

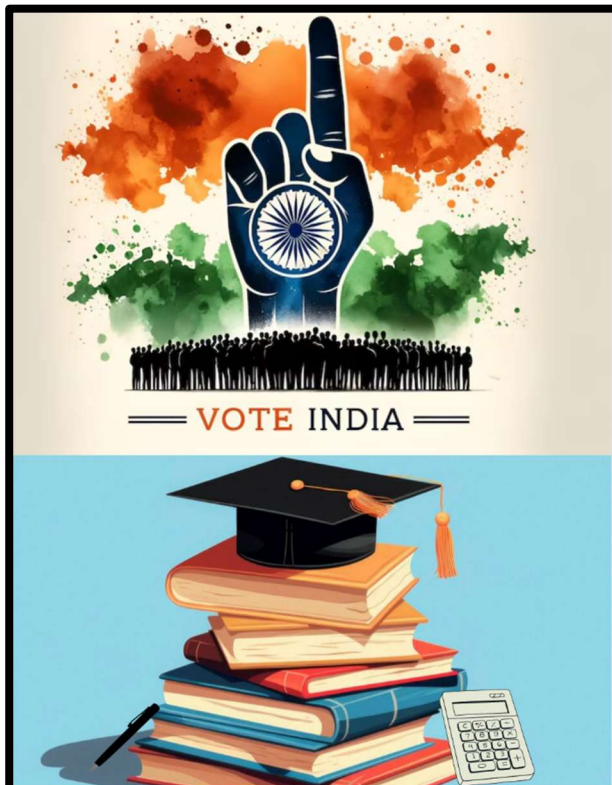


SPCM
LEGAL

SAMĀCĀRA

MAY

2024







*Lok Sabha
Elections
&
Chartered
Accountancy
examination*



SAMĀCĀRA – MAY 2024

EDITORIAL BOARD AND CONTRIBUTORS

			
CA. Suhas P. Bora	Adv. Sanket S. Bora	Adv. Abhay H. Bora	CA Disha M. Shah

			
CA. Rohan R. Nahar	CA. Siddhant A. Bora	CA. Prerna S. Bora	Mrs. Ruchi R. Bhandari



SAMĀCĀRA – MAY 2024

Team – SPCM and Associates

CA. Suhas P. Bora
CA. Pradeep M. Katariya
CA. Chetan R Parakh
CA. Manoj R. Jain
CA. Mehul Jain
CA. Tejal A. Jain
CA. Abhay P. Katariya
CA Prerna S. Bora
Ms. Deepali R. Shah
CA Rohan R. Nahar
CA. Vidhi S. Shah
CA. Neha L. Shah
CA. Nikita Maniyar-Bajaj
CA. Siddhant A. Bora
Mrs. Ruchi R. Bhandari
CA. Pratik Bagrecha
CA. Anand Shingvi
CA Prerna Surana

Team – SPCM Legal

Adv. Abhay H. Bora
Adv. Neetaa S. Bora
Adv. Sanket S. Bora
Adv. Vidhi Punmiya
Adv. Kirtika Jain
Adv. Unnati Thakkar
Adv. Ameya Das
Adv. Saukhya Lakade



SAMĀCĀRA – MAY 2024

INDEX

SR. NO.	PARTICULARS	PAGE NO.
1.	Editorial	05-07
2.	Glimpse of Event	08-08
3.	Income Tax, PF and ESIC due date calendar for the month of May, 2024	09-10
4.	GST due dates for the month May, 2024	11-12
5.	Section 45(4) of Income Tax Act - Applicability to a Real Estate Developer Firm.	13-19
6.	Gist of GST Notification	20-20
7.	GST Updates	21-21



SAMĀCĀRA – MAY 2024

EDITORIAL

Dear All,

As spring unfolds its vibrant hues, we find ourselves amidst a season ripe with growth and potential. In this May edition of our newsletter, we delve into the theme of professional success, exploring the diverse pathways that lead us there.

In today's ever-evolving landscape, success transcends mere destinations; it embodies the resilience we exhibit in adversity, the adaptability amidst change, and the unwavering commitment to perpetual growth and learning.

Within these pages, we celebrate the ethos of innovation, where creativity thrives, and novel ideas take flight. Innovation, we affirm, isn't confined to groundbreaking inventions; it's about challenging norms, thinking expansively, and devising ingenious solutions to intricate challenges.

