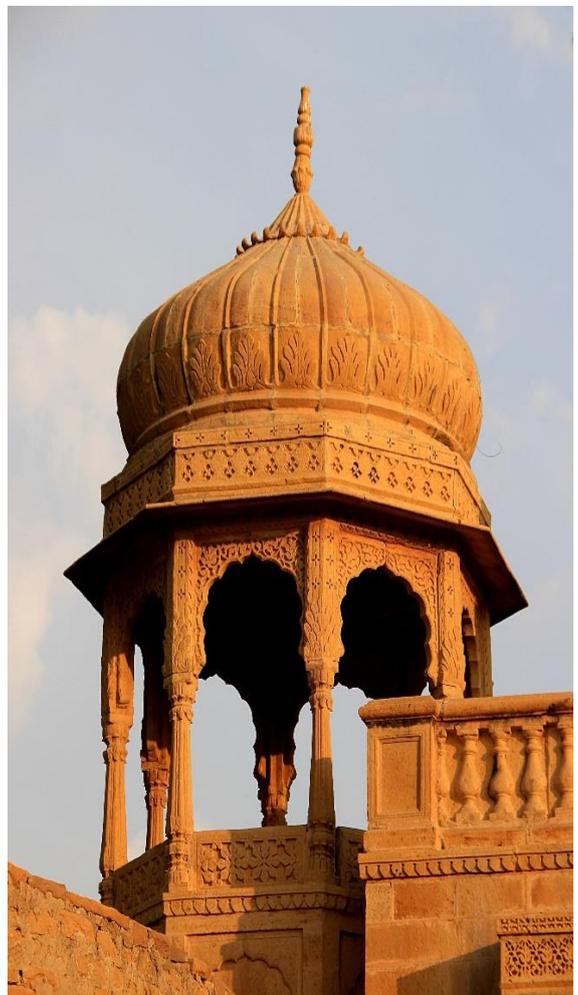


# Corporate Update

September | 2022

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## FOREWORD



*Dear Reader,*

*The revenue collection of the Government of India from direct taxes continues to show increase. The direct tax collection increased by around 24% in the half year ending September 30, 2022. GST tax collection has also shown increase of 31%.*

*Several notifications have been issued under the Companies Act making changes in respect of certain applicable compliance regulations which form part of this Update.*

*In addition, report on certain important notifications issued under the Direct Tax Regulations also form part of this Update.*

*C.S. Mathur  
Partner*

## DIRECT TAXES

### DOMESTIC TAXATION

#### **Additional Guidelines for removal of difficulties in application of withholding tax on benefit or perquisite under section 194R of the Income-Tax Act, 1961**

*Income Tax Circular no. 18 of 2022, dated September 13, 2022*

The Finance Act, 2022 inserted a new section 194R in the Income-tax Act, 1961 (hereinafter referred to as "the Act") with effect from 1st July 2022, to provide for a withholding tax of 10% on the value of any benefit or perquisite provided to a resident, arising from any business or profession.

The Central Board of Direct Taxes had earlier issued Circular No 12/2022 to provide clarification on some of the issues raised by the stakeholders. Certain particulars on the subject were published in the Corporate Update for June, 2022. As more clarifications were sought on some aspects by the stakeholders, the CBDT has now issued Circular No. 18 dated 18th September, 2022 containing some more clarifications as under:

1. It has been clarified that one-time loan settlement with borrowers or waiver of loan granted by banks and other financial institutions on reaching settlement with the borrowers, would not be subjected to tax deduction at source under section 194R of the Act, even though waiver or loan settlement may be an income to the Borrower. However, it has also been clarified that tax treatment of such settlement/ waiver in the hands of the borrower (who got benefitted by such waiver) would not be impacted by this relaxation.
2. It has been reiterated that if a service provider incurs some expense in the course of rendering service to a service recipient and the bill is in the name of the service provider, then the expense is the liability of the service provider and not of the service recipient. It is the service provider who gets input credit of GST included in the expenses incurred by him. If the expense was the liability of the service recipient, then GST input credit would have been allowed to the service recipient, which is not the case. Thus, reimbursement of expense is benefit/ perquisite on which tax is required to be deducted under section 194R.  
  
