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August 2014

B D Jokhakar & Co.

Chartered Accountants

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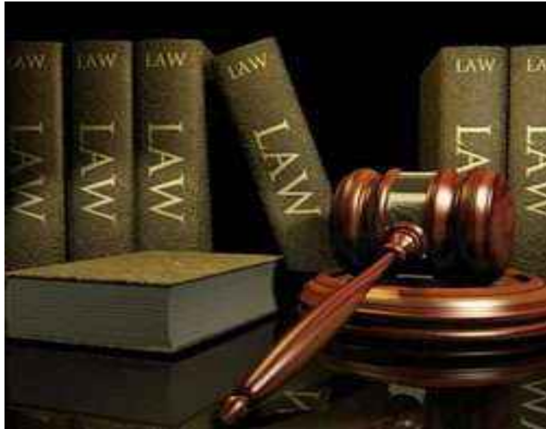
COMPANY LAW



Clarification on transitional period for resolutions' passed under the Companies Act, 1956:

MCA in this regard has clarified as under:
It has been brought to the notice of the government that many companies have passed resolutions during financial year 2013-14 under the relevant provisions of the Companies Act, 1956 (Old Act) which are/were at different stages of implementation after coming into force of corresponding provisions of the new Companies Act, 2013 (New Act).
Ministry has received suggestions that section 6 of the General Clauses Act, 1897 protects the validity of such resolutions.

The matter has been examined in the light of similar issues clarified earlier. It is clarified that resolutions approved or passed by companies under relevant applicable provisions of the Old Act during the period from 1st September, 2013 to 31st March, 2014, can be implemented, in accordance with provisions of the Old Act, notwithstanding the repeal of the relevant provision subject to the conditions:
(a) That the implementation of the resolution actually commenced before 1st April, 2014 and,
(b) That this transitional arrangement will be available upto expiry of one year from the passing of the resolution or six months from the commencement of the corresponding provision in New Act whichever is later.
It is also clarified that any amendment of the resolution must be in accordance with the relevant provision of the New Act.

Clarifications on matters relating to Related Party Transactions:

Government has received representations from stakeholders seeking certain clarifications on related party transactions covered under section 188 of the Companies Act, 2013. The following clarification has been given in this regards;
Scope of second proviso to Section 188(1),

1. Second proviso to subsection (1) of section 188 requires that no member of the company shall vote on a special

resolution to approve the contract or arrangement (referred to in the first proviso), if such a member is a related party. It is clarified that 'related party' referred to in the second proviso has to be construed with reference only to the contract or arrangement for which the said special resolution is being passed.

2. Applicability of Section 188 to corporate restructuring, amalgamations etc,

It is clarified that transactions arising out of Compromises, Arrangements and Amalgamations dealt with under specific provisions of the Companies Act, 1956/Companies Act, 2013, will not attract the requirements of section 188 of the Companies Act, 2013

3. Requirement of fresh approvals for past contracts under Section 188,

Contracts entered into by companies, after making necessary compliances under Section 297 of the Companies Act, 1956, which already came into effect before the commencement of Section 188 of the Companies Act, 2013, will not require fresh approval under the said section 188 till the expiry of the original term of such contracts. Thus, if any modification in such contract is made on or after 1st April, 2014, the requirements under section 188 will have to be complied with.

Clarification regarding filing of Form DPT4 under Companies Act, 2013:

The ministry has received reference regarding filing of form DPT4 under the provisions of Companies Act, 2013. As per section 74(1)(a) of the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014 made there under, companies are required to file a statement regarding deposits existing as on the date of commencement of the Act within a period of 3 months from such commencement. The time for filing of such statement has expired on 30/06/2014. It has now been decided to grant extension of time for a period upto 2 months i.e. 30/08/2014 without any additional fee.

Rate of Interest on PPF on subscription made on or after 01.04.2014:

In pursuance of section 5 of the Public Provident Fund Act, 1968 (23 of 1968), the Central Government hereby notifies that the subscriptions made to the Fund on or after the 1st day of April, 2014 and the balances at the credit of the subscriber shall bear interest at the rate of 8.7 per cent.

