

Monthly Newsletter

December 2024

Bhatia & Bhatia
CHARTERED ACCOUNTANTS



Here's a quick roundup of the events that happened this month!

Welcome to the December 2024 Edition of Our Newsletter.

As we close out the year, December brings with it significant updates and rulings across the regulatory spectrum.

In this issue, we delve into a crucial case law update in Transfer Pricing and we also explore insights from the ICAI vs. NFRA case.

Additionally, we cover the mandatory adjustment of non-salary income TDS, alongside critical updates in income tax and international taxation. These developments are essential for navigating compliance and strategizing for the upcoming year.

Stay informed with our in-depth analysis of these regulatory changes and their potential impact.

In this newsletter
you will read:

GST Updates

Income Tax Updates

International Tax
Updates

Transfer Pricing

ICAI vs. NFRA

GST Updates

The 55th GST Council meeting brought critical changes and clarifications to enhance compliance and trade facilitation. Here's a detailed overview:

Changes and Their Applicability

1. GST Rate Revisions

- Fortified Rice Kernel (FRK) rate reduced to 5%.
- Compensation Cess for merchant exporters aligned with GST at 0.1%.
- GST on used vehicles increased to 18%, with application limited to the margin value of the supplier.

2. Tax Exemptions

- Gene therapy fully exempted.
- Contributions by insurance companies to the Motor Vehicle Accident Fund exempted.
- IGST exemptions extended for specified goods used in LRSAM assembly and consumables for IAEA inspection teams.

3. Clarifications on Commodities

- Ready-to-eat popcorn with salt/spices taxed at 5% or 12%, depending on packaging.
- Specific agricultural products, such as fresh/dried pepper and raisins supplied by agriculturists, exempted from GST.

4. Compliance Relief

- Pre-deposit for penalty-only appeal cases reduced to 10%.
- Concessions extended for free food distribution under government programs, with a 5% GST rate on inputs.

Measures for Trade Facilitation

1. Vouchers Simplification

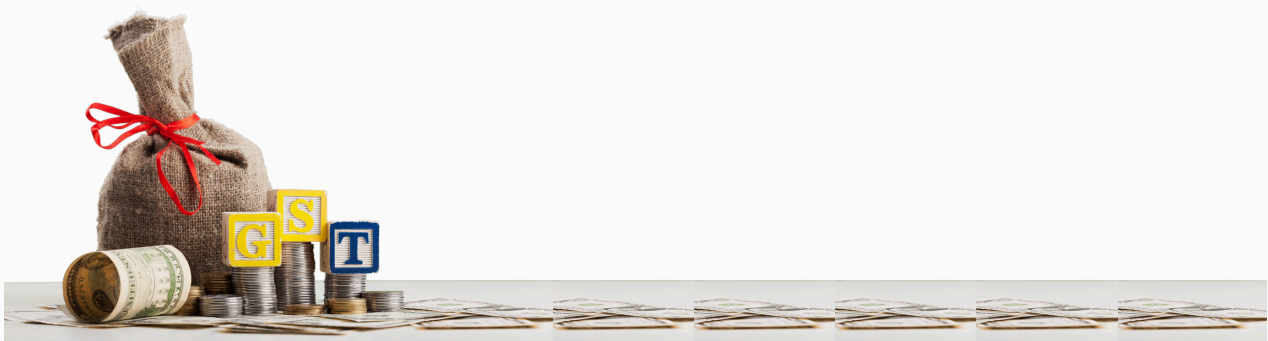
- Vouchers treated as neither goods nor services.
- Distribution clarifications: GST applies only to commission-based transactions.

2. Trade-Friendly Adjustments

- SEZ/FTWZ transactions prior to clearance for exports/DTA excluded from supply definitions, effective retrospectively from July 1, 2017.
- Circulars introduced to resolve ambiguities on ITC claims, late fees, and contract-specific requirements.

3. Future Implementation

- Track and Trace Mechanism introduced for high-evasion goods with Unique Identification Marking, effective April 2025.
- Invoice Management System (IMS) amendments for enhanced accountability.



Streamlined Compliance Measures

1. Annual Return and Reconciliation Adjustments

- Late fee waivers for delayed filings of GSTR-9C for FY 2017-18 to 2022-23 if submitted by March 31, 2025.

2. Functional Improvements

- Temporary Identification Number provisions for non-registered entities under GST introduced.
- Simplified provisions for ISD mechanisms in cross-border transactions.