However, if a service provider incurs an expense as "pure agent" under GST law, then GST input credit is allowed to service recipient and not to the service provider. In such a case, the amount incurred by such "pure agent" for which he is reimbursed by the recipient would not be treated as benefit/perquisite for the purpose of section 194R of the Act.
3. Further it has been clarified that if out of pocket expenses (reimbursement) are already part of the consideration in the bill on which tax is deducted on the entire consideration including out of pocket expense under the relevant provisions of the Act, other than section 194R, in accordance with the Circular No 715 dated 8th August 1995, then there will not be any further liability for tax deduction under section 194R of the Act.
4. If benefit/perquisite is provided in a group activity such as Business/Dealer conference in a manner that it is difficult to match such benefit/perquisite to each participant using a reasonable allocation key and consequently, it is difficult to apply section 194R, then the

benefit/perquisite provider may, at his option, not claim the expense representing such benefit/perquisite as deductible expenditure for calculating his total income. If he decides to opt so, he will not be required to deduct tax under section 194R.

5. Where a company has complied with provisions of Section 194R and has deducted tax on the value of car gifted to its dealer, the dealer can get depreciation benefit on the gifted car if he has included this benefit as income in his return of income, The value of such benefit will be deemed as “actual cost” for the purpose of depreciation under section 32.
6. In order to remove difficulty, it has been clarified that Section 194R shall not be applicable on benefit/perquisite provided by, an organization in scope of the United Nations (Privileges and Immunity Act) 1947, an international organization whose income is exempt under specific Act of Parliament (such as the Asian Development Bank Act 1966), an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign state.
7. Tax under Section 194R of the Act is not required to be deducted on issuance of bonus or right shares by a company in which the public are substantially interested as defined in clause (18) of section 2 of the Act, where bonus shares are issued to all shareholders by such a company or right shares are offered to all shareholders by such a company.

**Note:**

***No specific clarification is provided in the circular regarding applicability of section 194R on issuance of bonus or right shares by unlisted companies.***

***However, in our view, similar treatment under section 194R should also apply to the bonus or right shares issued by an unlisted company to its shareholders.***



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**CBDT Notification on Recomputation of Income for earlier claim of Surcharge and Cess**

*CBDT Notification No. 111/2022 dated September 28, 2022*

Prior to the Finance Act, 2022, a contentious issue existed as to whether, cess was an admissible business deduction. Although various High Courts had held that cess is an allowable deduction under Section 40(a)(ii) of the Act, the Government neutralized such decisions by introducing an Explanation 3 to Section 40(a)(ii), by Finance Act, 2022. In terms of such explanatory amendment, cess shall be inadmissible as a deduction with effect from Assessment Year 2005-06 (Financial Year 2004-05).

As this amendment applies to returns filed for prior years as well, the Government had also laid down the necessary framework [Section 155(18)] to facilitate re-computation of taxable income for past years, wherein, such cess had been claimed as a deduction. The Central Board of Direct Taxes has now notified a new Rule 132 of the Income-tax Rules, 1962, wherein the detailed procedure to recompute such taxable income has been provided. Brief highlights of this notification are as under:

1. The Assessee shall electronically furnish an application in Form No. 69 to prescribed authority requesting recomputation of income for previous year without allowing its earlier claim of 'surcharge' and 'cess'. Such application is required to be made on or before March 31, 2023.
2. The tax officer shall on receipt of Form No. 69, recompute the total income of the said year by amending the relevant order and issue a demand notice. Such notice shall specify the amount of tax (including interest) payable and the time limit for making payment.

Furthermore, if such recomputation has an effect of modification of carried forward losses, unabsorbed depreciation, MAT credit or AMT credit, resulting in tax payable for future years, the resultant tax payable for future years shall also be factored in the demand notice.

3. Thereafter, the Assessee shall make payment thereof and furnish details of such tax payment in Form No. 70 within 30 days from the date of payment.