Furthermore, we underscore the pivotal role of diversity and inclusion in propelling organizational triumph. By embracing a multitude of perspectives and experiences, we cultivate an environment of belonging, where each individual feels empowered to contribute their distinct talents.

Moreover, we shed light on the transformative influence of mentorship and networking in shaping our professional trajectories. Mentors offer invaluable guidance and insights drawn from their own journeys, while networking paves the way for new connections and opportunities that propel our careers forward.

As we traverse the path to success, let us not forget that it's a collective voyage, not a solitary odyssey. Through mutual support, knowledge-sharing, and uplifting one another, we forge a brighter future for ourselves and our communities.

In the midst of our professional pursuits, let us remain attuned to the broader socio-political canvas. This May brings a historic event with the national elections, where citizens exercise their democratic right to shape the nation's future. Additionally, April witnessed record-breaking GST collections, emblematic of our economy's resilience and dynamism.

At SPCM, we recently organized a seminar for students on the preparation of Income Tax Returns for Individual Assesses and the use of WINMAN Software, led by our esteemed partner, CA Manoj Jain.

These milestones underscore the intrinsic link between economic policies and our professional endeavors, emphasizing the importance of staying informed and engaged with developments that impact our work and lives.

May this newsletter serve as a beacon of inspiration and empowerment as you embark on your unique journey towards success. Together, let us embrace the boundless possibilities that lie ahead and seize the opportunities awaiting us.

As we contemplate the myriad facets of professional triumph and the events shaping our world, let us heed the timeless wisdom of Ralph

Waldo Emerson: "*Do not follow where the path may lead. Go instead where there is no path and leave a trail.*" Together, let us embark on the journey towards success with optimism, determination, and an unwavering belief in our capacity to effect positive change.

Wishing you all continued growth, prosperity, and fulfillment in your professional endeavors.

Thanking You.

With Warm Regards,



CA. Suhas P. Bora
Founder Partner,
SPCM and Associates,
Chartered Accountants



GLIMPSE OF EVENT

Lecture on Analysis of Payment u/sec 43B Of Income Tax Act for payments to MSME Sector delivered to members of Clothing Manufacturers Association of India, Western Zone on 11.04.2024 at 4 pm at Shantai Hotel, Pune.





DUE DATES

Income Tax, PF and ESIC due date calendar for the month of May 2024:

DATE	DUE DATE FOR
07-05-2024	<ul style="list-style-type: none"> • Deposit of Tax deducted/collected for the month of April, 2024.
15-05-2024	<ul style="list-style-type: none"> • Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194-IB, 194M and 194S in the month of March 2024. • Quarterly statement of TCS deposited for the quarter ending March 31, 2024. • Payment of ESI Contribution for the month of April, 2024. • Payment of PF for the month of April, 2024.
30-05-2024	<ul style="list-style-type: none"> • Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB, 194M, 194S in the month of April, 2024. • Quarterly TCS certificate in respect of tax collected by any person for the quarter ending March 31st, 2024.
31-05-2024	<ul style="list-style-type: none"> • Quarterly statement of TDS deposited for the quarter ending March 31, 2024



DATE	DUE DATE FOR
	<ul style="list-style-type: none"> • Quarterly statement of tax deposited in relation to transfer of virtual digital asset under section 194S to be furnished by an exchange for the quarter ending March 31, 2024. • Return of tax deduction from contributions paid by the trustees of an approved superannuation fund. • Due date for furnishing of statement of financial transaction (in Form No. 61A) as required to be furnished under subsection (1) of section 285BA of the Act respect of a Financial Year 2023 -24. • Application for allotment of PAN in case of non-individual resident person, which enters into a financial transaction of Rs. 2,50,000 or more during FY 2023-24 and hasn't been allotted any PAN. • Statement in Form no. 10 to be furnished to accumulate income for future application under section 10(21) or section 11(1) (if the assessee is required to submit return of income on or before July 31, 2024) • Statement of donation in Form 10BD to be furnished by reporting person under section 80G(5)(iii) or section 35(1A)(i) in respect of the financial year 2023-24. • Certificate of donation in Form no. 10BE as referred to in section 80G(5)(ix) or section 35(1A)(ii) to the donor specifying the amount of donation received during the financial year 2023-24.