These updates reflect the GST Council's commitment to reducing ambiguities, enhancing compliance efficiency and supporting economic growth through tax simplification. Further notifications will bring these recommendations into effect.

Quick Recap of GST Collections Over the Last Three Financial Years

- FY 2021-22: GST collections increased 26.9% year over year, with average monthly collections at ₹1.23 trillion, the highest since GST's implementation in 2017.
- FY 2022-23: Total gross collections reached ₹18.10 lakh crore, with an average monthly collection of ₹1.51 lakh crore, reflecting a 22% YoY increase.
- FY 2023-24: A milestone year with total gross collections of ₹20.18 lakh crore, marking an 11.7% growth and surpassing the ₹20 lakh crore mark for the first time.

This steady growth underscores the robustness of GST compliance and economic recovery over the years.



Income Tax Updates

- **PAN 2.0 project:** Recently, the Prime Minister granted approval for the PAN 2.0 project, which is in line with the government's vision of 'Digital India.' This project will enable the use of PAN as a "Common Identifier for all digital systems of specified government agencies" having key features like Aadhar Integration, QR Code Integration for enabling quick access and verification, Improved Security, Single portal for all PAN/TAN-related services and Eco friendly paperless process.
- **CBDT prescribes procedure for disposal of condonation of delay application in filing income-tax return (ITR) for certain Cooperative Societies for Assessment Year 2023-24:** The CBDT had earlier received various applications from cooperative societies claiming deductions under Section 80P of the Income-tax Act, 1961 (the IT Act), for the condonation of delay in furnishing the ITR due to a delay in getting the accounts audited under the respective state laws. The CBDT had directed the Chief Commissioners of Income-tax (CCIT) / Directors General of income tax (DGIT) to deal with the condonation applications for AY 2018-19 to 2022-23. It further specified the procedure for the disposal of the said applications. The CBDT received applications for the condonation of a delay in filing the ROI for such cases in relation to AY 2023-24 as well, and hence, it has extended the applicability of the earlier circular to AY 2023-24 as well, subject to conditions specified therein.
- **CBDT prescribes monetary limits for waiver/ reduction of interest levied under Section 220(2) of the IT Act:** Section 220(2A) of the IT Act empowers the PCCIT, CCIT, PCIT, and CIT to waive or reduce interest (levied at the rate of 1% per month or part of a month) for a delay in the payment of demand as per the notice issued under Section 156 of the IT Act.

The CBDT had directed that such waiver/reduction of interest would be subject to certain conditions.

In this regard, the CBDT has empowered the following designated authority based on the thresholds as under on the fulfilment of some prescribed conditions:

| Designated authority | Threshold for reduction/ waiver of interest |
|----------------------|---|
| PCIT / CIT | Up to INR 50 lakhs |
| CCIT / DGIT | Above INR 50 lakhs to INR 1.5 crore |
| PCCIT | Above INR 1.5 crore |

- **Condonation of delay in filing Form 10-IC or Form 10-ID for AY 2020-21, 2021-22 and 2022-23:** The CBDT has issued a circular to authorise the following officers to dispose of the applications for the condonation of a delay in filing the Forms 10IC and 10ID for AY 2020-21, 2021-22, and 2022-23 on fulfillment of certain prescribed conditions and within a prescribed time limit:

| Designated Authority | Threshold for reduction/ waiver of interest |
|----------------------|---|
| PCIT / CIT | Up to 365 days |
| PCCIT/ CCIT / DGIT | More than 365 days |

- **CBDT issues directions for disposal of application for condonation of delay in filing Form No. 9A/10/10B/10BB:** The CBDT, in the past, issued various circulars for the condonation of delay in applications in relation to Form No. 9A / 10 / 10B / 10BB for AY 2018-19 and subsequent AYs. The CBDT has now issued a circular in super session of the earlier circulars and prescribed the certain conditions and time limit for condonation of delay and delegation of power as follows:

| Designated Authority | Threshold for reduction/ waiver of interest |
|----------------------|---|
| PCIT / CIT | Up to 365 days |
| PCCIT/ CCIT | More than 365 days |

TDS Adjustment for Non-Salary Income Now Mandatory

From October 1, 2024, the government has made it mandatory for employers to give benefits of TDS/TCS deducted on non-salary income while computing TDS to be deducted from salary. Adjustment of tax already paid through TDS/TCS on non-salaried income while deducting TDS against salary can bring down TDS liability for a salaried employee. This amendment was introduced to reduce the incidence of extra TDS being deducted from salary income. While the law was already implemented, the necessary back-end technical infra updation took time. Protean (formerly NSDL e-Governance) has informed that the necessary changes have been made in the TDS software from December 27, 2024, and now the TDS certificate will start reflecting the updated changes for Q4 of 2024-25 TDS statement onwards.

