

HARBINGERTM

Updates on regulatory changes affecting your business

April 2016



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COMPANY LAW

Companies Amendment Act, 2016

The Companies Law Committee (CLC) has submitted its report and recommends certain changes in the Companies Act, 2013.

The Government has introduced the Companies (Amendment) Bill, 2016 in the Lok Sabha.

The changes are aimed at addressing difficulties in implementation due to strict compliance requirements, facilitating ease of doing business, harmonization with accounting standards, etc.

The Bill proposes to –

- Simplify private placement process
- Allow unrestricted object clause in Memorandum of Association
- Omission of provisions relating to forward dealing and insider trading
- Amending provisions related to Corporate Social Responsibility to bring clarity
- Removal of requirement for annual ratification of appointment or continuance of auditor
- Exempting class of foreign companies from registering and complying under the Act
- Removing restrictions for subsidiaries and investment companies
- Allowing companies to give

loans to entities in which directors are interested after passing a special resolution and following disclosure requirements

This Bill has not yet been approved. Once approved, it will bring significant changes in the way companies are regulated in India.

Indiacorporatelaw.in

The Companies (Share Capital and Debentures) Amendment Rules, 2016

These rules will come into force on the date of their publication in the Official Gazette.

The following has been inserted – where the audited accounts are more than six months old, the calculation for buy back will be on the basis of un-audited accounts not older than six months from date of offer document which are subject to limited review by the statutory auditors.

Notification dated March 9, 2016

The Companies (Incorporation) Second Amendment Rules, 2016

These rules will come into force on the date of their publication in the Official Gazette.

A new form INC-11 has been introduced.

Notification dated March 23, 2016

Notification for CRC phase-2 Incorporation

The Central Registration Centre (CRC) has been established and will exercise processing and disposal of e-forms and all other matters related to registration of companies.

Notification dated March 23, 2016

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INCOME TAX

Inclusion of interest income in the return of income filed by persons liable to pay tax.

The CBDT through a press release on 23rd March, 2016 has informed that the interest credited/received on deposits is taxable unless exempt under section 10 of the Income-tax Act.

Such interest income should be shown in the return of income even in cases where Form 15G/15H has been filed if the earning is not exempt under section 10 of the Income-tax Act and the total income of the person exceeds the maximum amount not chargeable to tax.

Press release dated March 23, 2016

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SERVICE TAX

Service Tax (Amendment) Rules, 2016

The Central Government has made amendments to the Service Tax Rules, 1994.

These rules may be called the Service Tax (Amendment) Rules, 2016 and shall come into force on the 1st day of April, 2016.

The following amendments are made:-

One person company (OPC) can now pay service tax on a receipt basis where its value of taxable service does not exceed Rs fifty lacs in the preceding year.

An OPC whose value of taxable service does not exceed Rs fifty lacs in the preceding year and a Hindu undivided family can now pay their Service tax liability quarterly.

Every assessee shall file the annual return in such form and manner as may be prescribed by 30th of November. Also the assessee filing the return within the due date can revise such return within 1 month of such filing.

In case of delay in filing such a return an amount of Rs. 100 per day subject to a maximum of Rs. 20,000 is to be paid

Notification no 19/2016 dated March 1, 2016

Legal services provided by a senior advocate liable for service tax and payable as a service provider

In pursuance to the further amendment made by the Central Government to the notification no 25/2012 dated 20th June, 2012, the legal services provided by a senior advocate to a person ordinarily carrying out any activity relating to industry, commerce or any other business or profession shall now be liable for tax.

Also such tax shall be payable by the senior advocate as a service provider.

This amendment shall come into effect from 1st April, 2016.

P.S. As on date of this newsletter - The Gujarat High Court has stayed this order.

Notification No. 9/2016 dated March 1, 2016 and Notification No. 18/2016 dated March 1, 2016.

Services provided by a person represented on an arbitral tribunal to an arbitral tribunal

Services provided by a person represented on an arbitral tribunal to an arbitral tribunal shall now be liable for Service tax with effect from 1st of April, 2016.

Notification No. 9/2016 dated March 1, 2016

Amendment to the Mega Exemption Notification

The following entries are being inserted in the exemption notification no 25/2012 which shall **come into effect from April 1, 2016**

- Services provided by Employees Provident Fund Organisation (EPFO) to employees.
- Services provided by Insurance Regulatory and Development Authority of India (IRDA) to insurers.
- Services provided by SEBI by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market.
- Cold chain knowledge dissemination Services provided by National Centre for Cold Chain Development under Ministry of Agriculture, Cooperation and Farmers Welfare
- Services of life insurance business provided by way of annuity under the National Pension System regulated by Pension Fund Regulatory and Development Authority of India (PFRDA)
- Services of assessing bodies empanelled centrally by Directorate General of Training, Ministry of Skill Development

and Entrepreneurship by way of assessments under Skill Development Initiative (SDI) Scheme

- Services provided by training providers (Project implementation agencies) under Deen Dayal Upadhyaya Grameen Kaushalya Yojana by way of offering skill or vocational training courses

The following entries are being inserted in the exemption notification no 25/2012 which shall **come into effect from June 1, 2016**

- Passenger transportation services, with or without accompanied belongings in a non-air-conditioned stage carrier.
- Services by way of transportation of goods by an aircraft from a place outside India upto the customs station of clearance in India.

