

# HARBINGER<sup>TM</sup>

*Updates on regulatory changes affecting your business*

**August 2015**



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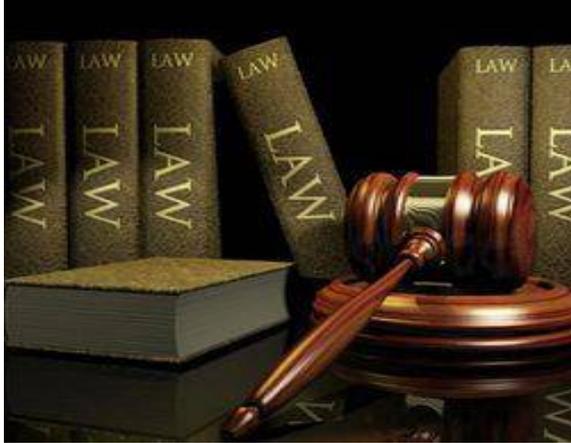
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## COMPANY LAW



### **Relaxation of additional fees and extension of last date of filing of forms MGT-7 and AOC-4 under the Companies Act, 2013**

The electronic versions of Forms AOC-4, AOC-4 XBRL and MGT-7 are being developed and will be made available for electronic filing latest by 30th September, 2015. In addition, a separate form for filing of Consolidated Financial Statements (CFS) will be made available latest by October 2015.

In view of this, it has been decided to remove the additional fee payable on forms AOC-4, AOC-4 XBRL and MGT-7 upto 31st October 2015. If a company which is not required to file its financial statement in XBRL and is required to file its' CFS would be able to do so in a separate form without any additional fees upto 30th November 2015.

*General Circular No. 10/2015 dated July 14, 2015*

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### **Clarification with regard to circulation and filing of financial statement under relevant provisions of the Companies Act, 2013**

A company holding a general meeting after giving a shorter notice as provided under section 101 of the Act may also circulate financial statements at such shorter notice.

It has also been clarified that in case of a foreign subsidiary, which is not required to get its accounts audited as per legal requirements and which does not get such accounts audited, the holding/parent company may file such unaudited accounts. These, however, would need to be translated in English, if the original accounts are not in English. The format of such accounts of foreign subsidiaries should be in accordance with the Companies Act, 2013. In case this is not possible, a statement indicating the reasons for such deviation may be filed.

*General Circular No. 11/2015 dated July 21, 2015*

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## **RESERVE BANK OF INDIA**



### **Master Circular on Foreign Investment.**

The Reserve Bank of India has issued a master circular on Foreign Investment in India dated 1st July, 2015.

*RBI/2015-16/96 dated July 1, 2015*

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### **Issue of shares under Employees Stock Options Scheme and/or sweat equity shares to person's resident outside India**

An Indian company can issue shares under Employees' Stock Option (ESOP) Scheme, to its employees or employees of its Wholly owned overseas subsidiaries who are resident outside India, provided that the scheme is as per the regulations issued under the SEBI Act, 1992 and face value of the shares under such scheme does not exceed 5 per cent of the paid up capital of the issuing company.

It has been decided that an Indian company may issue "employees' stock option" and/or "sweat equity shares" to its employees/directors or

employees/directors of its holding company or wholly owned overseas subsidiary/subsidiaries who are resident outside India, provided that :

- a) The scheme is as per the regulations issued under the Securities Exchange Board of India Act, 1992 or the Companies (Share Capital and Debentures) Rules, 2014 notified by the Central Government under the Companies Act 2013
- b) The "employee's stock option"/ "sweat equity shares" issued to non-resident employees/directors under the applicable rules/regulations are in compliance with the sectoral cap applicable to the said company.
- c) Issue of "employee's stock option"/ "sweat equity shares" in a company where foreign investment is under the approval route shall require prior approval of the Foreign Investment Promotion Board (FIPB) of Government of India.
- d) Issue of "employee's stock option"/ "sweat equity shares" under the regulations to an employee/director who is a citizen of Bangladesh/Pakistan shall require prior approval of the Foreign Investment Promotion Board (FIPB) of Government of India.