GSR 496(E) [F.NO.6-1/2011-NS-II (PT.II)], Dated 11-7-2014

SERVICE TAX

The Ministry of Revenue has notified the rate of interest on delayed payments of service tax:

Sr No.	Period of Delay	Rate of interest
1	Up to six Months	18 %
2	More than six months and up to one year	18% percent for the first six months of delay and 24% for the delay beyond six months
3	More than one year	18% percent for the first six months of delay and 24% for the delay beyond six months up to one year and 30% for any delay beyond one year.

This shall be applicable from 1st October, 2014.

Manner of distribution of common input service credit under rule 7(d) of the Cenvat Credit Rules (CCR), 2004:

Rule 7(d) reads as under:

*"credit of service tax attributable to service used by more than one unit shall be distributed prorata on the basis of the turnover of **such units** during the relevant period to the total turnover of all its units, which are operational in the current year, during the said relevant period"*

Certain doubts have been raised by trade regarding the meaning of the words 'such unit' used in rule 7(d). It has been stated in the representations that due to the use of the term 'such unit', the distribution of the credit would be restricted to only those units where the services are used. It has been interpreted by the trade that in view of the amended rule 7(d) of the CCR, the credit available for distribution would get reduced by the proportion of the turnover of those units where the services are not used. The amended rule 7(d) seeks to allow distribution of input service credit to all units in the ratio of their turnover of the previous year, irrespective of whether such common input services were used in all the units or in some of the units.

(Refer Circular No. 178/4/2014-ST)

INCOME TAX

Contribution made towards disaster relief for the affected people of Uttarakhand- 100% deduction u/s 80G of the Income Tax Act:

In this regard, vide letter no. Indian Revenue Service Association (IRSA) (All India Body) (A IB)/ EC/ Res./ UK-DR/4 dated 05th June,2014 it was brought to the kind notice that 100% deduction under section 80G of the Income Tax Act is available on contributions made for Uttarakhand disaster relief. In this regard, it may further be informed that this 100% deduction is available as per section 80G (2) (iiihf) of the Income Tax Act and PAN of CM Relief Fund Uttarakhand, for claim of the deduction, is AAAGM0036M.

[Refer F.No. IRSA (AIB)/EC/Res./UK-DR/5 dated: 15th July, 2014]

CBDT Revises Form 3CA, 3CB and 3CD:

Central Board of Direct Taxes has revised Form 3CA, 3CB and 3CD vide Notification No. 33/2014 dated 25-07-2014. This revision shall come into force on the date of their publication in the Official Gazette. CBDT has advised Tax Payers and CAs to await for the release of the new schema and utility to submit in the newly notified aforementioned forms. Tax Payers and CAs are further advised that any uploads using the old forms will not be valid even for previous AYs in view of notification of CBDT. The new schema and updated utility for e-filing of the same are expected to be deployed shortly.

Reserve Bank of India

Liberalised Remittance Scheme (LRS) for resident individuals-Increase in the limit from USD 75,000 to USD 125,000:

The RBI vide its notification A.P.(DIR Series) Circular No. 138 dated June 3, 2014, has already notified the increase in limit of Remittance for resident individual from USD 75000 to USD 125000 for any permitted capital or current account transaction or a combination of both. Further, it is clarified that the Scheme can now be used for acquisition of immovable property outside India.

Loans against Gold Ornaments and Jewellery for Non-Agricultural End-use:

Loans extended against pledge of gold ornaments and jewellery, for other than agricultural purposes, where both interest and principal are due for payment at maturity of the loan will be subject to the following conditions:

(i) Banks, as per their Board approved policy, may decide upon the ceiling with regard to the quantum of loans that may be granted against the pledge of gold jewellery and ornaments for non-agricultural end uses;
(ii) The tenor of the loans shall not exceed 12 months from the date of sanction;
(iii) Interest will be charged to the account at monthly rests and may be recognised on accrual basis provided the account is classified as 'standard' account. This will also apply to existing loans;
(iv) Such loans shall be governed by extant norms pertaining to income recognition, asset classification and provisioning which shall be applicable once the principal and interest become overdue.

In this connection, it is also clarified that Loan To Value Ratio of 75 per cent shall be maintained throughout the tenure of the loan for all loans extended against pledge of gold ornaments and jewellery for non-agricultural end uses.