However, it is imperative to mention here that the Finance Act, 2022 has also provided that a claim of deduction of 'surcharge' or 'cess' shall be deemed to be under-reporting of income under Section 270A(3) attracting penalty of 50%. However, if the Assessee follows the aforesaid procedure to withdraw its claim of deduction and pay the requisite tax including interest, it shall not be regarded as under-reporting of income.



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### Form ITR-A notified for filing of Modified Return by successor entity in the event of 'business reorganization' involving merger/ demerger/ amalgamation

Section 170A was inserted by the Finance Act, 2022 to enable successor entity on merger /demerger /amalgamation to file Modified Return for the period between the date from which the order takes effect and the date of issuance of final order of the competent authority.

A new Rule 12AD has been notified by Central Board of Direct Taxes (CBDT) vide [Notification No. 110/2022] prescribing Form ITR-A for filing return under section 170A. Rule 12AD, applicable with effect from November 01, 2022, provides that the modified return of income shall be furnished electronically by a successor entity to a business reorganisation.

Form ITR-A additionally seeks the information pertaining to successor entity, predecessor entity, details of order of business reorganisation.

The modified return shall be furnished within 6 months from the end of the month in which the order permitting the reorganisation is issued by the competent authority.

Where the assessment or reassessment proceedings have been completed or are pending, the Assessing Officer shall pass an order modifying the total income or proceed to complete the assessment or reassessment proceedings in accordance with the order of the business reorganization and the modified return so furnished.

## Order under section 119 of the Act: Timeline for ITR Filing by Successor Companies under section 170A extended upto March 31, 2023

Further, as Form ITR-A shall come into effect from November 01, 2022, six months' time may not be available to successor companies in cases where the order of business reorganisation of the competent authority was issued in the period from April 01, 2022 to September 03, 2022. Therefore, in order to provide adequate time for furnishing of return under section 170A of the Act, the CBDT has extended the date of furnishing ITR-A in cases where the order of business reorganisation of the competent authority was issued during the period April 01, 2022 to September 03, 2022. The time available to furnish modified returns under section 170A of the Act for the successor companies has been extended to March 03, 2023.



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## CORPORATE LAWS

### Amendments to various Rules under the Companies Act, 2013

A number of amendments to various Rules under the Companies Act, 2013 have been notified by the Ministry of Corporate Affairs recently. Brief Notes on the relevant subjects are given below:

#### 1. The Companies (Incorporation) Third Amendment Rules, 2022 on physical verification of the Registered Office of

#### a Company

The Ministry of Corporate Affairs (MCA), vide its Notification No. G.S.R 643 (E) dated August 18, 2022, has amended the Companies (Incorporation) Rules, 2014, by notifying Companies (Incorporation) Third Amendment Rules, 2022. The Amendment rules have inserted a new Rule 25B pertaining to Physical Verification of registered office of the Company.

As per the existing rules, all the companies incorporated on or before December 31, 2017 have to verify their registered office by way of filing of e-Form ACTIVE.

S-12(9) of the Companies Act provides that in case the RoC has reasonable cause to believe that the Company is not carrying on any business or operating, he may cause a physical verification of the registered office of the Company in such manner as may be prescribed. The procedure is now prescribed in the Companies (Incorporation) Third Amendment Rules, 2022.

Now, the present Amendment rules provide for physical verification of the Registered office of the Company to be carried out by the Registrar of Companies [ROC], in case he has reasonable cause to believe that the company is not carrying on any business or operations. The ROC has to conduct verification in the presence of two independent witnesses of the locality in which the said registered office is situated, he shall also take photographs of the registered office and may also seek assistance of the local police, if required.

For conducting such verification, the ROC shall take documents, as filed on MCA website by the concerned company, in

support of address of its registered office, for checking authenticity of such documents through cross verification from the documents collected during physical verification from such registered office.

Upon such verification, if the registered office is found to be not capable of receiving and acknowledging all communications and notices, which will be in violation of Section 12(1) of the Act, the ROC shall send a notice to the company and all its directors of his intention to remove the name of the company from Register of Companies, and shall take further action as prescribed in Section 248 of Companies Act, 2013, dealing with removal of name of company from Register of Companies.

