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India TaxHour

Quarterly India tax updates

January– March 2024
3 April 2024

Subject matter experts

We will discuss…

- Economy/Regulatory/International tax updates

- Direct tax updates
  - Finance Act 2024 Highlights
  - Implementation of e-Verification Scheme, 2021
  - Government notifies 'No TDS' on receipts of IFSC units

- Indirect tax updates
  - GST Updates [January 2024 – March 2024]
  - Customs update [January 2024 – March 2024]
  - Foreign Trade Policy Update [January 2024 – March 2024]

- Recent judicial pronouncements

Economy/Regulatory updates

Economy/International tax/Regulatory updates (January –March 2024)

Indian Economy - Growth and Inflation indicators; Tax collections

International Taxation

Base Erosion and Profit Shifting (BEPS) Project - Pillar 1 and Pillar 2 under **G20/OECD Inclusive Framework (IF)** :

Pillar 1 - The OECD/G20 Inclusive Framework on BEPS released the report on Amount B of Pillar One (on 19 Feb 24.); it provides a simplified and streamlined approach to the application of the arm's length principle to baseline marketing and distribution activities.
Pillar 2 – Till date 26 jurisdictions have introduced domestic tax legislation to implement a Global Minimum Tax for fiscal years beginning on or after 1 January 2024.

India-Regulatory Updates

- Up to 100% foreign direct investment (FDI) allowed in the space sector
- Reserve Bank of India (RBI) has released a draft framework for recognising Self-Regulatory Organisations for the fintech sector (SRO-FT)
- Ministry of Corporate Affairs (MCA) has relaxed the exemption limits for notifying mergers and acquisitions (M&As) to the Competition Commission of India.
- MCA has released the report of the Committee on Digital Competition Law (CDCL) which includes a draft Digital Competition Bill, for comments

Direct tax updates

Finance Act 2024 Highlights - Withdrawal of small outstanding direct tax demands

Order F. No. 375/02/2023-IT-BUDGET, dated 13 February 2024

01

Withdrawal of small direct tax demands
FM in her interim budget speech has proposed to withdraw the outstanding direct tax demands up to certain limits

02

Criteria
To extinguish demand outstanding as on 31 January 2024 from the date on which the demands were created/ raised / modified

03

What is Covered?
Tax demand viz., Interest, penalty, fee, cess or surcharge under the Income-tax, Wealth-tax and Gift-tax Act

Monetary Limit

AYs to which the entries of outstanding tax demands as on 31 January 2024 pertain	Monetary limit of entries of outstanding tax demands which are to be remitted and extinguished (in Rupees)
Up to 2010-11	each demand entry upto Rs.25,000
2011-12 to 2015-16	each demand entry upto Rs.10,000

*Maximum Ceiling Limit of Rs.100,000

Illustration for a single PAN:

AY	Demand (Rs)	Below the limit?	Cum. amount (max 1 Lakh)
2006-07	26,000	No	Nil
2007-08	23,000	Yes	23,000
2008-09	24,000	Yes	47,000
2009-10	25,000	Yes	72,000
2010-11	24,995	Yes	96,995
2011-12	12,000	No	96,995
2012-13	9,000	No	96,995

Recent updates

Amendment to India-Spain tax treaty - Notification No. 33/2024, dated 19 March 2024

Lower tax rate of 10% for taxation of royalties and fees for technical services (FTS) under Article 13(2) of the India-Spain tax treaty

Scope of filing department appeal expanded - Circular No. 5/2024, dated 15-03-2024

The monetary limits for filing appeals and SLPs have not been changed.