Income Tax Updates

The CBDT has extended the due date for determining the amount payable under Column (3) of Section 90 from 31st December, 2024, to 31st January, 2025, providing taxpayers with additional time to file declarations and settle disputes.

- Declarations filed on or before 31st January, 2025: Amount as per Column (3).
- Declarations filed on or after 1st February, 2025: Amount as per Column (4).

i. Switzerland suspends MFN clause in the India-Switzerland tax treaty

The Swiss Federal Department of Finance has recently issued an official announcement suspending the **Most Favored Nation (MFN)** clause in the protocol to the India-Switzerland tax treaty. This notification has been issued pursuant to the Apex Court judgement in Nestle's case (also a Swiss company). This decision comes after a series of legal interpretations and discussions surrounding the applicability of the MFN clause concerning dividend withholding tax rates.

i. Key Points:

- **Background:** Initially, the Swiss competent authority had indicated that Indian tax residents receiving dividends from Switzerland could benefit from a reduced withholding tax rate of 5%, based on the MFN clause and lower rates established in India's treaties with Lithuania and Colombia.
- **Supreme Court Ruling:** The Indian Supreme Court ruled that the MFN clause is not automatically applicable without a formal notification under Section 90 of the Income Tax Act. More importantly, the Court interpreted the language of the law and emphasized that only OECD member countries at the time of signing can influence benefits under this clause. In other words, if a third country is not an OECD member at the time of entering into a tax treaty with India, then the beneficial provisions contained in India's tax treaty with that third country could not be imported into the relevant tax treaty by virtue of the MFN clause.
- **Swiss Response:** Acknowledging that their interpretation was not aligned with India's stance, Switzerland will revert to a 10% withholding tax rate for dividends starting January 1, 2025. However, for income accrued between 2018 and 2024, the previously stated 5% rate will still apply.

ii. Implications:

This suspension marks a pivotal shift in bilateral tax dynamics, highlighting the importance of mutual agreement and reciprocity in interpreting treaty provisions. As countries like India assert stricter interpretations to safeguard domestic revenues, this development underscores the complexities involved in navigating international tax treaties. As we move forward, it is crucial for businesses and stakeholders to stay informed about these changes and their potential impact on cross-border operations. Stakeholders must re-evaluate the tax models to assess the fiscal impact of the change in the withholding tax rates and re-visit any aggressive tax positions adopted, if any.



II. UAE introduces DMTT in line with BEPS Pillar II

On December 9, 2024, the United Arab Emirates (UAE) announced the introduction of a Domestic Minimum Top-up Tax (DMTT), set to take effect from January 1, 2025. This tax is part of the UAE's broader strategy to align its corporate tax framework with international standards established by the Organisation for Economic Co-operation and Development (OECD).

Overview of the DMTT

- **Effective Date:** The DMTT will apply to financial years starting on or after January 1, 2025.
- **Tax Rate:** A minimum effective tax rate of **15%** will be imposed on profits of large multinational enterprises (MNEs).
- **Revenue Threshold:** The tax applies to MNEs with consolidated global revenues exceeding **€750 million** (approximately **AED 3 billion**) in at least two of the four financial years preceding its implementation.

Objectives and Implications

The DMTT aims to create a fair and transparent tax system by preventing profit shifting to low-tax jurisdictions. It reflects the UAE's commitment to enhancing its economic environment while maintaining competitiveness on a global scale. The new tax structure will ensure that MNEs contribute appropriately to the UAE's economy, reinforcing compliance with international tax norms.

Additional Legislative Measures

In conjunction with the DMTT, the UAE Ministry of Finance is expected to introduce incentives aimed at fostering innovation and creating high-value employment opportunities within the country. These measures are designed to support local businesses while ensuring that larger corporations meet their tax obligations. The introduction of the DMTT marks a significant shift in the UAE's corporate tax landscape, aligning it more closely with global practices and enhancing its reputation as a responsible business hub. Further details regarding implementation and compliance are anticipated from the Ministry in the coming months.