GST due dates for the month May 2024: -

DUE DATE	RETURN	PERIOD	DESCRIPTION
10 th May	GSTR-7 (Monthly)	April'24	Summary of Tax Deducted at Source (TDS) and deposited under GST laws.
10 th May	GSTR-8 (Monthly)	April'24	Summary of Tax Collected at Source (TCS) and deposited by E-commerce operators under GST laws.
11 th May	GSTR-1 (Monthly)	April'24	Summary of outward supplies where turnover exceeds Rs.5 crore or have not chosen the QRMP scheme for the quarter of April-June 2024.
13 th May	Furnishing Invoices in IFF Facility (Quarterly)	April-June 2024	Taxpayers who have opted for the Invoice Furnishing Facility (IFF) and choose to upload B2B outward supply invoices for first two months of the quarter. The B2B invoices relating to last month of the quarter are too uploaded while filing GSTR – 1 along with B2C invoices of entire quarter.



DUE DATE	RETURN	PERIOD	DESCRIPTION
13 th May	GSTR-6	April'24	Details of ITC received and distributed by ISD.
13 th May	GSTR-5 (Monthly)	April'24	Summary of outward taxable supplies & tax payable by a non-resident taxable person.
20 th May	GSTR-3B (Monthly)	April'24	Summary of outward supplies, ITC claimed, and net tax payable for taxpayers with turnover more than Rs.5 crore in the last FY or have not chosen the QRMP scheme for the quarter of April-June 2024.
20 th May	GSTR-5A (Monthly)	April'24	Summary of outward taxable supplies and tax payable by OIDAR.
25 th May	GST Challan for all Quarterly filers	April -June 2024	GST Challan Payment if no sufficient ITC for April 2024, (for all Quarterly Filers).



INCOME TAX

Section 45(4) of Income Tax Act - Applicability to a Real Estate Developer Firm

The interpretation of Section 45(4) of the Act becomes crucial when a retiring partner receives an amount exceeding their capital balance at the time of retirement. Let's delve into the nuances.

When a retiring partner's capital balance stands at Rs. 1 crore upon retirement, and they receive an additional 70 lakhs in monetary form, the amended Section 45(4) is triggered. At the heart of this scenario lies the question of the nature of this surplus payment, which could either signify a share of the firm's goodwill or a revaluation of its assets.

However, in cases where the firm holds immovable property as "stock in trade" and lacks capital assets in its balance sheet, such as in real estate development, determining the true nature of this surplus becomes contentious.

Let's scrutinize the notion of goodwill. One school of thought is that the excess payment made to a retiring partner over and above the capital balance is to be deemed as "Goodwill". For this proposition reliance is placed on Example 3 provided by CBDT in its **Circular no.14 dated 2nd July, 2021**, where the CBDT has clarified that the excess amount paid being Goodwill shall not be allowed as a deduction to the firm. However, this assertion lacks factual grounding for several reasons:

1. Goodwill cannot be presumed without a partnership agreement explicitly stating or agreeing to such excess payments for goodwill acquisition.

2. Consideration should be given to whether the firm had engaged in business activities before the partner's retirement. In cases where the firm holds undeveloped land, goodwill cannot exist as the firm hasn't conducted business previously.
3. CBDT's Example 3, which values goodwill, does not align with scenarios where no goodwill is established between partners, and the excess payment reflects the asset appreciation of the firm's stock.

The Supreme Court's decision in A.L.A. Firm v. Commissioner of Income Tax (1991) 189 ITR 285 further supports this stance, wherein the SC has observed that when a partner retires what he gets is the share of unearned increase in the value of properties held by the firm. This means that even if the land is held as "Stock in trade" yet in the commercial world while retiring the retiring partner would seek his share of increased value of such stock in trade. Hence, to call such an excess payment as a Goodwill is not correct. Ideally in such a situation the fact of increased value in the stock in trade (in this case land) be documented by the Partners to avoid any other interpretation.

Moving on to the tax implications, the classification of the gain as either long-term or short-term remains ambiguous under Section 45(4). However, Rule 8AA provides a framework for determining this classification.