However, the appeal or SLP can be filed on merits, without having any regard to tax effects and monetary limit under following circumstances:

- Litigation on TDS/TCS matters:
  - Dispute on nature of transaction - liability is under question; or
  - Appeals of International taxation charges - dispute on DTAA applicability;
- Writ matters;
- Mandated by a Court’s directions
- Matters related to wealth tax, fringe benefit, equalization levy and any matter other than the Income Tax Act

Finance Act 2024 Highlights - Sunset extended from 31 March 2024 to 31 March 2025

Section 92CA/ 144C/253/255	Directions to be issued for faceless regime
Section 80LA/10	Commencement of operations by IFSC units
Section 80-IAC	Incorporation of Eligible start-ups
Section 10(23FE)	Time-lines for making specified investments

Implementation of e-Verification Scheme, 2021 (Press releases dated 26 February and 4 March 2024) FY 2021-22 and FY 2022-23

Mismatch in interest and dividend income between information received from third parties and the ITR filed / No ITR filed

Income-tax portal showing mismatches.

Details available under 'e-verification' tab after logging into compliance portal.

Not a notice; taxpayers can explain mismatches or file updated returns if eligible

Government notifies 'No TDS' on receipts of IFSC units

01 Notification No.28/2024 dt. Mar 7, 2024is effective from Apr 1, 2024

02 Notifies the list of payments by any payer to IFSC units which exempt TDS deduction.

03 14 types of IFSC unit receipts exempt from TDS upon meeting conditions.

04 Introduction of Form No. 1 for payee (to be furnished to payer) declaration under section 80LA.

05 TDS relaxation applicable only for ten consecutive assessment years declared in Form No. 1 for which Section 80LA deduction is being opted.

06 Clarified that in any other year, the 'payer' shall be liable to deduct tax on payments as referred to in the list;

Indirect tax updates

GST Updates [January 2024 – March 2024]

Interim Union Budget 2024 – Input Service Distributor Mechanism

Key considerations

Background:

- Ambiguity in the GST law with respect to compulsory registration of ISD
- Divergent practices adopted by industry in respect of distribution of common ITC
- Investigations by authorities challenging the practice adopted
- 50th council meeting clarified the matter in favour of industry
- However, going forward ISD to be made mandatory

Proposed Amendment:

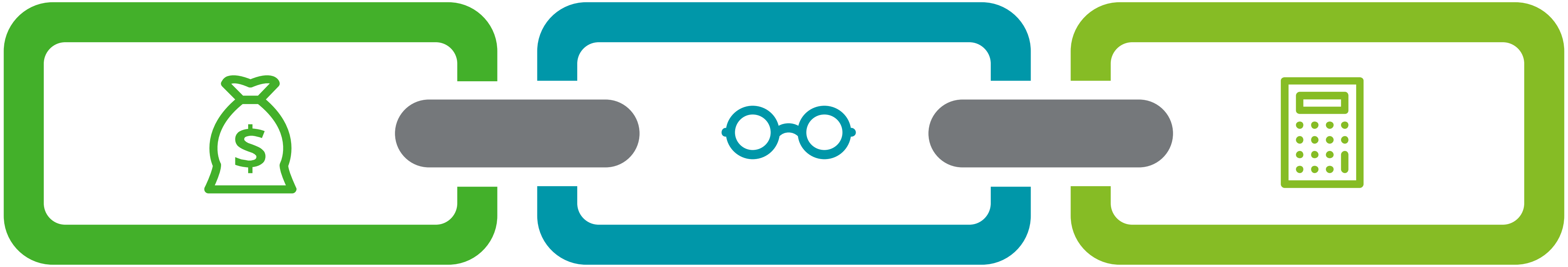
- Finance Act proposes amendments aiming to:
  - Mandate ISD mechanism
  - Expand the scope of distribution to include ITC on services taxable under the Reverse Charge Mechanism (RCM).

Effective date:

- To be notified

GST Updates [January 2024 – March 2024]

GST Notices for Royalty on Real Estate Firms



DGGI stated that SPVs using the flagship company's brand and logo constitutes a taxable service at 18% GST.

Real estate firms have reached out to the finance ministry for GST position on brand name usage in SPVs.

18% GST will inflate project cost and dent their margins substantially.

- The Directorate General of GST Intelligence has identified a tax obligation of roughly ₹3,500 crore, with ₹1,800 crore already collected.