Transfer Pricing

Case Law- Imputes ALP-commission on SBLC @ 1% over TPO's 4.01%, considers Everest Kento Cylinders Limited ruling

The Taxpayer¹ is engaged in the business of manufacturing of rubber metal automobile components. The taxpayer has issued Standby Letter of Credit (SBLC) of USD 5 million to its associated enterprise (AE) in United States in financial year (FY) 2016-17 without charging any commission from the AE. The HDFC Bank Limited (Bank) which provided the SBLC has charged commission @ 1% per annum which was later reduced to 0.5% per annum.

The Ld. TPO determined arm's length price (ALP) commission rate which an Indian entity should have charged from the associated enterprise at 4.01% based on the Comparable Uncontrolled Price (CUP) method, citing average bank guarantee rates and adding 200 basis points for the risks. The appellant contested this, proposing a cap of 0.5% per annum, citing judicial precedents like **Everest Kento Cylinders Limited**² and **Micromax Informatics Limited**.³

The DRP upheld the Ld. TPO order and dismissed the objection of the appellant.

The appellant also argued that the Ld. TPO wrongly treated the SBLC as a bank guarantee, highlighting that the SBLC facilitated the AE's loan acquisition for business expansion in the US, avoiding a direct cash infusion of USD 12 million by the appellant.

The ITAT held that SBLC and bank guarantees have distinct purposes and risks. Also, they are governed by different rules and local laws. For the issue at hand, if providing a guarantee to an AE impacts the company's profits, assets, or risk exposure—such as increasing leverage or affecting the debt-equity ratio—it qualifies to be an international transaction. It emphasized that corporate guarantees like SBLC aim to enhance the working capital or contractual terms of the AE, differing from the functions of bank guarantees. The Tribunal held that bank guarantees and SBLC/ corporate guarantees are not comparable due to differing commercial purposes; while bank guarantees are core banking functions, SBLCs aim to free up an AE's working capital and secure better contract terms. Thus, comparing the two lacks commercial prudence for determining the ALP. The Tribunal concluded that bank guarantee commissions cannot serve as a benchmarking parameter for determining the ALP of an SBLC if internal comparables, such as the commission actually paid by the assessee for similar guarantees, are available. The Tribunal determined the ALP for FY 2016–17 at 1% and directed the Ld. AO/TPO to use this rate.

The Tribunal in the above ruling highlights that there is a difference between the bank guarantee and corporate guarantee and directs the Ld. TPO to consider rate of 1% to be ALP for the guarantee provided by the appellant to its AE.

The similar position was also upheld in the case of **Zycus Infotech Private Limited**⁴ where corporate guarantee is held to be different from the bank guarantee. In the said decision the ITAT has remitted the matter to the Ld. TPO and held that the authorities need to determine the rate attributable to corporate guarantee provided by the appellant to its AE.



ICAI's Concerns Regarding SA 600 (Revised) and SA 299 (Revised) Approved by NFRA for Recommendation to the Central Government for Audits of Companies.

The Institute of Chartered Accountants of India (ICAI) has raised significant concerns regarding the implementation of SA 600 (Revised) and SA 299 (Revised) in the context of Indian auditing practices. Here's an overview of the key points:

- 1 Shared Responsibility in Current Standards vs. Full Responsibility under ISA 600
 - The current SA 600 allows the Holding Company Auditor to rely on the Subsidiary Auditor's report, whereas International ISA 600 places the entire responsibility for the group balance sheet on the Holding Company Auditor.
 - RBI and C&AG have resisted these changes, citing practical challenges under their jurisdiction.
- 2 Challenges for RBI-Regulated Entities
 - RBI guidelines restrict one CA firm to audit only one RBI-regulated entity in a group. This mandates separate auditors for each entity, requiring the lead auditor to perform additional work during consolidation, increasing time and costs.
- 3 Global Practices
 - Unlike ISA 600, the USA allows reliance on component auditors. Similarly, China does not fully adopt ISA 600. India's unique circumstances, such as unified professional competence under ICAI, make full adoption of ISA 600 impractical.
- 4 Responsibility for Component Auditors
 - Component auditors in India are appointed by regulators or shareholders, not group auditors. Holding group auditors accountable for verifying their competence is redundant since regulatory bodies and audit committees already assess this.
- 5 Impact on SMPs and Audit Ecosystem
 - Adopting ISA 600 (Revised) could lead to audit work concentration among a few large firms, adversely affecting Small and Medium Practices (SMPs) that comprise 98% of Indian firms.
- 6 Existing Standards and Regulatory Oversight
 - Current standards already empower the Holding Company Auditor to review the component auditor's work. NFRA's recent findings of auditor failures highlight individual lapses, not inadequacies in existing standards.
- 7 Mismatch with Indian Practices
 - Indian regulations require audits of all components, unlike some foreign jurisdictions where audits are optional. Furthermore, India's regulatory ecosystem (Companies Act, SEBI, CAG, RBI) ensures robust oversight.
- 8 Challenges for Indian Firms with Overseas Subsidiaries
 - Full adoption of ISA 600 (Revised) could disadvantage Indian firms auditing companies with large foreign subsidiaries. Duplication of audits for compliance with foreign laws would increase costs and deter companies from engaging Indian auditors.