*RBI/2015-16/128 dated July 16, 2015*

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## Inter-Governmental Agreement between Government of India and Government of US for compliance with Foreign Account Tax Compliance Act

The Government of India (GOI) has entered into an Inter-Governmental Agreement (IGA) with the Government of US on 9 July, 2015 to enable financial institutions in India to comply with Foreign Account Tax Compliance Act (FATCA). A memorandum of understanding is also entered between the GOI and the US Government with respect to certain terms used in the India IGA for compliance with FATCA.

The agreement will come into force once India has completed the necessary procedures for enforcing the India IGA. India proposes to complete the procedures by 30 September, 2015.

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## ECONOMICS

### IMF Appoints Berkeley Economist

The International Monetary Fund named Maurice Obstfeld, a widely respected economist known for his work on how policies spill over into the global economy, as the emergency-lender's next chief economist.

He will give the IMF high-powered intellectual horsepower on an issue the fund has been trying to expand upon in the wake of the financial crisis: how economic policies of one economy affect others around the globe. He is the co-author of two influential textbooks used at the top universities around the

world—Foundations of International Macroeconomics and International Economics, as well as scores of papers and research articles on financial crises, exchange rates, monetary policy and global capital markets.

His expertise will help the IMF warn the IMF's 188-member countries about the risks of the U.S. Federal Reserve's first rate increase in nearly a decade.

*Wall Street Journal – 20<sup>th</sup> July, 2015*

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### India's Most Expensive Film Ever

It took mere nine days for Bahubali to notch up nearly \$50 million in worldwide returns. The spectacular epic is the fastest Indian film to reach those numbers. That makes it the most successful opening in the history of India's prolific, multi-language film industry which makes over a thousand films each year

The second installment of the film is half-complete and will go into its post-production phase and finishing in the coming months.

*Forbes: 20.7.2015*

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### Gold slumps to five-year low, dollar at highest in months

Gold prices plunged to their lowest in more than five years on Monday, at one point dropping 4 percent on aggressive selling out of China, while the U.S. dollar hit a three-month high on

expectations for higher U.S. interest rates

Equity markets posted modest gains, with the focus remaining on earnings season.

The dramatic sell-off in gold came in a matter of minutes in Shanghai.

More than 33 tonnes of gold, worth about \$1.3 billion, traded in two minutes

The exact reason for the selling was unclear. Recent strength in the U.S. currency and expectations for higher U.S. rates have undermined the case for holding gold and other precious metals, while analysts also note that China imported a record volume of gold in 2013 that has created an oversupply situation. Still, the swiftness of the decline surprised traders and resulted in two separate trade halts in U.S. gold futures.

*Reuters: 21.7.15*

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## **Gexit - Exit of Greece from the Euro Zone, will it happen?**

Almost two-thirds of Greece's debt, about 200 billion Euros, is owed to the euro zone bailout fund or other euro zone countries. Greece does not have to make any payments on that debt until 2023. The International Monetary Fund has proposed extending the grace period until mid-century

Greece and its European creditors announced an agreement in Brussels on

July 13 that aims to resolve the country's debt crisis and keep it in the euro zone, but that will require further budgetary belt-tightening. Greece needs to agree on the details of the new aid program before Aug. 20, when the country is scheduled to make a payment of 3.2 billion Euros on bonds held by the European Central Bank.

The International Monetary Fund has threatened to withdraw support for Greece's bailout unless European leaders agree to substantial debt relief.

What if Greece left the euro zone?

At the height of the debt crisis a few years ago, many experts worried that Greece's problems would spill over to the rest of the world. If Greece defaulted on its debt and exited the euro zone, they argued, it might create global financial shocks bigger than the collapse of Lehman Brothers did.

Now, however, some people believe that if Greece were to leave the currency union, in what is known as a "Gexit," it wouldn't be such a catastrophe. Europe has put up safeguards to limit the so-called financial contagion, in an effort to keep the problems from spreading to other countries. Greece, just a tiny part of the euro zone economy, could regain financial autonomy by leaving, these people contend — and the euro zone would actually be better off without a country that seems to constantly need its neighbors' support.