GST Updates [January 2024 – March 2024]

CBIC instruction on Investigations by DGGI - Instruction No. 01/2023-24-GST (Inv.) dated 30 March 2024

01 Investigation to be conducted by allocated jurisdictional office of DGGI.

02 Investigation to be approved by (Pr.) Commissioner / Zonal (Pr.) Chief Commissioner

03 Approval mechanism to avoid overlapping enquiries/investigations

04 Investigation on interpretational issues to be referred to relevant policy wing

05 In case of listed company or PSU initially official letters to be sent instead of summons

06 Letters/summons should disclose specific nature of enquiry initiated

07 Investigation to be concluded within one year

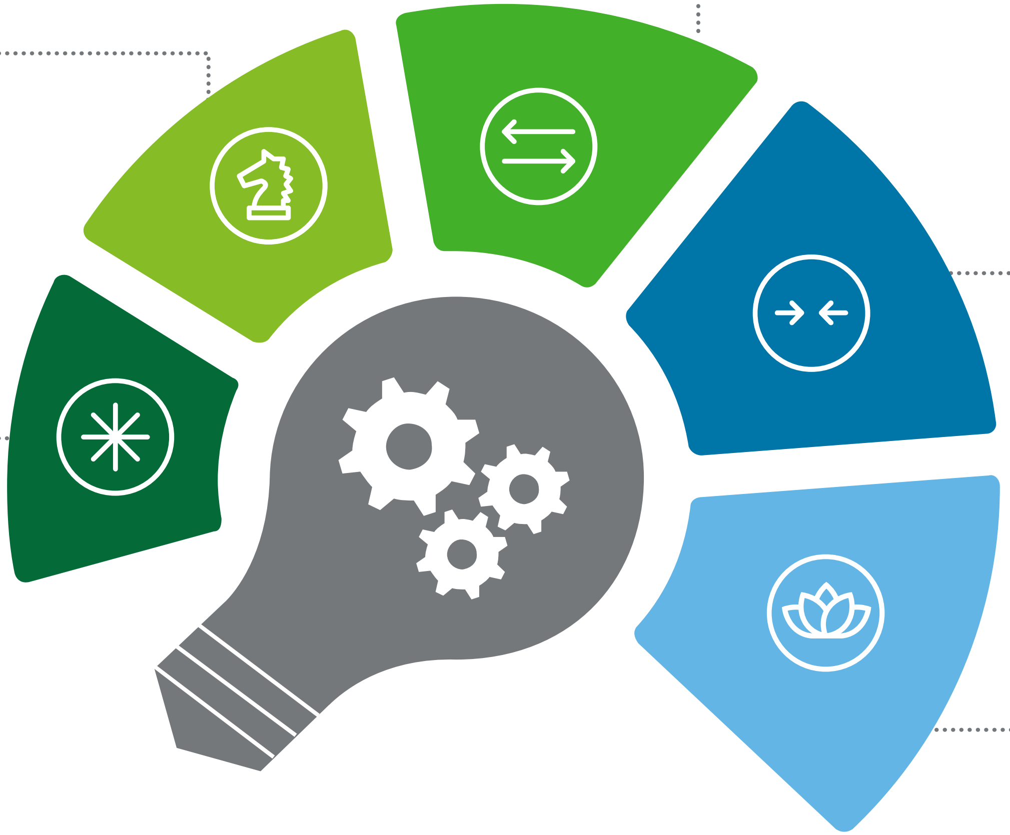
Customs update [January 2024 – March 2024]

Update on 13th World Trade Organisation (‘WTO’) Ministerial Conference concluded in Abu Dhabi on 2 March 24

- Under a WTO moratorium, countries do not impose customs duties on cross-border e-commerce transactions.
- Since 1998, WTO member nations have periodically agreed to extend the moratorium.

Developing countries lose an estimated $10 billion every year in revenue losses because of the moratorium

Developing countries have been battling for policy space to impose customs duties on e-commerce.



Developed countries believe that moratorium has supported a “stable and predictable environment” for digital trade to thrive.

Since the scope of moratorium is digitised products, the developed nations are gaining at the cost of the developing nations who are importers

The 13th Ministerial Conference of WTO ended with extension of the moratorium on e-commerce transmissions by two years.