Issue of partly paid shares and warrants by Indian Company to Foreign Investors:

Partly paid equity shares and warrants issued by an Indian company in accordance with the provision of the Companies Act, 2013 and the SEBI

guidelines, as applicable, shall be eligible instruments for the purpose of Foreign Direct Investment (FDI) and Foreign Portfolio Investment (FPI) by Foreign Institutional Investors (FIIs)/Registered Foreign Portfolio Investors (RFPIs) subject to compliance with FDI and FPI schemes.

The pricing of the partly paid equity shares shall be determined upfront and 25% of the total consideration amount (including share premium, if any), shall also be received upfront;

The balance consideration towards fully paid equity shares shall be received within a period of 12 months and in case of warrants the balance consideration shall be received within a period of 18 months.

The reporting of receipt of foreign inward remittance towards each upfront /call payment for FDI transaction shall be made in Advance Reporting Form along with copy/ies of Foreign Inward Remittance Certificate/s (FIRC), Know Your Customer (KYC) report on non-resident investor and details of the Government approval, if any.

INTERNATIONAL TAX

No withholding tax from sum paid to non-resident for services rendered outside India if it wasn't taxable in India:

Where amounts are paid outside India to persons outside Indian territory, who does not have any tax liability as far as I.T. Act, 1961 is concerned, said sum cannot be considered as 'sums chargeable' under provisions of this Act and accordingly not liable for deduction of TDS.

FEMA

Import of Rough, Cut and Polished Diamonds:

The RBI in consultation with the Government of India has decided that the Clean Credit i.e. credit given by a foreign supplier to its Indian customer/buyer, without any Letter of Credit (Suppliers' Credit) / Letter of Undertaking (Buyers' Credit) / Fixed Deposits from any Indian financial institution for import of Rough, Cut and Polished Diamonds, may be permitted for a period not exceeding 180 days from the date of shipment. The revised directions will come into force with immediate effect.

Financial Commitment (FC) by Indian Party under Overseas Direct Investments (ODI) – Restoration of Limit:

On a review, it has been decided to restore the limit of Overseas Direct Investments (ODI)/ Financial Commitment (FC) to be undertaken by

an Indian Party under the automatic route to the limit prevailing, as per the extant FEMA provisions, prior to August 14, 2013. It has, however, been decided that any financial commitment exceeding USD 1 (one) billion (or its equivalent) in a financial year would require prior approval of the Reserve Bank even when the total FC of the Indian Party is within the eligible limit under the automatic route (i.e., within 400% of the net worth as per the last audited balance sheet). All the other provisions under the Notification ibid shall remain unchanged.

ADOPTION OF Ind AS:

Finance Minister, Arun Jaitley, while presenting Budget on 10th July proposed in the Budget Speech that Indian Companies will have to adopt Ind AS (Indian Accounting Standards converged with IFRS) from financial year (FY) 2016-17,. They could also voluntarily adopt these standards from FY 2015-16. The Finance Minister's announcement for application of Ind AS is a progressive step as this will help the Indian economy get better integrated with the rest of the world. Timelines for the financial sector, including banking and insurance companies, are also expected to be finalised soon. Further to this, standards for computation of tax are also expected to be finalised and notified in due course.

PROFESSION TAX:

Slab rates for applicability of Profession tax in case of Salary and wage earners have increased from Rs.5,000/- to Rs. 7,500/-. Revised limits are as under:

Class of Persons	Rate of Tax
Salary and Wage earners-Such persons whose monthly salary or wages:	
(a) do not exceed rupees 7,500;	Nil
(b) Exceeds rupees 7,500 but do not exceed rupees 10,000;	175 per month
(c) Exceeds rupees 10,000	2,500 per annum to be paid in the following manner :- (a) rupees two hundred per month except for the month of February (b) rupees three hundred for the month of February.