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## **SERVICE TAX**

### **Requirements for Digital Signatures for Electronic Invoices**

The Central Board of Excise and Customs specifies the following conditions and procedures for issue of invoices, preserving records in electronic form and authentication of records and invoices by digital signatures -

- a) Every assessee using a digital signature shall use Class 2 or Class 3 Digital Signature Certificate duly issued by the Certifying Authority in India.
- b) Every assessee using digital signatures shall intimate the following details to the jurisdictional Deputy Commissioner or Assistant Commissioner of Central Excise, at least 15 days in advance -
  - i. name, e-mail id, office address and designation of the person authorised to use the digital signature certificate;
  - ii. name of the Certifying Authority;
  - iii. Date of issue of digital certificate and validity of the digital certificate with a copy of the certificate issued by the Certifying Authority along with the complete address of such Authority.
- c) Every assessee already using a digital signature should intimate to the jurisdictional Deputy

Commissioner or Assistant Commissioner of Central Excise the above details within 15 days of issue of this notification.

- d) Every assessee who maintains records in electronic form and who has more than one factory or service tax registration shall maintain separate electronic records for each factory or each service tax registration.
- e) Every assessee who maintains records in electronic form should ensure the backup of records in electronic form is maintained and preserved for a period of 5 years immediately after the financial year to which such records pertain.

*Notification No. 18/2015 dated July 6, 2015*

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### **Detailed Manual Scrutiny of Service Tax Return**

The focus for detailed manual scrutiny of the returns would be on returns of those assesses which are not being audited. The scrutiny would be conducted for those assessee's whose total tax paid for FY 2014-15 is below 50 lakhs. Each commissionerate has to select an equal number of assesses from each tax slab i.e. Rs. 0-10 lakhs, Rs. 10-25 lakhs, and Rs. 25-50 lakhs for the financial year 2014-15.

*Circular 185/4/2015-Service Tax dated June 30, 2015*

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## **INCOME TAX**

### **Electronic Verification Code (EVC) for electronically filed Income Tax Return**

“Electronic verification code” (EVC) means a code generated for the purpose of electronic verification of the person submitting the return of income. The EVC will be a 10 digit alpha-numeric number unique for an assessee PAN and will not be valid for any other PAN at the time of filing the Income Tax Return. The EVC will be valid for 72 hours or as otherwise specified. The EVC can be generated in the following manner – generated after logging in to the [incometaxindiaefiling.gov.in](http://incometaxindiaefiling.gov.in) website through net banking and generated after Aadhar authentication using Aadhar one time password.

*Notification No. 2/2015 July 13, 2015*

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### **Extension of time limit for submitting ITR-V for electronically filed returns AY 2013-14 and AY 2014-15**

The Director General of Income Tax extends the time limit for submitting ITR-V forms relating to Income Tax Returns filed electronically for AY 2013-14 and AY 2014-15. The forms can be submitted upto 31<sup>st</sup> October, 2015 or within a period of 120 days from the date of uploading of the electronic return data, whichever is later.

*Notification No. 1/2015 July 10, 2015*

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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 Lucknow	Sec 2(47)	Even if possession is handed over to the developer, there is no "transfer" if the developer has only paid an interest-free advance to the assessee to meet expenses.	<i>ACIT vs. Upper India Paper Mills Co Pvt. Ltd</i>
2	ITAT Lucknow	Sec 14A	Investment in joint ventures and subsidiaries is for strategic purposes and not for earning dividend and will therefore not attract disallowance under section 14A or Rule 8D	<i>U.P. Electronics Corporation Ltd vs. DCIT</i>
3	Delhi High Court	Sec 37	License Agreement spread over a period of time doesn't make the assessee the owner of the technical knowhow.	<i>CIT vs. SMCC Construction India Ltd.</i>
4	ITAT Mumbai	Sec 54	Booking a flat which is going to be constructed by the builder is a case of "construction" of the flat. If the flat is booked prior to the date of transfer of the old flat, deduction u/s 54 is not available. The date of receiving possession of the new flat cannot be regarded as the date of "purchase" of the new flat.	<i>ACIT vs. Sagar Nitin Parikh (ITAT Mumbai)</i>
5	ITAT Hyderabad	Sec 68	If the assessee has furnished the details of the creditors with their PAN, the onus is on the AO to examine their credit-worthiness and source of payment to assessee	<i>KLR Industries Ltd vs. DCIT</i>
6	ITAT Mumbai	Sec 143	Manner of computing profits in the case of bogus purchases by an assessee who is not a dealer in the goods but has consumed the goods in his business explained	<i>Shoreline Hotel Pvt Ltd vs. CIT</i>