Foreign Trade Policy Update [January 2024 – March 2024]

Extension on Remission of Duties and Taxes on Exported Product (‘RoDTEP’) scheme

RoDTEP scheme extended to Advance Authorization (AA) holders, Export Oriented Units (EOU) & Special Economic Zone (SEZ) units;

The RoDTEP implementation for SEZ units will happen once the IT integration of SEZ units with ICEGATE take place;

Exports by AA holders, EOUs and SEZ units shall be eligible for benefit from **11 March 2024 till 30 September 2024;**

RoDTEP scheme has been further extended by 3 months from 30 June 24 till 30 Sept 24.

Foreign Trade Policy Update [January 2024 – March 2024]

Trade and Economic Partnership Agreements

India-European Free Trade Association (‘EFTA’) signed a **Trade and Economic Partnership Agreement (‘TEPA’)** in March 2024
EFTA today includes four non-EU countries — **Iceland, Liechtenstein, Norway, and Switzerland**

Objective

- The TEPA aims to create opportunities for trade and investment between India and EFTA by reducing tariffs and non-tariff barriers on a wide range of products.

Coverage

- TEPA has 14 chapters, including trade in goods, rules of origin, IPRs, trade in services, investment promotion and cooperation, government procurement, technical barriers to trade and trade facilitation.

Key Highlights

- After 15 years of negotiations, India signed a TEPA with the EFTA.
- For the first ever time in the history of FTAs, a legal commitment is being made for target-oriented investment and creation of jobs.

Takeaway for India

- TEPA provides an opportunity to India to integrate into EU markets
- The anticipated USD 100 billion in FDI from EFTA countries over 15 years is crucial for India's infrastructure development, technological advancement, and job creation.

Judicial pronouncements – Direct Tax

Supreme Court| Applicability of TDS for Commission and Brokerage under section 194H

Income/profit component in the payments received by the distributors/franchisees from the third parties/customers

Bharti Cellular Ltd. v. ACIT [2024] 160 taxmann.com 12 (SC)[28-02-2024]

Facts of the case

- The Issue revolves around liability to deduct TDS u/s 194H on the amount which as per the Revenue, is a commission payable to agents under franchise/distributor agreements between assessees and franchisees/distributors. As per the assessees, neither are they paying a commission or brokerage to the franchisees/distributors, nor are the franchisees/distributors their agents

Decision of Supreme Court

- Assessees not required to deduct tax on income/profit components from distributor/franchisee payments
- Term 'agent' distinguished from other relationships like master-servant or employer-independent contractor
- Agent's power emphasized in affecting principal's legal position through contracts or property disposition

Delhi High Court| External Development Charges to Haryana Urban Development Authority

TDS applicability under section 194C on External Development Charges

Puri Constructions (P.) Ltd. v. ACIT [2024] 159 taxmann.com 444 [13-02-2024]

Facts of the case

- Certain real estate developers in Haryana executed a bilateral agreement with the Director Town & Country Planning (DTCP), and in accordance with such agreement, paid External Development Charges (EDC) to DTCP, payments being drawn in favour of Haryana Shahari Vikas Pradhikaran (HSVP). Whether the aforesaid payment is liable for TDS u/s 194C of the Act?

Decision of Supreme Court

- The Delhi High Court rejected the argument that there was no direct contractual relationship between real estate developers and HSVP for EDC, stating that Section 194C does not require such a relationship
- Emphasized that payments made are subject to TDS under section 194C. Although HSVP is not considered the government under Section 196, which exempts certain payments from TDS, the court ruled that EDC payments are still liable for TDS deduction

High Court of Madras| Challenging the reassessment proceedings without filing return u/s 148

Swapna Manuel v. ACIT [2024] 160 taxmann.com 166 (Madras)

Facts of the case

- For AY 2016-17 – Notice under section 148 was issued on March 31, 2021;
- The order passed was quashed and matter remanded;
- Notice u/s 142(1) was issued later on;
- The assessee requested for reasons for re-opening the assessment;
- The re-assessment order was passed under section 148;

Issue

- Assessee challenge reassessment proceedings on ground that reasons for reassessment were not provided.