For the sake of convenience, the relevant portion is reproduced hereunder:

(5). In case of the amount which is chargeable to income-tax as income of specified entity under sub-section (4) of section 45 under the head – "Capital gains",-

(i) the amount or a part of it shall be deemed to be from transfer of short term capital asset, if it is attributed to,-

- *(a) capital asset which is short term capital asset at the time of taxation of amount under sub-section (4) of section 45; or*
- *(b) capital asset forming part of block of asset; or*
- *(c) capital asset being self-generated asset and self-generated goodwill as defined in clause (ii) of Explanation 1 to sub-section (4) of section 45; and*

(ii) the amount or a part of it shall be deemed to be from transfer of long term capital asset or assets, if it is attributed to capital asset which is not covered by clause (i) and is long term capital asset at the time of taxation of amount under sub-section (4) of section 45.

Therefore, in our opinion the applicability of para 5(i)(c) of Rule 8AA is ousted and the Rule 8AA(5)(ii) will apply as a residual clause. The said residual clause states that what is not short-term capital gain is a long-term capital gain. This is in line with the definition of the Short term capital asset as defined in section 2(42A) of the Income Tax Act read with Section 2(29AA) of the Income Tax Act [renumbered from Section 2(29A) by Finance Act ,2021 . Again the definition of Long Term Capital Asset in the Act is a residual clause.

As per the said Section 2(29AA) of Income Tax Act, 1961, unless the context otherwise requires, the term “long-term capital asset” means a capital asset which is not a short- term capital asset.

Therefore, upon analysis, it's evident that none of the situations outlined in Rule 8AA(5)(i) apply to scenarios where a partner retires against monetary compensation without any capital assets held by the firm.

Consequently, Rule 8AA(5)(ii) emerges as the residual clause, defining such gains as long-term capital gains.

“Capital Asset” for amended 45(4):

The next question to be considered is whether the firm is transferring any “asset” so as to be liable to tax under section 45(4) of the Act.

Regarding the transfer of assets under Section 45(4), while the focus has shifted from taxing gains on capital asset transfers to the retiring partner (now under Section 9B), the amended Section 45(4) still holds significance. Notably, it taxes excess payments over the retiring partner's capital balance, treating the partner's capital balance as the cost basis for computing capital gains.

This interpretation underscores the partner's rights in the firm as the transferred asset, emphasizing that the gain arises from relinquishing these rights, classified as capital gains rather than business income.

On the other hand, section 45(4) has been re casted by making following two important changes:

- a. Now even if no capital asset is transferred but excess money is paid over and above the capital balance of the retiring partner it is made taxable under the head capital gain. Here the actual gain is not to the firm, but it is to the retiring partner since he is receiving more than the capital invested. However, still the firm is liable to pay the said tax for such income of partner, as a reverse charge.
- b. The computation of capital gain u/s 45(4) is not based on the cost of transfer of any asset but on the basis of capital balance of the retiring partner as is evident from the formula given for computation in the said provision. Thus, the calculation of 45(4) has deviated from the

cost of acquisition of capital asset to capital balance of partner being treated as a cost.

We have to ask ourselves as to what is the capital asset being transferred where the retiring partner is paid more than the capital balance invested by him. The only answer which comes to my mind is that it's the right of the retiring partner which is getting extinguished and hence, the legislature has treated the capital balance of such a partner as a cost in the formula provided for computation and also treated it as capital gain. **This right in partnership is a "property" of the retiring partner as held by various courts and is a settled issue.**

The aforesaid chargeability is enacted under the head "capital gain" only because the legislature is aware that the rights of a partner in a partnership property is a capital asset and excess payment to a retiring partner is classified as a "capital gain" and not "business income".

It is also to be noted that where the firm is transferring the capital asset the transaction is covered in section 9B also being the gain on difference between cost of such asset and fair market value. However, the excess money paid over and above the capital balance is not covered in section 9B only because it's not a transfer of any asset by the firm.

Thus, where excess amount is paid to the retiring partner, the asset being transferred is right of retiring partner in the firm and it belongs to the retiring partner and not to the firm.

Period of Holding:

Now as a natural corollary the period of holding of such "property" (rights in partnership) is to be determined from the date when the retiring partner became a partner. This means that if the partner had become the partner three years back then such gain is a long-term capital gain and if he



became a partner within 3 years then such a gain is a short-term capital gain.