SUMMARY OF IMPORTANT TAX JUDGEMENTS:

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 - Delhi	Section 10(23C) and Section 11	Deduction of Depreciation as well as of Capital expenditure in case of Trusts does not amount to double deduction	*ITO (E) Vs S.D.College Society, Lahore*
2	ITAT - Chennai	Section 11	Trust Eligible for Relief u/s 11 in respect of income from pharmacy run by it within its hospital premises	*Franciscan Sisters of St. Joseph Society Vs JCIT*
3	ITAT Agra bench	Section 37	Interest on loan taken against FDRs held allowable as it was incurred exclusively to keep intact income from FDRs	*Raj kumari Agarwal Vs Deputy Commissioner of Income – Tax, Circle – 2, Agra*
4	High court of Delhi	Section 45	I-T Act recognizes Mutual fund as a special category of investment; it can't be clubbed with investment in shares	*Yana Finance Ltd. Vs Assistant commissioner of Income Tax*
5	Supreme court of India	Section 54	Relief under section 54 was to be granted to assessee in respect of purchase of new residential property even if sale deed could not be executed within prescribed time for reason that assessee had been prevented from dealing with said residential house by an order of a competent court.	*Sanjeev lal Vs Commissioner of Income tax, Chandigarh*
6	High Court – Allahabad	Section 269SS/269 T	Section 269SS/ 269T does not apply to book entries not involving cash transactions	*CIT Vs M/s Saurabh Enterprises*

1) Section 11 and Section 10(23C) Deduction of Depreciation as well as of Capital expenditure in case of Trusts not amounts to double deduction

ITO (E) Vs. S.D.College Society, Lahore (ITAT Delhi) (AY 2008-09)

i) The assessee claimed depreciation in the income and expenditure account. The assessing officer held that since the benefit of application of fund had already been taken when the assets were purchased; the claim of the assessee was not allowable and disallowed the claim of the depreciation.

ii) The Commissioner (Appeals) decided in favour of the assessee. On appeal by the Department: Held, dismissing the appeal, that it was not a case of double deduction and depreciation had to be allowed.

iii) Hon'ble ITAT Delhi has held in the case of ITO (E) Vs. S.D.College Society (Lahore) that where the capital expenditure has been treated to have been applied for the object of the trust, allowance of deduction on account of depreciation will not amount to double deduction.

However, Finance Act 2014 has proposed to amend the Act to provide that under section 11 and section 10(23C), income for the purposes of application shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under these sections in the same or any other previous year.

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2) Trust Eligible for Relief u/s 11 in respect of income from pharmacy run by it within its hospital premises

Franciscan Sisters of St. Joseph Society Vs. JCIT (ITAT Chennai)

i) The first item so considered by the assessing authority is the receipts from pharmacy section. It is to be seen that assessee is running a full-fledged general hospital at St. Thomas Mount. The assessing authority has, no doubt, accepted the charitable nature of activities carried on by the assessee-society in respect of that hospital. The assessee is also running a dispensary. Number of patients are visiting the hospital and dispensary on a daily basis. Patients are admitted as in-patients and

they are also treated as out-patients. For all the in-patients undergoing treatment in the hospital, medicines are delivered from the pharmacy run by the assessee-society.

ii) In respect of out-patients also, most of the patients purchase medicine from the pharmacy run by the assessee. A few of the out-patients might purchase medicines from outside. Likewise, few from the public living nearby to the hospital may purchase medicines from the pharmacy run by the assessee-society. The purchase of medicines by the public is absolutely negligible. That negligible amount of sales, if any, cannot decide the nature of activities carried on by the assessee in running the pharmacy in its hospital premises.

iii) The pharmacy is not situated in any commercial area or outside the hospital compound with the intention to invite the public at large to purchase medicines from the pharmacy run by the assessee-society. The assessee-society is running the pharmacy within the premises of the hospital and as part of the hospital itself.

iv) It is clear that the pharmacy is run by the assessee-society only for the purpose of running the hospital. The hospital cannot be run without a pharmacy attached to it. If an assessee wants to run a hospital, running of the pharmacy is also a must.

Therefore, running of the pharmacy by the assessee-society is not an activity carried on by the assessee incidental to the running of the hospital; but, on the other hand, it is an integral part of the hospital run by the assessee.