## **2. The Companies (Removal of Names of Companies from the Register of Companies) Second Amendment Rules, 2022**

The Ministry of Corporate Affairs (MCA) vide its Notification No. G.S.R 658(E) dated 24th August 2022 has amended Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016, by **amending Form No. STK-1, STK-5 and STK-5A** with the insertion of an additional ground of strike-off as provided under clause (e) of Section 248(1) viz. the company is not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12.

### **Note:**

***Earlier, there was an omission in the said Forms, as Section 12(9) had already been amended with effect from November 02, 2018. This omission is now made good***

## **3. The Companies (Accounts) Fourth Amendment Rules, 2022 on maintenance of books of account etc.**

The Ministry of Corporate Affairs (MCA), vide its notification No. G.S.R 624(E) dated August 05, 2022, has amended the Companies (Accounts) Rules, 2014, by notifying Companies (Accounts) Fourth Amendment Rules, 2022. The existing rules prescribe that the books of accounts and other relevant books and papers of the Company maintained in electronic mode shall remain accessible in India, while, the Amendment rules have reworded this in a more strict manner by providing that such books, papers etc, shall remain accessible in India **at all times**.

Further, as per the existing rules, the back-up of such books of account and other books and papers maintained in electronic mode, including at a place outside India, shall be kept in servers physically located in India on a periodic basis. Now, as per the Amendment rules, such back-up needs to be maintained on **daily basis**, instead of periodic basis.

Moreover, as per the existing rules, the company needs to intimate the Registrar of Companies [ROC] at the time filing annual financial statements, the address as provided by the service provider, in case where books of account and other books and papers are maintained on cloud. Now, as per the Amendment rules, in case the books of account etc. are maintained on cloud and the service provider is located outside India, the company also needs to provide the name and address of the person in control of such books of account and other books and papers in India.

#### **4. The Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2022**

The Ministry of Corporate Affairs (MCA), vide its Notification No. G.S.R 662(E) dated August 29, 2022 has amended Companies (Appointment and Qualification of Directors) Rules, 2014 through which the Government has substituted the existing Form DIR-3 KYC and DIR-3-KYC web forms with new Form DIR-3 KYC and DIR-3-KYC web forms to align the same with MCA21 V3 portal. A new entry has also been inserted in the form to capture the 'details of the jurisdictional police station' in the address details of directors.

#### **5. The Companies (Registration of Charges) Second Amendment Rules, 2022 on signing of e-Forms etc.**

The Ministry of Corporate Affairs (MCA), vide its Notification No. G.S.R 664(E) dated August 29, 2022 has amended Companies (Registration of Charges) Rules, 2014. By these amendments a new rule 13 has been inserted to the Companies (Registration of Charges) Rules, 2014 dealing with 'Signing of charge e-forms by insolvency resolution professional or resolution professional or liquidator for companies under resolution or liquidation'. The new rule provides that the Form No.CHG-1, CHG-4, CHG-8 and CHG-9 shall be signed by the Insolvency resolution professional or resolution professional or liquidator for companies under resolution or liquidation, as the case may be and filed with the Registrar of Companies.

Further, the MCA has also substituted the existing Forms CHG-1, CHG-4, CHG-8, CHG-6 and CHG-9 with the new Forms on the MCA21 V3 portal.

#### **Note:**

***It may, however, be noted that Form CHG-6 is required to be signed by the Receiver or Manager or the person appointing such Receiver or Manager.***

#### **6. Companies (Acceptance of Deposits) Amendment Rules, 2022**

The Ministry of Corporate Affairs (MCA), vide its Notification No. G.S.R 663 (E) dated August 29, 2022 has amended Companies (Acceptance of Deposits) Rules, 2014 to the effect that every company which is liable to file Form DPT-3 shall also require to take a declaration from its Auditor in the said form, that the amount specified in 'Particular of deposits' and 'Particulars of liquid assets' is correct and in line with the relevant provisions of the Companies Act, 2013. Further, the particulars of Form DPT-3 and DPT-4 have been amended and have been substituted with new form DPT-3 and DPT-4 on the MCA21 V3 portal.