Deduction to Firm

Now, having opined that the excess payment is connected to the increased value of the land due to approvals received against cost, and having paid tax on the said excess amount, can one say that the firm will not be entitled to deduction of the said excess amount paid on the ground that it's not covered in section 48(iii) of the Act. Even though section 48(iii) allows deduction to the firm only where it holds capital asset, yet in our opinion the said excess amount paid to retiring partner over and above the capital balance is allowable as normal business expenditure to the firm under the head "Profits and gains from business or profession". My opinion is based upon the following reason:

1. As discussed above the capital gain tax paid by the firm is actually a capital gain of the retiring partner and the firm is merely a chargeable entity under the reverse charge. For the firm the said excess amount paid to the retiring partner is actually a business expense as without paying the said compensation the retiring partner will not retire thereby creating an impasse. As also discussed, it's a premium paid for the increased value of the land.
2. Secondly, section 48(iii) which provides for such deduction is applicable only in the case of capital asset held by the firm and not where the firm is holding a stock in trade. Where the firm only has stock in trade one has to see the provisions of Chapter IV-D relevant to PGBP and not Chapter IV-E relevant to Capital Gain to determine whether the said amount paid to partner is an allowable expense or not.

3. **There is another school of thought that since no amendment is brought under the head Profits and Gain from Business or profession, no deduction of excess amount paid to retiring partner will be allowed.** However, in our opinion Section 37(1) is wide enough to include all expenses paid for the purpose of business. It's an enabling clause and there is no provision introduced which refuses to allow such a claim of business expense on which tax is paid by the firm.

The provisions of section 48(iii) do not make any mention of non-allowability under section 37(1) nor can it do so. One can further refer the decision of Mumbai ITAT in the case of **Kamakshi Land Developers & Associates bearing ITA no. 6722/Mum/2008 order dated 21/04/2010** for the decision on the allowability of compensation to a retiring partner. One can also refer to **Kantilal and Sons [1985] 14 ITD 388 (Mum)** in further support of the said opinion.

In essence, navigating Section 45(4) requires a meticulous examination of partnership dynamics, asset holdings, and tax implications to arrive at a comprehensive understanding of its provisions.



GST

GIST OF GST NOTIFICATION

NOTIFICATION NO.	DATE	SUBJECT / HIGHLIGHTS
09/2024-Central Tax	12-04-2024	CBIC extended the due date for filing of FORM GSTR-1 till 12 th April 2024, for the month of March 2024.
08/2024-Central Tax	10-04-2024	CBIC extended the timeline for implementation of Notification No. 04/2024-CT dated 05.01.2024 from 1st April, 2024 to 15th May, 2024. The Notification issued for special procedure to be followed by a registered person engaged in manufacturing of certain goods.
07/2024- Central Tax	08-04-2024	CBIC provided waiver of interest for specified registered persons in the state West Bengal for specified tax periods.



GST UPDATES

1. Auto-populate the HSN-wise summary from e-Invoices into Table 12 of GSTR-1.

- a) GSTN is pleased to inform that a new feature to auto-populates the HSN-wise summary from e-Invoices into Table 12 of GSTR-1 is now available on the GST portal. This allows for direct auto-drafting of HSN data into Table 12 based on e-Invoice data.
- b) Please note that the HSN-wise summary data auto-populated into Table 12 is intended for your convenience. Please ensure that you reconcile the data with your records before its final submission.
- c) Any discrepancies or errors should be manually corrected or added in Table 12 before final submission.

2. Advisory on Reset and Re-filing of GSTR-3B of some taxpayers.

This has reference to the facility for re-filing of GSTR-3B for some of the taxpayers. It was noticed that there were discrepancies in the returns of some taxpayers during the filing process between the saved data in the GST system and actually filed data in the fields of ITC availment and payment of tax liabilities. The matter was examined and deliberated by the Grievance Redressal Committee of the GST Council and as a facilitation measure the Committee decided that these returns shall be reset, in order to give opportunity to such taxpayers to correct the discrepancy.

You may reach out to your jurisdictional tax officer or may raise ticket of GST grievance redressal portal, in case you face any difficulty in re-filing of such GSTR-3B.



THANK YOU!

DISCLAIMER

While every care has been taken in the preparation of this “Samācāra” to ensure its accuracy at the time of publication, SPCM & Associates and/or SPCM Legal assumes no responsibility for any errors which despite all precautions, may be found therein. Neither this alert nor the information contained herein constitutes a contract or will form the basis of a contract. The material contained in this document does not constitute/ substitute professional advice that may be required before acting on any matter. All images, pictures, logos and trademarks appearing in the “Samācāra” are property of their respective owners.