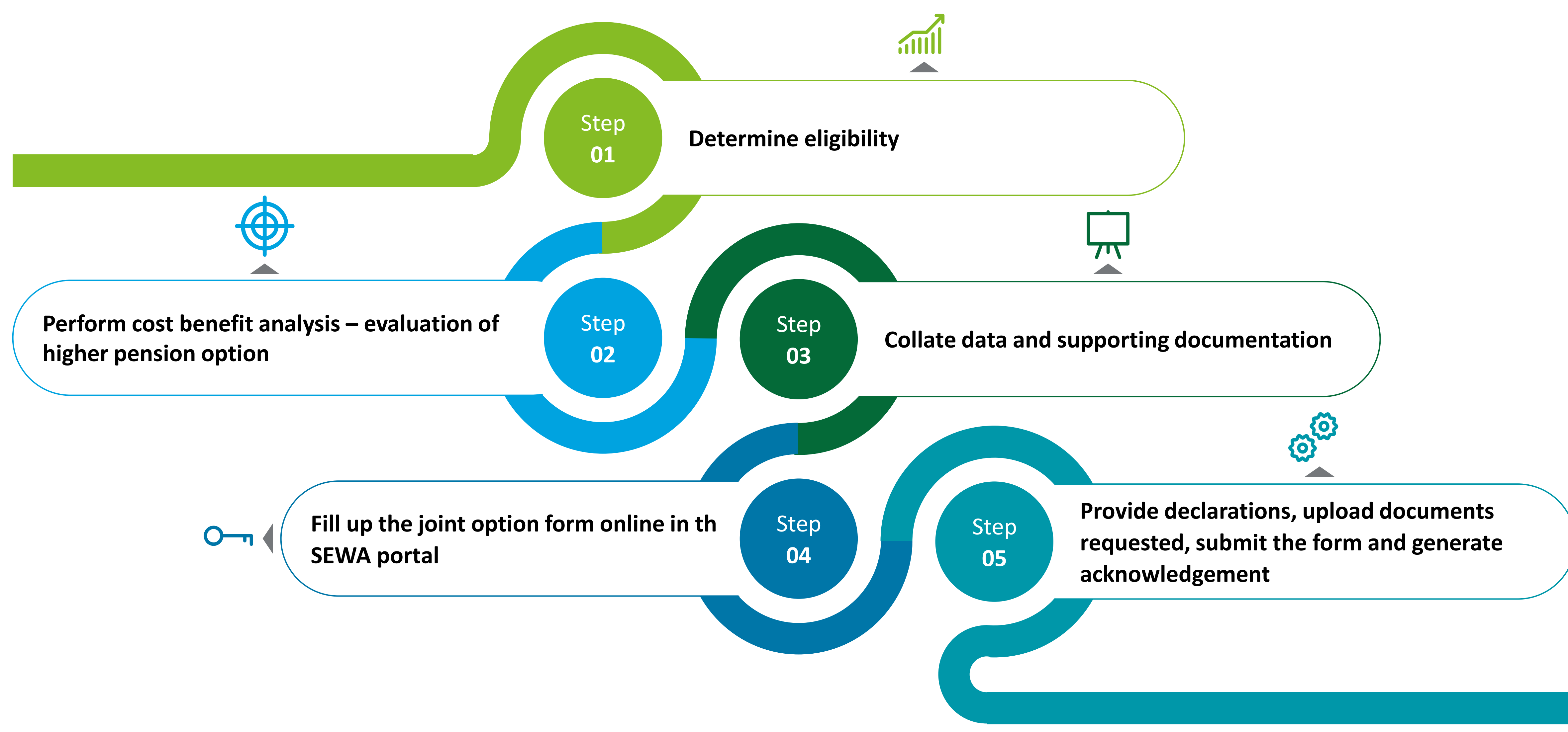
Way forward

Process



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Polling question 1

What is the approach adopted by your establishment pursuant to the SC ruling?

- Employee awareness sessions
- Shared FAQs with employees
- Assist with cost-benefit working
- Helpdesk for resolving queries
- None of the above

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Goods and Services Tax

Year end tax compliance requirements

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Polling question 2

How frequently do you schedule GST reconciliation exercises as per books of accounts and GST returns?