Decision of High Court

- SC judgement in case of GKN Driveshaft to follow;
- In case, the assessee revised return of income or treat the original return of income as the return in response to notice under Section 148;
- proceedings can be challenged for;
- reasons for re-assessment were not provided, but not otherwise.

High Court of Allahabad| Validity of notice issued to secondary mail id

Grs Hotel (P.) Ltd. v. Union of India [2024] 160 taxmann.com 125 (Allahabad)

Facts of the case

- Notice under section 148A(b) was issued;
- order under section 148A(d) was passed;
- Consequently, a notice under section 148 was also issued;
- Order under section 148A(d) and notice under Section 148 was issued to secondary mail id and not registered mail id.

Issue

- Notice issued under section 148A (b) and consequential order passed under section 148A (d) sent to secondary email address were liable to be quashed and set-aside.

Decision of High Court

- notice issued under section 148A(b) to the registered email ID is not an empty formality;
- Issuance of the notice and service of such notice upon the assessee are jurisdictional requirement that must be mandatorily complied with;
- It provides an opportunity to the assessee to satisfy the AO with his reply;
- Order passed under section 148A(d) and the consequential proceedings cannot be sustained in the eyes of law;

Judicial Pronouncements - Indirect tax

HC Guwahati| Parallel proceedings in respect of the same period are not permissible under GST Law

Subhash Agarwalla v. State of Assam (Case No. WP(C)/ 683/2024 dated 12 February, 2024)

Facts of the case

- The Petitioner was issued the SCN by the SGST Authority asking the Petitioner why the amount indicated therein shall not be demanded and recovered from the Petitioner for the FY 17-18.
- Subsequently, another SCN was issued by the CGST Authority asking Petitioner why the amount indicated therein shall not be demanded and recovered from the Petitioner for the FY 17-18, 18-19, and 19-20.

Issue - Whether two parallel proceedings in respect of the same period is permissible under GST Law?

Observations by High Court

- If a proper officer under the SGST Act or the UTGST Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.
- This decision aligns with the legislative intent to avoid redundancy and ensures a streamlined and efficient adjudication process.

HC Orissa | No coercive measures for GST arrears recovery during pendency of Writ Petition

M/s Chirag Industries v. Additional Commissioner Of State Tax (Appeals), Bhubaneswar and Others (2024 (3) TMI 677)

Facts of the case

- The Petitioner has filed Writ petition before Orissa High Court and the Writ petition came into consideration primarily because the GST Tribunal, the usual forum for such issues, is not yet constituted.
- The Petitioners' challenge before the first appellate authority was confined to the demand for penalty and fine, and the learned counsel for the petitioner, confirmed this position.

Observations by High Court

- The petitioner cannot be deprived of the benefit, due to non-constitution of the Tribunal.
- The recovery of balance amount, and any steps that may have been taken in this regard will thus be deemed to be stayed.
- This interim directive by the Orissa High Court underscores the important principle that no coercive actions should be taken during the pendency of legal proceedings, maintaining a fair and equitable legal process.

HC Delhi | Constitutional validity of Anti-profiteering provisions under GST

Facts of the case

- The petitioners are companies running diverse businesses who have been directed to pass on the commensurate benefit of the reduction in tax rate or ITC to it's consumers along with interest.
- Section 171 of the CGST Act and Impugned Rules excessively delegate legislative functions to the government by conferring excessive powers to the NAA to determine profiteering without guidelines, leading to ambiguity and violation of Article 14 of the Constitution.

Observations by High Court

- High Court upheld the constitutional validity of Anti-profiteering provisions and rules as provided under GST Law.
- The court stated that section 171 mandates that a tax foregone has to be passed on as commensurate reduction in price and it is a consumer welfare measure introduced in public interest.

