

HARBINGERTM

Updates on regulatory changes affecting your business

January 2019



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INCOME TAX



Deposits made under Senior Citizen Welfare Fund during FY 2018-19 shall bear an interest rate of 7.9%

Union Budget 2018 brought several tax benefits for the senior citizens. These included increase in tax exemption limit for interest income from banks and post offices from Rs. 10,000 to Rs. 50,000 and increase in tax break on health insurance and medical expenditure under sections 80D and 80DDB.

Both these would give a big relief to this category of tax payers as most senior citizens derive most of their income from bank Fixed Deposits and post office schemes.

On 6th December, 2018 the Ministry of Finance vide Notification No. 13/20/2014 notified that deposits made under the Senior Citizens Welfare Fund, shall with effect from 1st April, 2018 to 31st March, 2019, bear interest at 7.90%.

The Ministry of Finance (Department of Economic Affairs) had announced this scheme on 18th March, 2016 vide Notification No. G.S.R. 322(E).

GOODS & SERVICE TAX



Ministry of Finance notifies the recommendations of 31st GST Council

The 31st GST Council meeting was held on 22nd December, 2018.

In the meeting, the Council has proposed various relief to the taxpayers, which included, reduction of GST rates on goods and services, extension of due date for filing of Annual return and GST Audit.

The Ministry of Finance notified the recommendations of the council vide Notification No.24/2018-Central Tax (Rate) dated 31st December, 2018.

The key recommendations were:

1. New Return Filing System

The CBIC has already issued the draft mechanism for new return filing system. This new return filing system shall be introduced on trial basis from 1st April, 2019, which shall be made mandatory from 1st July, 2019.

2. Extension of due dates of various returns

- a) The GST Council had made recommended the extension of due date for filing of GST Annual Return in Form GSTR-9 or GSTR-9A and GST Audit in Form GSTR-9C for financial year 2017-18. The revised due date shall be 30th June, 2019.
- b) Due date for filing of return in GSTR-8 by e-commerce operators for the months of October, 2018 to December, 2018 shall be extended to 31st January, 2019.
- c) Due date for filing details of goods or capital goods sent to job worker and received back in Form GST ITC-04 extended to 31st March, 2019 for the period July, 2017 to December, 2018.

3. Late fee waived-off

The GST Council had made the recommendations for waiver of late fees for all taxpayers in case of GSTR-1, GSTR-3B and GSTR-4 for the months and quarters comprising the months of July, 2017 to September, 2018. However, waiver of late fees would be available only when return is furnished between 22nd December, 2018 and 31st March, 2019. If any late fees are paid by the taxpayers for late filing of return, he shall not be eligible to get the waiver of such fees by way of credit in the electronic credit ledger.

4. GST Refund

Now, there is no need to physically visit a tax office for submission of a refund application. GST Council approves of the online facility which would enable the taxpayer to upload all the required documents on GST portal to claim refund of tax.

5. Creation of Centralized AAAR

The GST Council had recommended the creation of Centralized AAAR to deal with the conflicting decisions made by two or more State AAAR on the same issue.

6. Reduction in GST rates of goods

- a) Rates reduced from 28% to 18% on certain electronic goods, which include, monitors, television (up to 32 inches), digital cameras, video cameras, video games, pulleys, transmission shafts, cranks, gear boxes, etc.
- b) Rates reduced from 28% to 5% for parts and accessories for carriage of disabled person.
- c) Rates reduced from 18% to 12% for certain goods, i.e., cork roughly squared or debagged, articles of natural, cork agglomerate cork, etc.
- d) Rates reduced from 18% to 5% for marble rubble.
- e) Rates reduced from 12% to 5% for natural cork, walking sticks, fly ash blocks, etc.

- f) Renewal energy devices and parts thereof to be taxed at 5%.
- g) Certain goods exempted from tax, i.e., goods supplied by nominated agencies to exporters of gold jewellery, proceeds received by government from auction of gifts, etc.
- h) Rates reduced to 'nil' for certain goods, i.e., music books, vegetables (cooked, uncooked or frozen), preserved vegetables, etc.