- Every month
- During finalisation of annual reports
- During October

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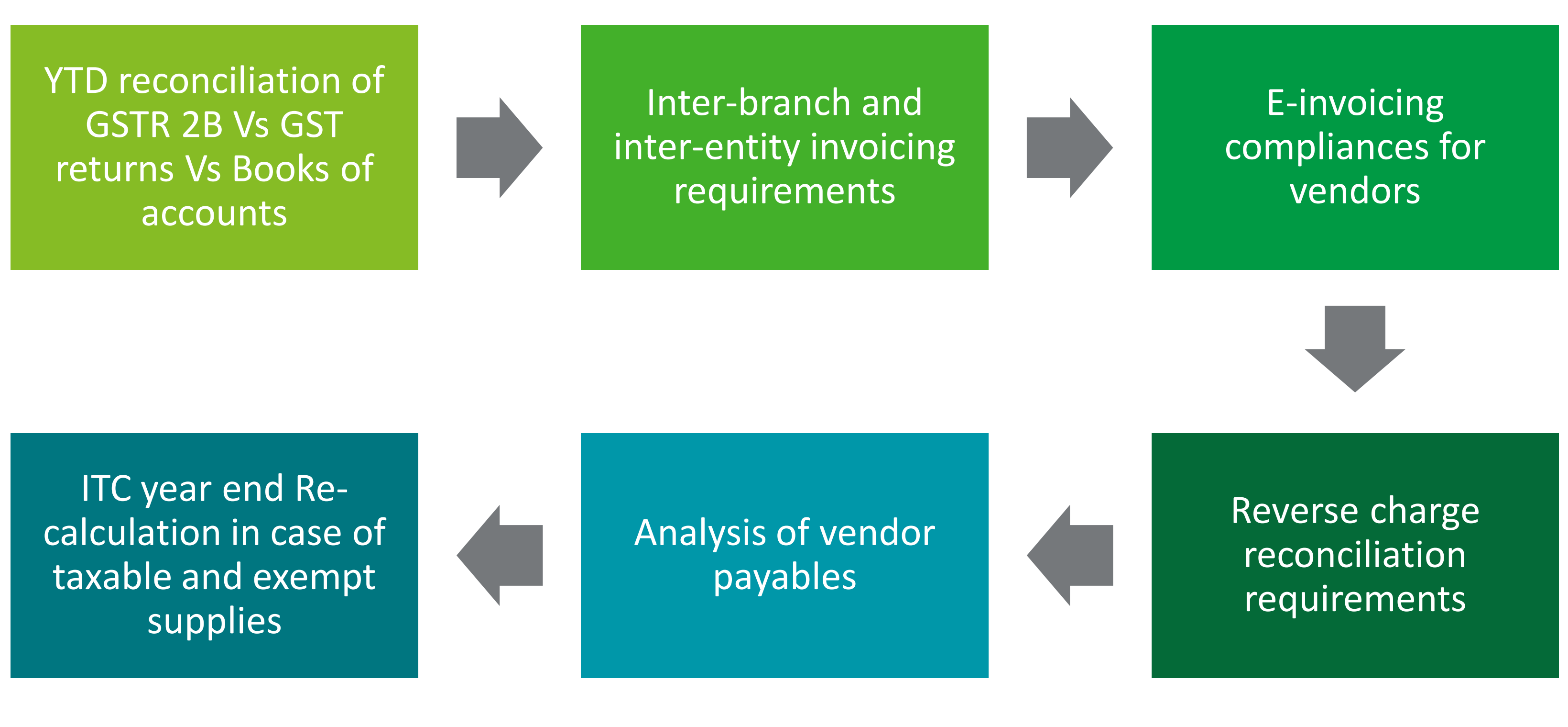
Goods and Services Tax: Year End compliance requirements



Expense side year end compliance requirements

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Goods and Services Tax: Year End compliance requirements

Reconciliation of revenue as per books and GST returns

Issuance of credit notes based on debtors report for billing adjustments

Renew document series for FY 2023-24

Provisions for contingent liabilities [Secondment etc.,]

Amendment to invoices/debit notes/credit notes issued

Submission of Letter of undertaking for FY 2023-24

Revenue side year end compliance requirements

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Recent judicial updates related to certain year-end compliances

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Polling question 3

Has your organisation considered applicability of Section 43B on items not routed through P & L account?

