



Just 5 Minutes

TAXCONTM INDIA PRIVATE LIMITED



INCOME TAX

1. *Extension for refund*

By virtue of Order F. No. 225/98/2020-ITA-II, dated 30-09-2021, the CBDT directed that all validly filed returns up to Assessment Year 2017-18 bearing refund claims could be processed until 30-11-2021. In view of pending taxpayer grievances related to the issue of refund, the CBDT has decided to extend this time frame further. As a result, such ITRs can now be processed until 31-01-2024.

2. *Enforcing DTAA needs IT Act Section 9 notification*

The Supreme Court has provided clarity on the date of applicability of Double Taxation Avoidance Agreements (DTAA) and its relevance on the Most Favoured Nation (MFN) clause contained in the Protocol. The Supreme Court held that a notification under Section 90(1) is a mandatory condition for any court, authority, or tribunal to give effect to a DTAA or any protocol that changes the terms and conditions, which in turn modifies the existing provision.



GST

1. *Clarifications regarding applicability of GST on electricity*

The Central Board of Indirect taxes and custom issued Circular clarifying applicability of GST on certain services including GST on electricity.

It is clarified that whenever electricity is being supplied bundled with renting of immovable property and/or maintenance of premises, it forms a part of composite supply and shall be taxed accordingly. The principal supply is renting of immovable property and/or maintenance of premise and the supply of electricity is an ancillary supply. Even if electricity is billed separately, the supplies will constitute a composite supply and therefore, the rate of the principal supply i.e., GST rate on renting of immovable property and/or maintenance of premise would be applicable

However, where the electricity is supplied by the Real Estate Owners, Resident Welfare Associations (RWAs), Real Estate Developers etc., as a pure agent, it will not form part of value of their supply.



GST

2. *Amendments to GST Rules*

The Central Board of Indirect taxes and Customs has issued Notification dated October 26, 2023 to make amendments in CGST Rules. The highlight of the same are:-

- a) New valuation rule has been inserted. It stipulates that the value of supply of services by a supplier to a recipient who is a related person, by way of providing a corporate guarantee to any banking company or financial institution on behalf of the said recipient, shall be deemed to be 1% of the amount of such guarantee offered, or the actual consideration, whichever is higher.
- b) An amendment in Rule 159(2) and Form GST DRC-22 is made to provide that the order for provisional attachment in Form GST DRC-22 shall not be valid after expiry of 1 year from the date of the said order. This will facilitate release of provisionally attached properties after expiry of period of 1 year, without need for separate specific written order from the Commissioner.



Companies/ LLP Act

1. *Dematerialization of securities of private companies*

The Ministry of Corporate Affairs (MCA) has notified the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023 mandating all private companies, other than small companies, to mandatorily dematerialise their shares by September 30, 2024.

The term 'small company' has been defined by Section 2(85) of the Companies Act, 2013 to mean a company which has (i) paid up capital not exceeding INR 4 Crore; and (ii) turnover not exceeding INR 40 Crore.

Furthermore, after September 30, 2024, no private company can issue securities or buyback its securities or issue bonus shares or rights offer until the complete dematerialization of its securities held by its promoters, directors and key managerial personnel.



Companies/ LLP Act

2. Mandates declaration of beneficial interest and keeping of register for partners of LLP

The Govt. has notified LLP (Third Amendment) Rules, 2023 to provide that a person whose name is entered in register of partners of LLP but doesn't hold any beneficial interest in contribution must file a declaration to that effect in Form 4B within 30 days from the date on which his name is entered in the register.

Further, every LLP must maintain a register of its partners in Form 4A from the date of its incorporation, which must be kept at the registered office of LLP.



Companies/ LLP Act

3. MCA mandates Companies to designate a person for furnishing information to ROC w.r.t beneficial interest in shares of company

The Govt. has notified the Companies (Management and Administration) Second Amendment Rules, 2023 providing every company must designate a person who shall be responsible for furnishing information, and extending cooperation in providing information to the Registrar or any other authorised officer regarding beneficial interest in shares of the company.

Further, a company may designate a company secretary (CS), a KMP or every director, if there is no CS or KMP.

LABOUR LAWS

1. *Revision on minimum wages in Delhi*

With effect from October 01, 2023, the minimum wages have been revised in Delhi, as below:-

Class of Employment	Class of workers	Total Per Month
Unskilled	NA	17,494
Semi-skilled	NA	19,279
Skilled	NA	21,215
Clerical And Supervisory Staff	Non Matriculates	19,279
Clerical And Supervisory Staff	Matriculates But Not graduates	21,215
Clerical And Supervisory Staff	Graduates And Above	23,082



CASE LAWS - INCOME TAX

1. *Ajay Parasmal Kothari v. ITO*

It has been held that where the amount received from the builder is in the nature of hardship compensation for providing alternative accommodation as the building has gone for redevelopment, the same is not taxable, irrespective of the fact that the assessee lived with his parents.

2. *Euro Homes Vs. DCIT,*

It has been held that incentive earned by the assessee for achieving the sales target as per franchise agreement is part of business turnover of the assessee and therefore the same is includible in turnover for the purpose of determination of income u/s 44AD and not chargeable under the head income from other sources.

CASE LAWS - INCOME TAX

3. *Sonia Verma Vs. ITO,*

In the matter the assessee, a resident of Jagraon, having accept the sale consideration of the flat in Delhi in cash on five different occasions as she was in dire need of money to meet the expenses on the upcoming marriage of her daughter which was solemnized in Delhi and it was considered to be unsafe to withdraw large amount of cash from her bank account in Jagraon and travel with said cash in Delhi. Assessee has successfully made out cash demonstrating that there was a reasonable cause for her to accept payment in cash on the specific dates on the sale of flat and therefore levy of penalty u/s 271D is not sustainable.

CASE LAWS - INCOME TAX

4. *Smt.Kiran Agrawal Vs. ACIT,*

It has been held that where the assessee being seller has incurred the entire Registration expenses, Stamp Duty etc. on the sale of land as per the mutual consent of parties, the same are allowable expenses.

5. *Orion Security Solutions P. Ltd. Vs DCIT*

The Delhi High Court has held that while computing 20% of the outstanding tax demand to be deposited for obtaining stay, the credit of TDS or TCS is available, and excess recovery (if any) is to be refunded to the taxpayer along with the interest as applicable thereon. The High Court has also held that such 20% of the tax liability is to be calculated against the tax liability as crystallised in the assessment order and not against the reduced amount as per the notice of demand under section 156 of the Income-tax Act, 1961



CASE LAWS - INCOME TAX

6. *CAE Simulation Training P. Ltd. Vs. DCIT*

The Delhi bench of the Tribunal has held that mere access to use the server or software to download the reports cannot be regarded as transfer of any license or copyright in the software and is not covered within the definition of royalty. What needs to be seen is whether access to the software equipment of the non-resident entity is given to the taxpayer such that there is transfer of title or ownership and proprietary rights to the systems and software of the non-resident. Moreover, where the business income of the non-resident is not chargeable to tax in India in the absence of a permanent establishment, there will be no liability to deduct tax at source.



CASE LAWS - INDIRECT TAX

1. *Kiran Motors v. Additional Commissioner of CT & GST*

It has been held that where appeals are to be filed, pre-deposit can be made by debiting electronic credit ledger instead of electronic cash ledger



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