Notification no 09/2016 dated March 1, 2016

Withdrawal of taxability of the services of a mutual fund agent or distributor under reverse charge mechanism

Upon further amendment to the notification no 30/2012 , the service tax on the services provided by the mutual fund agents or the distributors to a mutual fund or asset management company shall not be paid by the service receiver under reverse charge mechanism.

Service tax on this service shall now be payable by the mutual fund agent or the distributor.

This shall come into effect from April 1, 2016.

Notification no 18/2016 dated March 1, 2016

Amendment to the abatement notification no 26/2012 regarding rate and the conditions for availing abatement

Particulars	Rate	Condition for availing abatement	Effective from
Transportation of goods by rail (other than in containers by any person other than Indian railways)	70%	Cenvat credit would be available in case of input services only	01/04/2016
Transportation of goods by rail in containers (by any person other than Indian railways)	60%	Cenvat credit would be available in case of input services only	01/04/2016
Transport of passengers by rail	70%	Cenvat credit would be available in case of input services only	01/04/2016
Transport of used household goods by a GTA	60%	Cenvat credit would not be available	01/04/2016
Services by a foreman of a Chit fund	70%	Cenvat credit would not be available	01/04/2016
Transport of goods by a Vessel	70%	Cenvat credit would be available in case of input services only	01/04/2016
Tour operator services only for the purpose of arranging or booking accommodation for any person	90%	Cenvat credit would be available in case of input services only	01/04/2016

Tour operator services other than specified above	70%	Cenvat credit on inputs, capital goods and input services other than input services of a tour operator, used for providing the taxable service, has not been taken	01/04/2016
Construction of a complex, building, civil structure or a part thereof	70%	Cenvat credit would not be available The value of land is included in the amount charged from the service receiver.	01/04/2016
Transportation by a air conditioned stage carrier	60%	Cenvat credit would not be available	01/06/2016

1. The definition of a package tour has been omitted with effect from April 1, 2016

2. In case of renting of a motor vehicle, for availing abatement, the amount charged shall include the fair market value of all goods used in providing the service. This shall come into effect from April 1, 2016

Notification no 08/2016 dated March 1, 2016

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ECONOMICS

Bank Defaulters won't be spared; every paisa defaulted will be realized: PM Narendra Modi

In a rally at Rangapara in Assam's Sonitpur district, Prime Minister Narendra Modi quoted that now the government has tightened the screws on the bank defaulters.

He further added that no defaulters will be spared for their fraud in financial institutions and every paisa will be realized as this money belongs to the poor.

www.indiaonline.com dated March 28, 2016

High Interest rates will make Indian economy sluggish- Arun Jaitley

Finance minister Arun Jaitley in an interview justified his decision to reduce the interest rate on small savings like PPF.

According to him, the tax free interest rate of 8.7 percent translates into an effective rate of 12-13 percent on small savings. Such high interest rate on small saving prevents growth of an economy.

Because of this the lending rates should also be high up to 14-15 percent. However such high lending rate will make the economy sluggish and hence reduction in interest rate will be beneficial in the long run.

www.economictimes.indiatimes.com dated March 28, 2016

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SUMMARY OF IMPORTANT TAX JUDGMENTS:

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

Sr. No	Tribunal / Court	Area/ Section covered	Nature	Case Law
1	ITAT Mumbai	Section 9(1)(vi)	Whether consideration for use of software is assessable as royalty	Capgemini Business Services (India) vs. ACIT
2	Karnataka High Court	Section 40 (a)	Disallowance for short-deduction of TDS	CIT vs. Hewlett-Packard India Sales Pvt. Ltd.
3	Karnataka High Court	Section 44AB	Belief that a mutual association is not liable for tax audit is a bona fide one and constitutes a reasonable cause	Koramangala Club vs. ITO
4	Supreme Court	Section 80HHC	Sale proceeds of scrap cannot be included in total turnover u/s 80HHC	Jagraon Exports vs. CIT
5	Supreme Court	Section 147	If no assessment order is passed, there cannot be notice for re-assessment as re-assessment arises only when there is an assessment in the first place.	Standard Chartered Finance Ltd. Vs. CIT
6	Bombay High Court	Section 148	Providing the assessee with recorded reasons towards the end of the limitation period and passing a reassessment order without dealing with objections results in gross harassment to the assessee	Bayer Material Science Pvt. Ltd. vs. DCIT

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DISCUSSION ON JUDGEMENTS - INCOME TAX



1. Whether consideration for use of software is assessable as royalty.

Capgemini Business Services (India) Ltd. vs. ACIT (ITAT Mumbai)

In this case, it cannot be concluded that the assessee paid consideration for use of or right to use copyright but has purchased copyrighted work on a CD which can be considered as sale of goods by the owner. The consideration paid by the assessee cannot be considered as royalty as per the Double Taxation Avoidance Agreement (DTAA) and would be taxable as business income of the recipient. The assessee can make use of the product and make copies for temporary use and this would not amount to infringement of any copyright of the owner.