- Yes
- No
- Not aware

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Recent judicial precedents

GST remaining unpaid is disallowable under section 43B even if not routed through profit & loss account

Facts of the case

- The taxpayer has not paid GST within the time limit as prescribed under section 43B.
- The taxpayer contended that the GST amount is not routed it through the profit and loss account but directly taken to the balance-sheet, therefore no deduction is claimed for the GST amount and accordingly, provisions of sec 43B are not attracted.
- The AO made additions to the income of the taxpayer to the extent of GST liability unpaid upto the due date of filing of Return of Income. CIT(A) upheld the order of the AO
- Appeal filed before Varanasi Tribunal on the grounds that since the GST amount was not routed through the profit and loss account, sec 43B would not be attracted.

Decision

- The modus operandi of the taxpayer is not acceptable as GST amount is part and parcel of sales or inventory.
- The taxpayer is required to maintain books of accounts as per the Accounting Standards notified in the official gazette as per sec 145 of the Act.
- Per section 145A GST to be part of the valuation of purchases and sales of goods or services and the value of inventory.
- Hence, the taxpayer cannot give an accounting treatment to GST amount without passing through the profit and loss account to circumvent applicability of section 43B.

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Recent judicial precedents

TDS applicable on year-end provisions, disallowance under section 40(a)(i)/(ia) does not absolve taxpayer from liability under section 201

Facts of the case

- The taxpayer disallowed certain expenditure under section 40(a)(i)/(ia) of the Act in its return of income, for not deducting TDS from such expenses. The AO treated the taxpayer as an 'assessee in default', since there was a failure on part of the taxpayer to deduct TDS from the expenses; and raised a demand under section 201(1) and charged interest under section 201(1A) of the Act.
- The ground raised here was whether the taxpayer is liable to deduct TDS from the year-end provision for expenses.

Decision

- The TDS provisions are triggered for amounts credited to 'Provision for expenses account' and the taxpayer was liable to deduct TDS from the year-end provision for expenses.
- The disallowance made under section 40(a)(i)/40(a)(ia) of the Act would not absolve the taxpayer from the liability under section 201 of the Act, when a taxpayer was deemed to be an 'assessee in default'.

Observation on the practical difficulties in complying with TDS provisions

1. Cases where payees were not identifiable, TDS mechanism would fail:

- ➢ Responsibility of the taxpayer to prove that the payees were not identifiable.
- ➢ If proved, TDS provisions of the Act would fail, and the AO was not entitled to demand tax under section 201(1) and interest under section 201(1A) of the Act in respect of those expenses

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Recent judicial precedents

TDS applicable on year-end provisions, disallowance under section 40(a)(i)/(ia) does not absolve taxpayer from liability under section 201

2. Scenarios on year-end provisions and actual payments in the succeeding year:

Sr No	Case Scenario	Consequence
a)	Actual payment made in the succeeding year is more than the provision amount	Taxpayer would be liable to pay interest (on the provision amount) from the date of provision to the date of actual deduction/payment.
b)	Actual payment made in the succeeding year is less than the provision amount	Taxpayer would be liable to pay interest (on the amount of actual payment made) from the date of provision to the date of actual deduction / payment.
c)	No payment is required to be made i. e. entire amount of provision is reversed in the succeeding year	There would be no liability to deduct TDS from the amount of provision created as the said amount is not payable at all to anyone. Hence, section 201(1) of the Act would not apply.
d)	Payment has not been made in the succeeding year, even though the liability is acknowledged (however, TDS was deducted/paid in the succeeding year)	Interest under section 201(1A) shall be payable (on the provision amount) from the date of provision to the date of actual deduction.
e)	Payment has not been made in the succeeding year, even though the liability was acknowledged (however, TDS was not deducted in the succeeding year)	Taxpayer would be liable to pay demand under section 201(1) of the Act equivalent to the TDS amount deductible (on the provision amount) and would be liable to pay interest under section 201(1A) of the Act (on the provision amount) till the date of deduction/payment, which might cross the succeeding year.

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Recent judicial precedents

Tax neutral excess year-end provisions to be allowed to the taxpayer

Facts of the case

- The assessee is a Company engaged in providing healthcare services.
- The taxpayer regularly follows the procedure of creating provisions for certain expenses
- It suo-moto disallows excess provision in Year 1 and excludes the same in year 2 i.e. the year of reversal of the excess provision and so on.