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3) Interest on loan taken against Fixed Deposit Receipts (FDRs) held allowable as it was incurred exclusively to keep intact income from FDRs

Raj kumari Agarwal V.s Deputy Commissioner of Income – Tax, Circle – 2, Agra (ITAT Agra bench)

i) It is clear that as long as the expense is incurred wholly and exclusively for the purpose of earning an income, even if it is not necessarily for earning that income, it will still be deductible in computation of income. What thus logically follows is that even in a situation in which proximate or immediate cause of an expenditure was an event unconnected to earning of the income, in the sense that the expenditure was not triggered by the objective to earn that income, but the expenditure was, nonetheless, wholly and exclusively to earn or protect that income, it will not cease to be deductible in nature.

ii) It is also important to bear in mind the fact that a borrowing against fixed deposit cannot be considered in isolation of a fixed deposit itself in as much as, going by the admitted facts of this case, the interest chargeable on the fixed deposit itself is linked to the interest accruing and arising from the fixed deposit. On these facts, in order to protect the interest earnings from fixed deposits and to meet her financial needs, when an assessee raises a loan against the fixed deposits, so as to keep the source of earning intact, the expenditure so incurred in wholly and exclusively to earn the fixed deposit interest income.

iii) The authorities below were apparently swayed by the fact that the borrowings were triggered by assessee's financial needs for personal purposes and by that logic, the borrowing cannot be said to be wholly and exclusively for the purposes of earning interest income, but what this approach overlooks is whether the expenditure is incurred for directly contributing to the beginning of or triggering the source of income or whether the expenditure is for protecting, and thus keeping alive, that source of income, in either case it is expenditure incurred wholly and exclusively for the purpose of earning that income. The assessee indeed required that money, so raised by borrowing against the fixed deposits, for her personal purposes but that's not relevant for the present purposes. The assessee could have gone for premature encashment of bank deposits, and thus ended the source of income itself, as well, but instead of doing so, she resorted to borrowings against the fixed deposit and thus preserved the source of earning. The expenditure so incurred, in our considered view, is an expenditure incurred wholly and exclusively for earning from interest on fixed deposits.

iv) We are alive to the fact that in the case of a business assessee, and in a situation in which the borrowings against fixed deposits were resorted to use in business, consideration for end use of funds so borrowed would be relevant because the interest deduction is claimed as a business deduction under section 36(1)(iii). That aspect of the matter, however, is academic in the present context as the limited issue for our consideration is whether or not, on the facts before us, the interest on borrowings against the fixed deposits could be said to protect the interest income from fixed deposit interest and thus, incurred wholly and exclusively for the purposes of earning such income.

4) I-T Act recognizes Mutual fund as a special category of investment; it can't be clubbed with investment in shares

Yana Finance Ltd. V.s Assistant commissioner of Income Tax (High court of Delhi)

i) The assessee, dealer in shares, had also invested and sold mutual funds. He also derived income from interest; dividend and surplus realized on sale of shares and mutual funds and had invested in these funds and shown them in its investment account. The surplus from the sale of these mutual funds had been treated as long term capital gain by the assessee. The Assessing Officer had rejected said claim and treated it as business income. The Commissioner (Appeals) allowed the assessee's appeal.

ii) This Court also notices that the CIT (A) noted in the order that the Income Tax Act itself recognized units of mutual funds as a special category of "investments" as far as trusts were concerned, u/s. 11 (5) which placed this in an entirely separate class. He, therefore, reasoned that investments in mutual funds are of an entirely different kind and cannot be clubbed with sale of shares or commodities.

iii) Thus Units of Mutual Fund being special category investments, Investments in mutual fund cannot be clubbed with investments in shares or commodities; and any surplus arising there from on sale of mutual fund kept as investment is long term capital gain.

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5) IT : Where assessee having executed an agreement to sell in respect of a house property, purchased a new residential property within one year from date of agreement to sell, in view of fact that subsequently sale deed could not be executed within prescribed time for reason that assessee had been prevented from dealing with said residential house by an order of a competent court, a valid 'transfer' took place within meaning of section 2(47) by executing agreement to sell and, consequently, relief under section 54 was to be granted to assessee in respect of purchase of new residential property

Sanjeev lal Vs. Commissioner of Income tax, Chandigarh (Supreme Court of India)

i) Due to the interim relief granted in the suit, the appellants could not execute the sale deed till the suit came to be dismissed and the validity of the Will was upheld. Thus, the appellants executed the sale deed in 2004 and the same was registered on 24th September, 2004.