2. Disallowance on short deduction of TDS

CIT vs. Hewlett-Packard India Sales Pvt. Ltd. (Karnataka High Court)

The CIT passed an order u/s 263 of the Act contending that the Assessing Officer (AO) has not disallowed expenditure as per the audit report submitted by the statutory auditors. Form 3CD clearly states that the assessee had not deducted TDS on Contract u/s 194C on an advertising contract.

The Commissioner held that the disallowance should have been made. The assessee appealed before the Tribunal. The Tribunal came to a conclusion that the assessee had deducted TDS u/s 194H i.e. TDS on Commission and Brokerage and the provisions of 194C are not applicable. The Tribunal came to a conclusion that the Commissioner did not have proper reasoning to call for and examine any records u/s 263 as the conditions were not satisfied – order to be revised is erroneous and prejudicial to the interest of the revenue.

3. Belief that a mutual association like a club is a bona fide one.

Koramangala Club vs. ITO (Karnataka High Court)

As per the law relating to mutual concerns, the surplus of a mutual concern is not income, profits or gains as per the Act and the contributors will receive back a part of their own contribution. The identity between the contributors and recipients removes the idea of any profit as a person cannot make a profit out of himself.

A mutual concern can carry on activity with its members, though the surplus

arising from such activity is not taxable income or profit. A voluntary organisation which receives contributions from its members is also a mutual association.

The argument of the assessee was that Section 44AB is not applicable to a club being a mutual concern is supported by several judgements. The assessee had a genuine belief which was reasonable to relieve him from levy of penalty. Section 273B clearly states that no penalty should be levied to a person if he fails to get accounts audited if it is proved that there was reasonable cause for such failure.

4. Sale proceeds of scrap cannot be included in total turnover for the purpose of Section 80HHC.

Jagraon Exports vs. CIT (Supreme Court)

The issue in this case pertains to whether scrap sales should be included in total turnover. In a recent judgement, it was held that sale proceeds generated from scrap would not be included in the total turnover for purpose of deduction under the Act.

5. If no assessment order is passed, there cannot be notice for re-assessment as question of re-assessment arises only when there is an assessment.

Standard Chartered Finance Ltd. Vs. CIT (Supreme Court)

This issue pertains to Assessment Year 1997-1998. No assessment order was passed on the return filed by the assessee. However, the Assessing Officer (AO) re-

opened the assessment. The assessee appealed the matter. The main argument of the assessee was that since no assessment order was passed in the original return filed, the question of re-assessment does not arise. The order was supported by the Tribunal. However, the High Court reversed the order taken by the Tribunal. If there was no assessment passed, there could not be a re-assessment.

6. Providing the assessee with reasons towards end of limitation period and passing a reassessment order without dealing with objections is gross harassment to the assessee

Bayer Material Science Pvt. Ltd. vs. DCIT (Bombay High Court)

Whenever a reopening notice is issued to the assessee, on request, a copy of reasons recorded while issuing the notice for reopening the Assessment will be made available by the Assessing Officer.

In this case, the issue involved is with regard to transfer pricing cases. The period of limitation to dispose an Assessment is two years from the end of the financial year in which such notice is given.

The notice was issued on February 6, 2013 and the reasons were supplied on March 19, 2015. The Revenue was aware that the period to pass an order of reassessment would expire on March 31, 2015. The Revenue could not satisfactorily explain the delay. The only clarification provided was that the issue was pending before the Transfer Pricing Officer (TPO) and only after the TPO passes his order the reasons were provided to the assessee.

The entire period of two years from the end of the financial year in which notice was issued was consumed by the Assessing Officer (AO) in failing to give reasons in relation to the notice. The AO proceeded to pass a draft assessment without dealing with the objections filed by the Petitioner. This is a case of harassing the assessee which should be rectified by the Principal Commissioner.

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NOTE: The Judgements should not be followed without studying the complete facts of the case law.

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DUE DATES CHART FOR THE MONTH APRIL 2016 (VARIOUS ACTS):

April 2016						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	2
3	4	5 Service Tax Payments by Companies	6 Service Tax Payments by Companies (if paid electronically) , Excise Duty Payment	7	8	9
10 Monthly Excise Return (ER- 1)/ ER-2 monthly return by 100% EOU, Quarterly Excise Return by EOU, SSI Units and paying 2% in Form ER- 8	11 Monthly Excise Return (ER-6)	12	13	14	15 P.F Payment for month of March	16
17	18	19	20 EPF Payment (including 5 days of grace), Quarterly Central Excise Return	21 ESIC Payment for March, Payment and filing of quarterly/mon thly MVAT Return	22	23
24	25 Yearly Half Service Tax Return	26	27	28	29	30 Profession Tax Payment, TDS Payment for March, Six monthly VAT Payment/Re turn for VAT Audit Dealers, Filing ER- 5/ER-7

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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.

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