7. Reduction in GST rates of services

- a) GST rates on cinema tickets have been reduced from 28% to 12% for tickets price up to Rs. 100.
- b) GST rates on cinema tickets have been reduced from 28% to 18% for tickets price more than Rs. 100.
- c) Third party insurance premium of motor vehicle shall be chargeable to GST at 12% instead of 18%.
- d) Certain services shall be exempt from tax, i.e., services by bank to Jan Dhan account holders, services by GTAs to government dept., services by Govt. to their undertakings or PSUs by way of guaranteeing loans taken by financial institutions, etc.

RESERVE BANK OF INDIA



Govt tightens selling norms for e-commerce firms

The Ministry of Commerce and Industry on 28th December, 2018 said that e-commerce companies running market place platforms cannot sell products on their platform through companies where they hold an equity stake.

In another decision, the government aimed to put a cap of 25 % on the inventory that a marketplace entity or its group companies can purchase from one vendor. "E-commerce entity providing a marketplace will not exercise ownership or control over the inventory i.e. goods purported to be sold. Such an ownership or control over the inventory will render the business into inventory based model. Inventory of a vendor will be deemed to be controlled by e-commerce marketplace entity if more than 25% of purchases of such vendor are from the marketplace entity or its group companies," said the ministry statement.

As per the FDI policy on e-commerce sector, while 100% FDI under automatic route is permitted in marketplace model of e-commerce, FDI is not permitted in inventory based model of e-commerce.

Besides e-commerce marketplace entity will also be now required to furnish a certificate along with a report of statutory auditor to Reserve Bank of India, confirming compliance of all the guidelines by September 30 every year for the preceding financial year.

RBI Launches Payment Survey in Six Cities

The Reserve Bank of India (RBI) will capture payment habits of individuals in six cities, including four metropolitan towns.

For the purpose, the central bank has launched a 'Survey on Retail Payment Habits of Individuals (SRPHi)'. The survey will cover a sample of 6,000 individuals from various socio-economic backgrounds across Delhi, Mumbai, Kolkata, Chennai, Bengaluru & Guwahati.

The RBI said in a press release on 26th December, 2018 that, "the survey seeks qualitative responses from individuals on their payment habits".

"The findings may provide some idea about awareness and usage habits of digital payment products", it added.

It said 'Sigma Research & Consulting' has been engaged to conduct the fieldwork of the survey on behalf of the RBI.

Those not approached by the agency can also participate in the survey by sending their responses in a prescribed format available on the website of RBI.

MINISTRY OF CORPORATE AFFAIRS



MCA delegates its powers and functions related to Alteration of Articles to Regional Directors

The Ministry of Corporate Affairs (MCA) vide Notification dated 18th December, 2018 delegated its powers and functions vested in the National Company Law Tribunal (NCLT) under section 2(41) & section 14(1) of the Companies Act, 2013 to the Regional Directors at Mumbai, Kolkata, Chennai, New Delhi, Ahmedabad, Hyderabad and Shillong.

Section 2(14) of the Act is definition of the term 'Financial Year' & deals with change in the financial year in certain cases.

Section 14(1) of the Act deals with alteration of Articles of Association resulting into conversion of a private company into a public company or a public company into a private company.

This notification came into force with effect from 20th December, 2018.

ECONOMICS



Indian economy on track to maintain high growth rate

On 2nd January, 2019, the Finance Ministry in the year end review 2018, said that, the Indian economy is projected to be the fastest-growing major economy in the current and upcoming fiscal 2019-20, while emphasising that the government has taken several steps to boost investor's confidence.

According to a recent World Bank report, India has improved its ranking in the Ease of Doing Business to 77th in 2018.

The average growth of the Indian economy between 2014-15 and 2017-18 was 7.3 per cent, fastest among the major economy.

On inflation, it said that the country witnessed moderation during 2017-18 and this progress is a result of a number of initiatives & reforms undertaken by the government.