HC Madras | Interest not leviable when amount of tax is deposited in Electronic Cash Ledger

Eicher Motors Limited Vs Superintendent of GST and Central Excise

Facts of the case

- During GST transition, the transitioned amount of CENVAT credit was not reflecting in the ECL, therefore, taxpayer was barred from filing the monthly return for the period August 2017 to December 2017.
- The taxpayer was able to file the monthly returns once the CENVAT credit was transitioned into GST.
- After six years, the taxpayer was issued a recovery notice for payment of interest for alleged belated payment of GST for July–December 2017.

Issue - Whether the taxpayer is liable to pay interest of GST amount, which was deposited into the ECL within the due date prescribed for filing of monthly returns?

Observations by High Court

- The tax should be paid to the Government before the last date for filing the GSTR-3B returns.
- Once the amount is deposited, it should be made available to the Government for their use and the Government cannot wait or postpone the utilisation of the said amount until the date of filing GSTR-3B.
- The law laid down by Jharkhand High Court in RSB Transmission and Telangana HC in Megha Engineering are not in line with the provisions of the CGST Act.

Thank you!

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

For any queries, please feel free to write to us at intax@deloitte.com

Annexure

Finance Bill 2024 highlights

TCS rates on foreign remittances u/s 206C(1G)

Nature of payment	TCS rates until September 30, 2023	New TCS rates w.e.f. October 1, 2023
LRS for education financed by loan	Nil up to Rs. 7 Lakhs	Nil up to Rs. 7 Lakhs
	0.5% above Rs. 7 Lakhs	0.5% above Rs. 7 Lakhs
LRS for medical treatment / education (other than financed by loan)	Nil up to Rs. 7 Lakhs	Nil up to Rs. 7 Lakhs
	5% above Rs. 7 Lakhs	5% above Rs. 7 Lakhs
LRS for other purposes such as overseas investments	Nil up to Rs. 7 Lakhs	Nil up to Rs. 7 Lakhs
	5% above Rs. 7 Lakhs	20% above Rs. 7 Lakhs
Purchase of overseas tour program package	5% without threshold	5% till Rs. 7 Lakh, 20% thereafter

CBDT Order (F. No. 225/132/2023-ITA –II) dated 1 March 2024

1. CBDT has issued an order under section 119 of the Act to address grievances of taxpayers regarding unprocessed ITRs for AY 2021-22, filed under sections 139, 142(1), or 119
2. The prescribed timeline for processing ITRs with refund claims under section 143(1) has been relaxed to get the refund
3. Validly filed electronic ITRs (with refund claims) for AY 2021-22, previously unprocessed and time-barred, can now be processed until 30 April 2024.
4. Relaxation is not applicable to the following ITRs:

   - ITRs under scrutiny assessment;
   - Unprocessed ITRs due to demand reflecting as payable or likely to arise post-processing.
   - Unprocessed ITRs due to reasons attributable to the taxpayer.

Ex-post facto extension of due date for filing Form No. 26QE which was required to be filed during the period 01.07.2022 to 28.02.2023 (pertaining to F.Y. 2022-23) - Circular No. 04/2024, dated 7 March 2024

1. Virtual Digital Assets (VDA) transfers to resident individuals attract TDS from July 2022.
2. TDS must be reported via Form 26QE, serving as a TDS challan-cum-statement.
3. Persons who deducted TDS from July 2022 to January 2023 couldn't file Form 26QE due to its unavailability.
4. Consequent levy of fee under section 234E and interest under section 201(1A)(ii) occurred.
5. Specified persons deducted tax under section 1945 from February 2023 couldn't file Form 26QE in time.
6. CBDT extended the Form 26QE filing due date to 30.05.2023 via an order dated March 7, 2024.
7. Fee under section 234E and/or interest under section 201(1A)(ii) till 30.05.2023 will be waived in these cases.

