



**The Malad
Chamber of
Tax Consultants**

**44th
YEAR**

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President's Communiqué

My Dear Professional Colleagues,

The **India Lok Sabha Election Results** will be declared on **4th June, 2024** and the Sensex is already responding to it. In 2024, **Mumbai Voter turnout** was **52.4%** - the second highest turnout since Liberalization in 1991. In 2019, it logged 55.4% which was the highest since 1991 but it paled in comparison to 70-80% turnouts in other parts of the country.

The word **Governance** comes from the Greek word “**Kubernaein**” and the Latin verb “**Gubernare**” which means “**to steer**”. We, as citizens, hope that India receives a **Strong and Stable Government** which provides accountable, transparent, equitable and efficient Governance for the next 5 years.

Shri Rajubhai Chokshi Oration Fund Lecture is scheduled to be held on **Sunday, 9th June, 2024** at the N G Hall Saraf College, Malad. The topics are:

- 1) Recent Amendments in Tax Audit Forms 3CA-3CB & 3CD and Changes in ITR for AY 24-25 by **CA Avinash Rawani**
- 2) Important Amendments to GST Laws applicable for the years 2029-20 and 2020-21 by **CA Janak Vaghani**.

The topics are very relevant and timely to help us prepare for the upcoming Income Tax Return filing & audit season as well as to face the ongoing GST Audits. I will request all the members to please participate and take benefit of this lecture as the eminent speakers are pioneers of the profession.

The Chamber successfully hosted a Third Part in the series “**Opportunities for Tax & Finance Professionals abroad – Australia**” in association with **Lions Club of (Mumbai) Walkeshwar & Foundation for Skill Development**. This webinar series was initiated with an intention to enable professionals to explore opportunities overseas and was delivered by **Speaker CA Rajat Shah** from **Brisbane, Australia** on **18th May, 2024**. The webinar followed in the success of the first two parts in the series - Dubai and UK.

As the nation awaits a relief from the brutal heat waves and anticipates an early onset of Monsoons, I would like to wish Eid Mukarak on the occasion of Bakri Eid.

CA Khyati B. Vasani

President

Request members please send your Mobile No. & Email ID to update list of life members. Please send message on 7039006655 or email to maladchamber@gmail.com

For Queries & Submission of Forms for Membership/Seminar please contact any of the following Office Bearers:

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Shri Raju Chokshi Oration Fund Lecture

Day & Date	Sunday, 9th June, 2024
Time	9.30 am to 10.00 am Breakfast and Registration. 10.00 a.m. to 1.00 p.m. Lecture
Topic	1) Recent Amendments in Tax Audit Forms 3CA-3CB & 3CD. Changes in ITR for AY 24-25 2) Important Amendments to GST Laws applicable for the years 2029-20 and 2020-21.
Venue	6th Floor, Room 623, Durgadevi Saraf Institute of Management Studies, Opp. Bajaj Hall S.V.Road, Malad West, Mumbai – 400 064.
Speakers	CA. Avinash Rawani (Income Tax) CA Janak Vaghani (GST)
Fees	Member: ₹ 150/- Non-Members: ₹ 300/-

DIRECT TAXES CIRCULARS AND NOTIFICATIONS, CRUCIAL UPDATES ISSUED BY CBDT/MINISTRY OF FINANCE

Compiled by CA Nitin Bhuta

Part I – Circulars

A. Circular No 06/2024 dated 23.04.2024

This is a significant update, Circular No 06/2024 dated 23.04.2024, which brings modifications to Circular No 3/2023 dated 28.03.2023. It's crucial as it pertains to the implications of PAN becoming mandatory as per Rule 114AAA of the Income Tax Act, 1961. The previous circular stated that PAN would be inoperative from 1st July 2023 until it becomes operative. This new circular alters that provision.

The CBDT received numerous complaints about notices of 'short deduction/collection' of TDS/TCS. These issues occurred during transactions where the PANs of the deductee/collectee were inoperative. In such cases, TDS/TCS was not collected at a higher rate but at the regular rates. As a result, the Department raised demands against most of the deductors/collectors while processing TDS/TCS statements u/s. 200A or u/s. 206CB.

In response to these grievances, the Board has taken significant steps to alleviate the situation. It has modified circular no 03/2023, stating that for the transactions entered up to 31.03.2024 and in cases where the PAN becomes inoperative (as a result of linkage with Aadhaar) on or before 31.05.2024, there shall be no liability on the deductor/collector to deduct/collect the tax u/s. 206AA/206CC, as the case may be. Instead, the deduction/collection, as mandated in other provisions of Chapter XVII-B or Chapter XVII-BB of the Act, shall be applicable, providing much-needed relief.