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Sr. No	Tribunal / Court	Area/ Section covered	Nature	Case Law
7	ITAT Mumbai	Sec 271D	The limitation period has to be computed from the date of issue of the show-cause notice by the AO. Penalty should not be levied if circumstances show no intention to contravene the law	<i>Parin K. Rajwani vs. JCIT</i>

## DISCUSSION ON JUDGEMENTS - INCOME TAX



**1. Even if possession is handed over to the developer, there is no "transfer" if the developer has only paid an interest-free advance to the assessee to meet expenses.**

*ACIT vs. Upper India Paper Mills Co Pvt. Ltd (ITAT Lucknow)*

The provisions of section 2(47) (v) of the Act can only be invoked where absolute possession of capital asset was given to the buyer against certain consideration, but in the above case no consideration was ever fixed for handing over the possession to the developer and whatever amount was received, it was received as interest free advance to meet the expenses to be incurred in discharging certain responsibilities agreed upon in this agreement. Therefore, from any angle there is no transfer of asset as per provisions of section 2(47) of the Act and capital gain would only be chargeable in the years in which stock-in-trade would be sold.

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**2. Investment in joint ventures and subsidiaries is for strategic purposes and not for earning dividend.**

*U.P. Electronics Corporation Ltd vs. DCIT (ITAT Lucknow)*

Investment in subsidiary companies and joint venture companies are long term investment and no decision is required in making the investment or disinvestment on regular basis because these investments are strategic in nature and no direct or indirect expenditure is incurred for maintaining the portfolio on these investments or for holding the same.

It was further held that the Assessing Officer has not brought out any contrary fact or material to show that the assessee has incurred any expenditure for maintaining these investments or portfolio of these investments. Therefore, no disallowance u/s 14A or Rule 8D can be made.

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**3. License Agreement spread over a period of time doesn't make the assessee the owner of the technical knowhow.**

*CIT vs. SMCC Construction India Ltd. (Delhi High Court)*

The High Court held that the very nature of the license agreement is that it is not of a permanent nature and therefore, the court concurs with the view of the CIT (A) and the ITAT that the benefit to the assessee as a result of payment of royalty for technical knowhow was not of an enduring

nature, and therefore cannot be construed to be a capital expenditure.

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**4. Booking a flat which is going to be constructed by the builder is a case of “construction” of the flat. If the flat is booked prior to the date of transfer of the old flat, deduction u/s 54 is not available. The date of receiving possession of the new flat cannot be regarded as the date of “purchase” of the new flat.**

*ACIT vs. Sagar Nitin Parikh (ITAT Mumbai)*

i) The assessee sold the flat on 27.03.2008 and claimed deduction u/s 54 of the Act pertaining to the cost of another flat. The assessee had entered into an agreement for the purchase of the said flat on 01.12.2004. The assessee finally received the possession on 30.06.2007.

ii) The AO took the view that deduction u/s 54 of the Act can be availed only if the residential house was purchased within one year prior to the date of house giving rise to capital gain and since the date of purchase of flat, according to AO, fell beyond the period of one year, the AO rejected the claim for deduction u/s 54 of the Act. The CIT (A), however, agreed with the contentions of the assessee and accordingly allowed the deduction u/s 54 of the Act.

iii) On appeal by the department the tribunal HELD that: The booking of a flat which is going to be constructed by a builder has to be considered as a case

of “Construction of flat”. Deduction u/s 54 is available only if the assessee constructs a new house within three years after the date of transfer. In the instant case, the assessee has constructed a house prior to the date of transfer of original house, in which case, the assessee is not entitled to claim deduction u/s 54 of the Act in respect of the cost of new flat.