SUMMARY OF IMPORTANT TAX JUDGEMENTS

Unless otherwise stated, the sections mentioned hereunder relate to the Income Tax Act, 1961

Sr No.	Tribunal/Court	Section/Code	Nature	Case Law
1	ITAT Mumbai	Section 2(47)	Conversion of CCPs into equity shares couldn't be considered as transfer within meaning of sec. 2(47).	Periar Trading Company (P) Ltd. Vs. ITO
2	ITAT Mumbai	Section 10(23), 11, 12A, 13	No denial of exemption on incurring part of exp. towards non-objects if sec. 13 conditions not violated by BCCI	Board of Control for Cricket in India Vs. ITO
3	ITAT Mumbai	Section 10(38), 68	No denial of exemption in absence of proof that assessee introduced unaccounted money to earn LTCG	Ramprasad Agarwal Vs. ITO
4	ITAT Pune	Section 37(1)	Expenses allowable if assessee was responsible for warranty towards engines supplied to IAF manufactured by Russian Company	Indo Russian Aviation Ltd. Vs. ACIT
5	ITAT Jaipur	Section 48, 54B	No sec. 54B exemption if new agricultural land was purchased prior to sale of old agriculture land	Mathur Lal Vs. ITO

DISCUSSION ON INCOME TAX



1. Periar Trading Company (P.) Ltd. Vs. ITO

- a. The assessee-company held 51,634 number of cumulative and compulsory convertible preference shares (CCPS) of Company-TL. As per the terms of the scheme, CCPS of a series would compulsorily and automatically get converted into one fully paid-up equity share. Accordingly, the assessee was allotted one equity share of TL for every preference share held in TL.
- b. Assessing Officer (AO) held that the conversion of CCPS into equity shares was transfer within the meaning of the definition provided in section 2(47)(i) and that profit accrued from such conversion was taxable as capital gain.
- c. CIT(A) upheld order of AO. Aggrieved-assessee filed the instant

appeal before the ITAT.

Held:-

- a. The CBDT vide Circular F. No. 12/1/84-IT(AI) dated 12-5-196 has clarified the position that where one type of share is converted into another type of share, there is no transfer of capital asset within the meaning of section 2(47).
- b. The present case wasn't a case where one form of share had been exchanged, bartered, swapped for other form of share. In the instant case, one type of share had been converted into other type and the earlier type of share had ceased to exist.
- c. Thus, there was no exchange of any share as the pre-conversion security had ceased to exist. Hence, it was evident that mere conversion of one type of share to other type of share would not be a transfer of a capital asset within the meaning of section 2(47).
- d. Therefore, conversion of CCPS into equity shares couldn't be treated as 'transfer' within the meaning of section 2(47) and, hence, the addition was to be deleted.

2. Board of Control for Cricket in India Vs. ITO

- a. The assessee-charitable institution was granted registration under section 12A. It filed its return of income declaring nil income.
- b. Assessing Officer (AO) denied its entire claim for exemption under

section 11 on grounds that a part of expenditure incurred by assessee was not for objects of trust.

- c. The CIT(A) held that only the income which was not applied to charitable purposes in India was not covered by section 11. Thus, he allowed assessee's claim for exemption under section 11 to the extent of income applied towards charitable objects.
- d. Aggrieved-revenue filed the instant appeal before the ITAT.

Held:-

- a. A reading of section 11(1)(a) makes it clear that exemption under section 11 is allowable to the extent of income derived from property held for charitable or religious purposes and applied for charitable or religious purposes.
- b. Thus, the assessee was entitled to claim exemption of income to the extent it was applied for charitable purpose. Of-course, the provisions of section 11 are subject to the conditions/exceptions provided under section 13. However, in the present case, there was no allegation by the AO that the assessee had violated any of the conditions of section 13.
- c. Therefore, the contention of department, that assessee's claim of exemption under section 11 had to be disallowed entirely, was not acceptable.

- d. Hence, the assessee's claim of exemption under section 11 was allowable to the extent assessee had applied such income for charitable purposes.

3. Ramprasad Agarwal Vs. ITO

- a. Assessing Officer received information from DGIT (Inv.), Kolkata that some companies were engaged in issuing penny stocks for which there were large number of beneficiaries claiming bogus long-term capital gain.
- b. Assessing Officer (AO), based on said information, found that assessee was one of beneficiaries of said racket and, thus long-term capital gain from sale of shares of a company declared by assessee and claimed as exempt income under section 10(38) was treated by AO as bogus and added said amount to total income of assessee under section 68.

Held:-

- a. Assessee had produced relevant record to show allotment of shares by company on payment of consideration by cheque. All entries were part of bank account of assessee and assessee dematerialized shares in D-mat account.
- b. Addition made by the AO was based on mere suspicion and surmises without any cogent material to show that the assessee had brought back his unaccounted income in the shape of long-term capital gain.