Readers, should the benefit of the above circular be available only with respect to transactions pertaining to the financial year ending 31st March 2024? If the Deductor/collector has paid such additional tax demands and revised their returns to discharge such tax demands raised as per Circular No 03/2023 dated 28.03.2023, then the benefit of such a circular may not be available.

Tax Auditor should exercise apt care while reporting the details/information of TDS/TCS under clause 34 of Form 3CD appropriately by considering the above beneficial circular and appropriate observations to be included in Form 3CA/3CB and/or Notes to accounts



forming part of Tax Audited Financial Statements as per the provisions of the Income Tax Act, 1961 and Income Tax Rules framed thereunder.

B. Circular No 07/2024 dated 25.04.2024

This significant circular, Circular No 07/2024 dated 25.04.2024, again extends the due date for electronic filing of Form 10A/10AB of the Income Tax Act, 1961, considering the difficulties reported by the taxpayers and/or other stakeholders.

CBDT by exercising their powers of extension u/s. 119 as summarized in the table below:

Form No	Extended Date	Extended Date	Extended Date	Extended Date	Extended Date
10A AY 22/23	31-08-2021 Cir No 12/2021 dt 25-06-21	31-03-2022 Cir No 16/2021 dt 29-08-21	25-11-2022 Cir No 22/2022 dt 01-11-22	30-09-2023 Cir No 06/2023 dt 24-05-23	30-06-2024 Cir No 07/2024 dt 25-04-24
10AB AY 22/23	NA	NA	30-09-2022 Cir No 08/2022 dt 31.03.22	30-09-2023 Cir No 06/2023 dt 24.05.23	30-06-2024 Cir No 07/2024 dt 25.04.24

It is further clarified in the circular that if any existing trust, institution or fund fails to file Form No. 10A for AY 22/23 within the due date as extended by CBDT circular No 06/2023 dated 24-05-2023 and subsequently applied for the provisional registration as a new trust, institution or fund and has received Form 10AC, it can also avail the option to surrender the said Form 10AC and apply for registration for AY 22/23 as existing trust, institution or fund in Form 10A within the extended time limits up to 30-06-2024.

Part II – Notifications

A. Series of Notification to notify several organizations/associations

Sr No	Notification No and date	Name of the Organisation/Associations
1	39/2024 dated 23.04.2024	<p>“Shree Ramanuj Kot Laxmi Venkatesh Mandir” managed by Shree Ramanuj Kot Trust, Indore, Madhya Pradesh (PAN: AAATR0970L) to be a place of historic importance and a place of public worship of renown throughout the state of Madhya Pradesh for the purposes of the said section.</p> <p>The Notification will be valid only for the renovation or repair of the “Shree Ramanuj Kot Laxmi Venkatesh Mandir” to the extent of ₹ 1,63,06,311/- (Rupees One Crore Sixty-Three Lakhs Six Thousand Three Hundred and Eleven only) and will cease to be effective after the said amount has been collected or on 31.03.2029, whichever is earlier.</p>
2	40/2024 dated 24.04.2024	<p>“Kerala Autorickshaw Workers Welfare Fund Scheme, Kollam” (PAN: AAATK3080E), a Board constituted by the Government of Kerala u/s. 10(46) of the Income Tax Act 161 from AY 24/25 to AY 28/29 with specific stipulations as notified.</p>
3	41/2024 dated 08.05.2024	<p>‘Tamil Nadu Electricity Regulatory Commission’ (PAN AAAGT0048J), a body constituted by the Government of Tamil Nadu, u/s. 10(46) of the Income Tax Act 161 from AY 18/19 to AY 22/23 with specific stipulations as notified.</p>



WHETHER COMPANY IS ENTITLED TO CLAIM ITC IN RESPECT OF EXPENSES INCURRED TOWARDS ISSUE OF IPO OR RIGHT ISSUE OR BUYBACK OF SHARES?

Compiled by CA Bhavin Mehta



1. The eligibility and condition for taking input tax credit is contained in Section 16 of the CGST Act, 2017. Sub-section (1) of section 16 provides “every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are **used or intended to be used in the course or furtherance of his business** and the said amount shall be credit to the electronic credit ledger of such person”.