In the assessment proceedings for the Assessment Year 2005-2006 under the Act, the Assessing Officer was of the

view that the appellants were not entitled to any benefit under Section 54 of the Act for the reason that the transfer of the original asset, i.e. the residential house, had been effected on 24th September, 2004 whereas the appellants had purchased another residential house on 30th April, 2003 i.e. more than one year prior to the purchase of the new asset and therefore, the appellants were made liable to pay income tax on the capital gain under Section 45 of the Act.

ii) Upon perusal of Section 54(1) of the Act, it is very clear that relief under Section 54 of the Act in respect of the long term capital gain can be availed only if a residential house i.e. a new asset is purchased within one year before or within two years after the date on which the transfer of the residential house/original asset takes place. In the instant case, the residential house had been transferred by the appellants-assessees on 24th September, 2004 whereas they had purchased another house on 30th April, 2003. Thus, the new asset was purchased more than one year prior to the date on which the transfer in respect of the residential house had been effected.

The learned counsel appearing for the appellants had mainly submitted that the authorities below and the High Court had committed an error in interpretation of Section 54 of the Act. According to him, though the property in question had been apparently transferred on 24th September, 2004 and the new asset i.e. new residential house had been purchased on 30th April, 2003 i.e. more than one year prior to the date on which the property had been sold, the authorities ought to have considered the date on which the agreement to sell had been effected by the appellants for transfer of the property in question as the date of transfer of the house/original asset. The said agreement had been signed on 27th December, 2002 i.e. which was well within the period prescribed under Section 54 of the Act. If one considers 27th December, 2002 as the date on which the property had been transferred or that a right in the property had been transferred, the appellants would become entitled to the benefit under Section 54 of the Act.

iii) According to the learned counsel appearing for the appellants, the date on which the agreement to sell had been executed ought to have been treated as the date of transfer. He had referred to the provisions of Section 2(47) of the Act which defines the term "transfer". He had, therefore, submitted that by virtue of the agreement to sell, a right had been created in favour of the buyer of the property and certain right in respect of the residential house, which the appellants had, had been extinguished

and therefore, ought to have been considered as the date of transfer.

In view of the reasoning in the preceeding paragraphs assessee was considered eligible to benefit u/s 54.

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6) Section 269SS/ 269T do not apply to book entries not involving cash transactions

CIT Vs. M/s Saurabh Enterprises (Allahabad High Court)

i) The brief facts of the case are that in the instant case, the AO found that there was violation of Section 269SS/269T of the Act. So, he levied the penalties under Sections 271 -D and 271 -E of the Act. The same were cancelled by the CIT (A) and the Tribunal also upheld the same. Being aggrieved, the Department has filed the present appeal.

ii) In the instant case, the transaction in question was not cash transaction. It was merely book entries. The CIT (A) has called Remand Record from the AO, who vide report dated 05.01.1999, confirmed that the transaction in question, by mentioning that no cash was involved. There were only adjustment entries. When that it so, then there is no violation of Section 269SS/269T of the Act.

Hence no addition was made in quantum appeal.

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

DUE DATES CHART FOR THE MONTH OF August 2014 (Various Acts):

Date	Particulars
5th	Service Tax payment for the previous month (6th if paid electronically)
6th	Payment of Excise Duty for all assesses for the previous month (except SSI Units)
7th	TDS remittance for the previous month
10th	Monthly Excise return by all assesses (except SSI Units) coming under CEA in Form ER1
10th	Monthly Excise return by specified class of assesses regarding principal inputs coming under CEA in Form ER 6
20th	Payment of contribution under Employee EPF & MP Act, 1952 (including 5 days of grace)
21st	Payment of contribution under Employees State Insurance Act, 1948
20th	Payment and returns of Monthly MVAT under MVAT Act, 2002
21st	MVAT Monthly return of July
25th	Monthly Provident Fund Return
31st	Payment of Profession Tax for the employees
31st	Filing of Annual Information return

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