#### **7. The Companies (Corporate Social Responsibility Policy) Amendment Rules, 2022**

The Ministry of Corporate Affairs (MCA), vide its Notification No. G.S.R 715(E) dated September 20, 2022 has amended Companies (Corporate Social Responsibility Policy) Rules, 2014.

The synopsis of the amendments in rules are as follows:

- a. Every Company having any amount in its "Unspent CSR Account" in terms of any ongoing project as per Section 135(6) of the Companies Act 2013, shall constitute a CSR committee and comply with the provisions of sub-sections (2) to (6) of the Section 135;

- b. Earlier, CSR provisions once applicable in any financial year on a Company remained applicable for three consecutive financial years irrespective of the criteria provided under Section 135(1). The present amendment has omitted sub-rule (2) of rule 3. After omission of sub rule 2 of Rule 3, only a Company which fulfils the criteria provided under Section 135(1) is required to comply with the provisions of CSR.
- c. Allow Companies to undertake its CSR Activities either by itself or through any Company established under section 8 of the Act, or a registered public trust or a registered society, exempted under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of section 10 or registered under Section 12A and approved under Section 80G of the Income-tax Act, 1961 established by the company, either singly or along with any other company or having an established track record of at least three years in undertaking similar activities.
- d. Expenditure on impact assessment reports is now allowed at 2 per cent of total CSR expenditure instead of earlier 5 per cent, or Rs. 50 Lakhs, whichever is higher;
- e. Introduced the Revised format for the annual report on CSR activities required to be attached in the Board's Report.

## 8. Revision in the definition of "small company"

Ministry of Corporate Affairs (MCA) has vide its notification no. G.S.R 700(E) dated September 15, 2022 notified the Companies (Specification of Definition Details) Amendment Rules, 2022. These

Rules have amended the definition of small company [(Section 2 (85)] with effect from September 15, 2022, whereby the limit of paid-up capital and turnover for the small company has been increased to Rs. Four crore and Rs. Forty crore respectively.

Earlier, the definition of "small company" under the Companies Act, 2013 was revised by increasing the threshold for paid-up capital from "not exceeding Rs 50 lakh" to "not exceeding Rs 2 crore" and turnover from "not exceeding Rs 2 crore" to "not exceeding Rs 20 crore" effective April 01, 2021 vide notification no. GSR 92(E) dated February 01, 2021. This definition has, now, been further revised by increasing such thresholds for paid-up capital from "not exceeding Rs. 2 crore" to "not exceeding Rs. 4 crore" and turnover from "not exceeding Rs. 20 crore" to "not exceeding Rs. 40 crore".

### Note:

#### **1. Due to revision in the definition of small company, more companies will become entitled to the benefits available to small companies under Companies Act 2013, some of which are as under:**

- **No need to prepare cash flow statement as part of financial statement;**
- **Advantage of preparing and filing an Abridged Annual Return, as against a detailed Annual Return;**
- **Mandatory rotation of auditor not required;**
- **An Auditor of a small company is not required to report on the adequacy of the internal financial controls and its operating effectiveness in the auditor's report; and**

- ***Holding of only two board meetings in a year***
- 2. It may be noted that the definition of 'small company, shall not apply to: -**
- a) a holding company or a subsidiary company;***
  - b) a company registered under section 8; or***
  - c) a company or body corporate governed by any special Act.***



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## Important dates to remember

Particulars	Date
<b><u>Direct Taxes</u></b>	
Due date for filing TCS return for Quarter Ended September 2022	15.10.2022
Due date for filing Income tax Return for AY 2022-23 for specified taxpayers (where transfer pricing provisions are not applicable)	31.10.2022
Due date for filing Tax Audit Report for AY 2022-23 in case of taxpayers, to whom Transfer Pricing provisions are applicable	31.10.2022
Due date for filing Accountant's Report (Transfer Pricing Certificate) for AY 2022-23 in Form 3CEB	31.10.2022
Payment of monthly TDS and TCS for the month of October 2022	07.11.2022

### Disclaimer

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