9 Preserving Audit Quality and the "Maker-Checker" Approach

- India's well-regulated system ensures robust checks and balances between Principal and Component Auditors. Enhancing reporting requirements for Component Auditors can strengthen the process without centralizing accountability with the Group Auditor.

10 ICAI's Initiatives for Audit Quality

- ICAI is already enhancing audit quality through initiatives like the Centre of Audit Quality and the Audit Quality Maturity Model (AQMM). Dialogue and collaboration are key to driving further improvements.

✓ India's Economic Growth with Current Standards

- Over the last decade, India has risen from the 10th to the 5th largest economy, with robust auditing standards in place. Concentrating audit work among large firms and bypassing ICAI's consultation process could hinder India's vision of becoming a developed nation.

ICAI strongly advocates for a measured approach, tailored to India's unique audit environment, to ensure sustainable growth while maintaining audit quality.

'Only govt can take final call on audit standards'

RUCHIKA CHITRAVANSHI
New Delhi, 15 November

The Solicitor General of India, in an opinion provided to the National Financial Reporting Authority (NFRA), said the Institute of Chartered Accountant of India (ICAI) does not have the power to issue any binding standards or guidelines for audit, according to people in the know.

It can also not take action against any audit firm but only Chartered Accountants, sources said.

The authority to issue any standards regarding audit and accounting vests only with the government and in this case the Ministry of Corporate Affairs (MCA). "Neither NFRA nor ICAI have the power to issue binding standards of audit. They can only make recommendations to the government who can then take the final call to accept or reject those suggestions," the source said.

The legal opinion was sought in reference to the Standard of Quality Management 1 and 2 (SQM) that was brought by the Institute last month. ICAI sources however have held that the said standards are related to quality management and not audit standards, at firm level providing them SoPs and guidance for smooth functioning and quality management. Turn to Page 6 ▶



IN A NUTSHELL

- NFRA recommended revision in 40 standards on auditing (SA), including the SA 600 and SA 299, which deal with group and joint audit, respectively
- ICAI opposed those standards on grounds that they will affect smaller firms and duplicate work
- NFRA sources believe that while directly the standards don't relate to audit but indirectly they would end up altering them, which can only be done by the MCA

Bhatia & Bhatia

CHARTERED ACCOUNTANTS

About Us

Founded in 1981, our firm is dedicated to providing unparalleled financial services to our clients and assisting in navigating the business landscape. With a commitment to deliver exceptional services while upholding the highest ethical standards, our team of over 125+ professionals, led by 11 experienced partners, brings a diverse range of expertise to the table.

This allows us to act as your trusted advisor for all aspects of your financial needs, including Audit & Assurance, Taxation (both domestic and cross-border), Valuations, Mergers & Acquisitions and Corporate Finance. We operate as a progressive and well-structured full-service firm with a Pan India presence and a network of various international forums, groups & chambers.

We deliver end-to-end business solutions through a dedicated panel of experts, maintaining long-term trust and reliance from our clients.

New Year Greetings from Team BnB

As we wrap up this year, we extend our heartfelt gratitude to all our clients, associates and team members for their unwavering support and trust in us.

The New Year brings new opportunities, fresh goals, and renewed energy to achieve even greater heights together. May 2025 be a year filled with growth, success, and endless possibilities for all of us. Cheers to another fantastic year ahead!

HAPPY
New Year



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