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**5. If the assessee has furnished the details of the creditors with their PAN, the onus is on the AO to examine their credit-worthiness and source of payment to assessee**

*KLR Industries Ltd vs. DCIT (ITAT Hyderabad)*

i) The assessee had produced confirmation letters in respect of all the creditors wherein not only the identities of the creditors with their address have been furnished but income tax particulars including PAN has also been given. Therefore, the identity of the creditor’s remains established. The second ingredient which requires fulfillment is the genuineness of the transaction. As is evident, the entire transaction has been through proper banking channel. The creditworthiness of the creditors, it is to be noted that all the creditors have not only confirmed of having advanced the money to the assessee but have also stated that it is out of their own sources.

ii) The AO did not accept the explanation of the assessee and rejected it on the grounds that creditworthiness had not been proved. If at all the A.O.

or CIT (A) had any doubt with regard to creditworthiness of the creditors, it should have triggered an enquiry by the A.O. to find out the real facts. When the identity of the creditors along with their income tax particulars including PAN and assessment details were available with the A.O. it would not have been difficult on the part of the A.O. to verify their bank accounts and other details to ascertain whether the advances were from explained sources.

iii) Only because the credits have been shown as share application money in the books of accounts of the assessee, it will not automatically lead to the conclusion that the amount received is unexplained credit as the assessee has failed to establish its claim that the money advanced is towards share application money.

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## **6. Manner of computing profits in the case of bogus purchases by an assessee who is not a dealer in the goods but has consumed the goods in his business explained**

*Shoreline Hotel Pvt Ltd vs. CIT (ITAT Mumbai)*

i) The AO found that the assessee had made certain purchases from black listed parties and asked for documentary evidence. The assessee failed to submit the relevant information and thereafter the AO rejected the books of accounts u/s 145 (3) of the Act. The AO after taking average gross profit margin of 15% made an addition of Rs. 54, 03,687/- on such bogus purchases.

ii) However, the AO was not justified in making an addition of 15% of the profit as the bogus expenses would reduce the amount of profit by an equal amount of such expenses, therefore the CIT (A) invoked his revisionary jurisdiction u/s 263 of the Act and asked the assessee to explain in this respect.

iii) The assessee then filed an appeal with ITAT Mumbai who on review of the records found that the AO has erroneously applied a wrong proposition of treating the assessee as a dealer and applying a gross profit rate on accommodation bill which is actually in the nature of expenses, the CIT was justified in setting aside the order and restoring back the file to the desk of AO.

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## **7. The limitation period has to be computed from the date of issue of the show-cause notice by the AO. Penalty should not be levied if circumstances show no intention to contravene the law**

*Parin K. Rajwani vs. JCIT (ITAT Mumbai)*

i) The original assessment order had been passed on 30.11.2010 on which date the AO proposed to initiate penalty proceedings u/s 271D. The notice u/s 271(D) was also issued on the said date. The penalty order u/s 271D has been passed on 08.06.2011. The six month period for the purpose of clause (c) of section 275(1) of the Act is to be computed from the date of issue of first show cause notice by the AO and not from the date of issue of first show

cause notice issued by the Joint Commissioner. In the light of the above decision, the order dated 08.06.2011 is hit by the bar of limitation as prescribed in clause(c) of section 275(1) of the Act and the same is accordingly set aside.

ii) The assessee being a small time tailor, her gross total Income mainly from tailoring and interest income and there being no intention to breach the provisions of law while accepting loan of Rs. 40,000/- from her daughter in law, it was not found fit case for levy of penalty u/s 271D of the Act.

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

## Due Dates Chart for the Month August 2015 (Various Acts):

Date	Particulars
5 <sup>th</sup>	Service Tax Payment by Companies for July
6 <sup>th</sup>	Payment of Excise Duty for the previous month (other than SSI units)
7 <sup>th</sup>	Income Tax - TDS payment for July
10 <sup>th</sup>	Monthly Excise return by all assesseees (except SSIs & EOUs) coming under CEA in Form ER-1
10 <sup>th</sup>	Monthly Excise Return by specified class of assesseees regarding principal units in Form ER-6
20 <sup>th</sup>	Payment of contribution under Employee EPF & MP Act, 1952 (including 5 days of grace)
21 <sup>st</sup>	Payment of contribution under Employees State Insurance Act, 1948
21 <sup>st</sup>	Payment and filing of Monthly MVAT return under MVAT Act, 2002 for dealers liable to pay tax monthly.
31 <sup>st</sup>	Payment of Profession Tax for the employees
31 <sup>st</sup>	Filing of Annual Information Return
31 <sup>st</sup>	Return of income for A.Y. 2015-16, by--- (I) Salaried employees and other individuals having incomes other than from business, in Form ITR-1 or 2 (II) non-company assesseees having business income (not required to get their accounts audited) in Form ITR-3, 4 or 5 ( Date extended for AY 2015-16)

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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.*