The term “business” is defined under section 2(17) of the CGST Act, which is reproduced below:

(17) “business” includes –

- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
 - (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
 - (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
 - (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
 - (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
 - (f) admission, for a consideration, of persons to any premises;
 - (g) services supplied by a person as the holder of an office which has been accepted by him in the course of furtherance of his trade, profession or vocation;
 - (h) activities of a race club including by way of totalizator or a license to book maker or activities of a licensed book maker in such club; and
 - (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;
2. The definition of “business” is expansive and includes under its scope any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit, irrespective of the volume, frequency, continuity or regularity of such activity, and any activity in connection with or incidental or ancillary thereto. The definition of ‘business’ must be construed in a broad rather than a restricted sense. The issue of IPO, Right issue or buyback of shares is activities in relation to business. The Bombay High Court in the case of **Coca Cola India Pvt. Ltd. reported in 2009-TIOL-449-HC-MUM-ST** with respect to “business” observed as under:

The expression ‘Business’ is an integrated / continuous activity and is not confined restricted to mere manufacture of the product. Therefore, activities in relation to business can cover all the activities that are related to the functioning of a business. The term “business” therefore, in our opinion cannot be given a restricted definition to say that business of a manufacturer is to manufacture final products only. In a case like the present, business of assessee being an integrated activity comprising of manufacture of concentrate, entering in to franchise agreement with bottlers permitting use of brand name by bottlers promotion of brand name, etc. the expression will have to be seen in that context See (i) Pepsi Foods Ltd. vs. Collector 0 1996 (82) ELT 33, (ii) Pepsi Foods Ltd. vs. Collector 2003 (158) ELT 552 (SC) = (2003-TIOL-30-SC-CX).

3. The money raised through issue of IPO or Right issue is for the business of the Company. Similarly, buyback of shares is also for the business of the Company. The Hon'ble Supreme Court in the case of **Eastern Investment Ltd. vs. CIT reported in 1951 (20) ITR 1** observed as under:

“Most commercial transactions are entered into for the mutual benefit of both sides, or at any rate each side hopes to gain something for itself. The test for present purposes is not whether the other party benefited, nor indeed whether this was a prudent transaction which resulted in ultimate gain to the appellant, but whether it was properly entered into as a part of the appellants' legitimate commercial undertakings in order to indirectly facilitate the carrying on of its business”

From the above, it can be derived that expenses incurred towards issue of IPO, right issue or buy back of shares is activities in relation to business of the company.

4. Section 17 of the CGST Act, 2017 pertains to apportionment of credit and blocked credits. Sub-section (1) of section 17, where the goods or services are used partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax attributable to the purposes of his business. In the present case, expenditure incurred towards IPO issue, right issue or buyback of shares is for business of the company.
5. Sub-section (2) of section 17 provides that where the goods or services are partly used for effecting taxable supplies (including zero rated supplies) and partly for effecting **exempt supplies**, the amount of credit shall be restricted to so much of the input tax attributable to the taxable supplies including zero rated supplies.
6. Sub-section (3) of section 17 provides that the value of exempt supply shall include supplies on which the recipient is liable to pay tax on reverse charge basis, **transactions in securities**, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.
7. Transactions in securities are considered as exempt supply for the purpose of input tax credit. As per explanation to Rule 45 of CGST Rules, 2014, in the case of transaction in securities, the value of exempt supply is considered as 1% of the sale value of securities. The issue arises is whether initial issue of equity shares or subsequent issue of additional equity shares through rights or otherwise would be considered as transaction in securities.
8. In the opinion of author “transaction in securities” is applicable to securities which are already in existence and not during the process of securities coming into existence, such as initial public issue or right issue (additional issue of shares). IPO and Right issue is means of raising the capital of the Company. It is not the case of dealing or trading in securities. GST is consumption based tax. The Supreme Court in **All India Federation of Tax Practitioners vs. UOI reported in 2007 (7) S.T.R. 625 (S.C)**, observed that “service tax is VAT which in turn is both a general tax as well as destination based consumption tax in the sense that it is on commercial activities and is not a charge on the business but on the consumer and it would, logically, be leviable only on services provided within the country. Service tax is value added tax”. Therefore, disallowance of ITC on expenses incurred for raising capital of the company would indirectly amount to charge on business rather than on consumer, which is against the fundamental principles laid down by Supreme Court in **All India Federation tax Practitioners** (supra) and the OCED guidelines.
9. The buyback of shares amounts to redemption of share capital and cannot be considered as transaction in securities. The persons who off load the shares, for them it can be considered as transaction in securities and not for the company.

Conclusion: In the premises of above discussion, it can be derived that issue of IPO, right issue or buyback of shares by a company would not be considered ‘transaction in securities’. The company would be entitled to claim ITC in respect of expenses incurred towards issue of IPO, right issue or buyback of shares.



Opportunities for Tax & Finance professionals abroad- Australia in association with FFSD and Lion's club Walkeshwar

Disclaimer : Though utmost care is taken about the accuracy of the matter contained herein, the Chamber and/or any of its functionaries are not liable for any inadvertent error. The views expressed herein are not necessarily those of the Chamber. For full details the readers are advised to refer to the relevant Acts, Rules and relevant Statutes.

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