Finance Bill 2024 Highlights - Changes in Tax Audit Report - CBDT Notification No. 27/2024/F. No. 370142/3/2024-TPL, dated 05-03-2024

Clause 8A	To verify and report whether the assessee has exercised the option by e-filing Form 10-IFA in accordance with Rule 21AHA
Clause 12	Inclusion of Section 44ADA contains special provisions for computing the profits and gains of the profession on a presumptive basis.
Clause 18	To report adjustment to the WDV under the different provisos to section 115BAA/115BAC/115BAD for specified assessment years
Clause 19	Amended clause will include reference to rows section 35ABA and any other relevant section
Clause 21	To include expenditures for any purpose which is an offence or which is prohibited by law or expenditure to compound an offence etc.
Clause 26	To report in respect of compliance u/s 43B(h) relating to amount payable to micro and small enterprises.
Clause 32(a)	To include reference to losses/allowances not allowed under section 115BAE and amount adjusted by way of withdrawal of additional depreciation on account of opting for taxation under section 115BAE.

These changes came into force on 05-03-2024 and shall apply to all tax audit reports signed or after 05-03-2024, irrespective of the assessment year to which the tax audit report relates to.

Clarification for donation to another Trust - CBDT Circular no. 3/ 2024

Finance Act, 2023 (FA 2023) provided that eligible donations made by a Trust/institution shall be treated as application for charitable or religious purposes, only to the extent of 85% of such donations and accordingly, the FA 2023 made the following amendments:

(a) inserted clause (iii) in Explanation 2 to third proviso of section 10(23C) of the ITA;

(b) inserted clause (iii) in Explanation 4 to section 11(1) of the ITA;

It has been clarified by Circular:

- when a Trust/institution donates INR 100 to another trust/institution, it will be considered to have applied 85% (INR 85) for the purpose of charitable or religious activity.
- it clarifies that 15% (INR 15) of such donations by the donor Trust/institution shall not be required to be invested in specified modes under section 11(5) of the ITA.
- as the entire amount of INR 100 has been donated to the other Trust / institution and is accordingly, eligible for exemption under the first or second regime.

Detailed illustration explaining the above mechanism has also been provided.

Clarification for donation to another Trust - CBDT Circular no. 3/ 2024

Prescribed forms of audit report for trust or institution under the first and second regime:

Report of audit of the accounts of a trust or institution, shall be furnished in –

(a) Form No. 10B where,
   i. the total income of trust or institution, exceeds rupees five crores during the previous year; or
   ii. such trust or institution has received any foreign contribution during the previous year; or
   iii. such trust or institution has applied any part of its income outside India during the previous year;

(b) Form No. 10BB in other cases.

The new forms, Form No. 10B and Form No. 1OBB, were notified vide Notification No. 7 of 2023 dated 21st February, 2023 w.e.f. 01.04.2023, is therefore, effective for assessment year 2023-24;
The due date for furnishing such audit reports for the A.Y. 2023-24 was 31st October, 2023.

Prior to the aforesaid amendment of the Rules, the earlier prescribed form for audit report was Form No. 10BB for trust/ institution in the first regime and Form No. 1OB for trust I institution in the second regime. Thus, A.Y. 2023-24 is the first year when aforementioned changes were to take effect.

hereby allows those trusts/ institutions which have furnished audit report on or before 31st October, 2023;
in Form No. lOB where Form No. 10BB was applicable and vice-versa;
to furnish the audit report in the applicable Form No. 10B/ 10BB for the assessment
year 2023-24, on or before 31st March, 2024.

Other GST Updates [January 2024 - March 2024]

Fake GST Summons

- According to the CBIC, DGGI recently uncovered fake GST summons being dispatched to the taxpayers irrespective of whether they investigated by the DGGI.
- Taxpayers are advised to authenticate such summons by using the **'VERIFY CBIC-DIN' tool available on the CBIC's official website** or By utilizing the DIN Utility Search feature on the CBIC's online portal.

Enhanced E-Invoicing Initiatives

- The GSTN **issued Advisory No. 624 dated February 21, 2024)** announcing significant enhancements to its e-invoice portal, https://einvoice.gst.gov.in.
- This enhancement is part of ongoing effort to further improve taxpayer services.
- New features are PAN-Based Search, Automatic E-invoice exemption List, FAQ Section, Daily IRN Count Statistics, Dedicated Section on Mobile App, etc