- c. Assessee had brought all the relevant material to substantiate its claim that transactions of the purchase and sale of shares were genuine.
- d. Since AO failed to bring any material on record to show that the assessee had paid over and above the purchase consideration, it couldn't be held that the assessee had introduced his own unaccounted money by way of bogus long-term capital gain. Therefore, impugned addition was liable to be deleted.

4. Indo Russian Aviation Ltd. Vs. ACIT

- a. The assessee was engaged in the business of trading in Aircraft parts and engines. It entered into a tripartite agreement with a Russian Co. (UFA) and Indian Air Force (IAF) in terms of which assessee had to supply engines to IAF manufactured by UFA.
- b. Assessee filed its return claiming deduction of warranty expenses in respect of engines supplied to IAF. Assessing Officer (AO) rejected said claim holding that assessee was working as dealer of UFA and thus warranty expenses were not attributable to it.
- c. CIT(A) confirmed said disallowance. Aggrieved- assessee filed the instant appeal before the ITAT.

Held:-

- a. As per understanding between the parties, the claim of customer during warranty period has to be reimbursed to the assessee and where the customer carried out the repairs during warranty period, then the assessee had to refund expenses borne by the customer.
- b. In other words, though the assessee was not manufacturing or refurbishing the engines but it had to bear the cost of warranty expenses, wherein if within stipulated period any defect was found in the engines, then the same would be reimbursed by third party to the Contract, i.e., UFA.
- c. It couldn't be held that merely because liability had not been discharged by assessee and was being pursued for reimbursement from the Russian Co. would make the claim of assessee as not allowable.
- d. In view of fact that as per terms of agreement, warranty in respect of engines supplied to IAF was responsibility of assessee though to be discharged jointly by UFA, impugned order passed by AO rejecting assessee's claim was to be set aside.

5. Mathur Lal Vs. ITO

- a. The assessee entered into an agreement to sell his agricultural land on 29-12-2011 and received a part of sale consideration.

- b. Subsequently, another agreement was executed for sale of said land on 11-6-2013 and, therefore, the first agreement was no more in existence.
- c. Assessee filed his return of income claiming deduction under section 54B in respect of the agricultural land purchased in year 2012 vide agreement dated 16-5-2012.
- d. The revenue authorities rejected assessee's claim on the ground that deduction under section 54B of the Income-tax Act, 1961 ('Act') is allowable only if the agricultural land is purchased after the sale of existing agricultural land. However, in the instant case, agricultural land was purchased in year 2012, i.e., prior to sale of existing agricultural land.
- Held:-**
- a. The provisions of section 54B of the Act set out the conditions for allowing the deduction in respect of the capital gain arising from transfer of agricultural land if the assessee has purchased within a period of two years, any other land for being used for agricultural purposes.
- b. Hence, the Legislature has not intended to allow the claim in respect of the land purchased prior to date of sale of original asset as in the case of deduction under sections 54 and 54F of the Act.
- c. Further, it was not the case of the assessee that sale deed was executed on the basis of the first agreement dated 29-12-2011 as the assessee himself had declared the transfer of the land in question vide agreement dated 11-6-2013.
- d. Therefore, it was held that the land was purchased by the assessee vide agreement dated 16-5-2012 which was prior to the sale declared by the assessee vide agreement dated 11-6-2013. Consequently, no exemption shall be allowable under section 54B of the Act.

Note: The judgments should not be followed without studying the complete facts of the case Law.

HARBINGER™

Updates on regulatory changes affecting your business

DATE CHART FOR THE MONTH OF JANUARY, 2019

(Compliances are for the previous month unless otherwise stated)

January 2019

Sun	Mon	Tues	Wed	Thurs	Fri	Sat
		1	2	3	4	5
6	7 Monthly TDS Payment	8	9	10	11 GSTR-1 (T/O>1.5 Crores)	12
13	14	15 1) Provident Fund Payment. 2) ESIC Payment.	16	17	18	19
20 GSTR-3B	21	22	23	24	25	26
27	28	29	30	31 GSTR-1 (T/O<1.5 Crores)		

This communication is intended to provide general information, guidance on various professional subject matters and should not be regarded as a basis for taking decisions on specific matters. In such instances, separate advice should be taken.