Decision

- The Tribunal observed that taxpayer followed 2 types of accounting for year end provisions:
  i. Provision for expenses for the year without ascertaining the portion/head of expenses or the actual value.
  ii. Provisions where the portion/head of expenses are ascertained but the actual value of the expenses are estimated.
- The taxpayer estimates the amount of expense to the best of his knowledge and any excess provision is disallowed. Short provision / reversal of excess provision of earlier year is claimed as deduction in the subsequent year.
- The Mumbai Tribunal held that, the taxpayer makes adjustment of upto 7-8% each year and consistently follows this procedure.
- It held that the provisions on best estimate should be allowed as a deduction since disallowance of excess in year 1 and claiming deduction for short provision and reversal of earlier year's provisions in Year 2 is revenue neutral.
- SC Judgement in the case of Rotork Controls India (P) Limited vs. CIT, Chennai (2009), relied upon

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Transfer Pricing

Year-end adjustments and annual compliance requirements

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TP considerations - Year End TP adjustments

Year end adjustments are journal entries passed in the books of account at the end of fiscal year **to align actual outcome of Related Party Transactions with contractual obligations and Arm's Length Price**

True-up /true down entries – erroneous exclusion/inclusion of expenses & income while raising periodic invoices	Unaccounted expenses – e.g., software, any other expenses, etc. incurred by AEs not/under charged	Interest on overdue receivables - delayed recovery /non-recovery of dues from AE
Loans/Guarantee provided to AE for 'NIL' consideration or below FMV (commercial rationale to be evaluated)	Recognition of revenue for any services, rights use of intangibles, provided to AE, etc.	Allocation of common expenses, payment of interest, management charge, etc.

Few practical examples – Diagnostic review

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Polling question 4

What do you think are key challenges faced during year end closure of financials from TP perspective?

- RPT identification/reconciliation
- Year-end TP adjustments
- RPT ageing analysis
- Segmental P&L A/c

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TP considerations - Year End TP adjustments

Need for year end TP adjustments

- Upfront corrections before filing annual Tax returns/TP reports – avoid adjustments
- Rationalizing impact of secondary adjustments
- Mitigating penal consequences of under reporting/Mis-reporting
- Interplay with other regulations governing RPT disclosures – GST Act Customs Act, Companies Act, SEBI LODR, etc

Suggested measures

- Health check review of RPT and ALP justification
- Adjust value of RPT in accordance with agreements/arm's length results
- Maintenance of segmental P&L A/c from TP perspective
- Comfort from independent auditors on arm's length justification
- Proactive initiation of annual TP Compliances

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Annual Transfer Pricing compliances – Requirement, applicability, and timelines

Requirement	Applicability	Prescribed due date
Furnishing **Accountant's Report** in Form 3CEB	• Any entity having an International Transaction or • Specified Domestic Transaction ('SDT') (aggregate value > INR 20 cr.)	• 31 October [one month prior to the due date of filing return of income]
Maintenance of **TP Study Report** (prescribed)	• Any entity having International Transactions [aggregate value > INR 1 cr.] and / or • Specified Domestic Transactions (aggregate value > INR 20 cr.]	• 31 October [to be maintained on a contemporaneous basis]
Furnishing **Master File** in Form 3CEAA		
- Part A	• Every constituent entity	• 30 November [due date of filing return of income]
- Part B	• For the accounting year, consolidated group revenue > INR 500 Cr; **and** • The aggregate value of international transactions, as per books of accounts of the entity, for the accounting year : – exceeds INR 50 Cr, **or** – in relation to intangibles exceeds INR 10 Cr.	
Intimation of designated constituent entity of the International Group ('IG') in Form 3CEAB	• In case more than one constituent entities of an IG are required to file Master File in India, a designated constituent entity can file single Master File (Part A and/or Part B) on behalf of other constituent entities of an IG	• 31 October [30 before the due date of furnishing Form 3CEAA]
Furnishing **Country by Country Report** ('CbCR') **notification** in Form 3CEAC	• For the previous accounting year, Ultimate Parent Entity ('UPE') /Alternate reporting entity files CbCR in its jurisdictions	• 10 months after end of group accounting year
Furnishing **CbCR** in Form 3CEAD	• UPE of Indian multinational group with consolidated revenue exceeding INR 6,400 cr. • Indian constituent entity of foreign headquartered group is required to submit CbCR in India under ^specified circumstances	• 12 months from the end of reporting accounting year

^No obligation to file CbCR in the jurisdiction of parent entity; or Parent entity is resident of country or territory with which India does not have an agreement for exchange of CbCR; or There has been a systemic failure of the country or territory in which the parent entity is resident, and the failure has been intimated to such constituent entity

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Thank you!

Kindly spare a minute to help us with your feedback for today’s session…

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