

# HARBINGER<sup>□</sup>

*Updates on regulatory changes affecting your business*

**January 2016**



**BEST WISHES FOR THE UPCOMING  
YEAR!**

**B D Jokhakar & Co.**

*Chartered Accountants*

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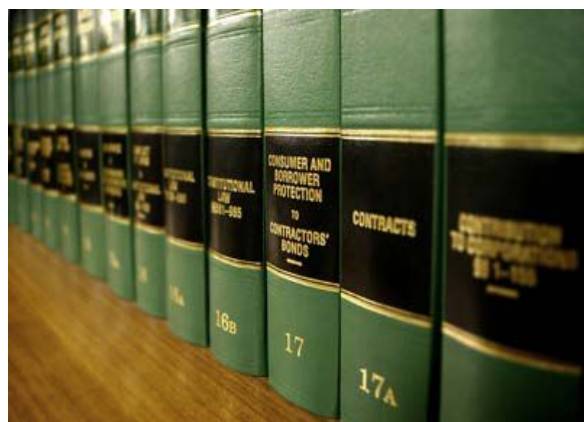
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## COMPANY LAW



### Commencement of Section 13 & 14 of the Companies (Amendment) Act, 2015

Section 13  Reporting of fraud by an auditor and Section 14  Approval of Related Party Transactions by the Audit Committee shall come into force on December 14, 2015.

*Notification dated December 14, 2015*

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### Companies (Meeting of Board and its Powers) Second Amendment Rules, 2015

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

The following will be inserted -

Omnibus Approval for related party transactions on annual basis:

All related party transactions will require approval of the Audit Committee and the Committee will make approval for related party transactions entered into by the

company subject to the following conditions

The Audit Committee, after obtaining approval of the Board of Directors, will specify the criteria for making the approval which will include the following

- a. Maximum value of transactions, in aggregate, which can be allowed under the omnibus routine in a year
- b. The maximum value per transaction which can be allowed
- c. Extent and matter of disclosures to be made to the Audit Committee at the time of obtaining such approval
- d. Review, at such intervals as deemed fit, related party transactions entered into by the company after such approval is made
- e. Transactions which cannot be subject to the approval by the Audit Committee

The Audit Committee will consider the following factors while specifying the criteria for making such approval

- a. Repetitiveness of the transactions (in the past or future)
- b. Justification for the need of approval

The committee will satisfy itself on the need for omnibus approval for transactions of repetitive nature and that such approval will be in the best interest of the company.

The approval will contain the following

- a. Nature of the related parties
- b. Nature and duration of such transaction
- c. Maximum amount of transaction that can be entered into
- d. Base price or contract price and the formula for variation in the price (if any)
- e. Any other relevant information for the Audit Committee to take a decision

Omnibus approval will be for a period of one financial year and will require fresh approval after the expiry of such year.

Omnibus approval cannot be made for transactions for selling or disposing of the undertaking of the company.

*Notification dated December 14, 2015*

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## **Companies (Audit and Auditors) Rules, 2015**

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

Reporting of fraud by auditor and other matters □

If an auditor in the performance of his duties, comes across an offence involving fraud, which involves or is expected to involve, individually an amount of Rupees one crore or above or has been committed by the officers or employees, the auditor shall report the matter to the Central Government.

The auditor shall report the following to the Central Government □

- a. The auditor will report the matter to the Board of Directors or Audit Committee within 2 days of his knowledge of the fraud and seek their reply within 25 days
- b. On receiving the observation, the auditor will forward his report and reply of the Board of Directors to the Central Government within 15 days from the date of receipt of such reply
- c. In case the auditor does not get any reply from the Board within the period of 45 days he will forward his report to the Central Government along with a note containing the details of his report that was forwarded to the BOD or Audit Committee for which he hasn't received any reply
- d. The report will be sent to the Secretary, Ministry of Corporate Affairs in a sealed cover by Registered Post or Speed Post followed by an email confirming the same
- e. The report should be on the letterhead of the auditor containing postal address, email address, contact number and should be signed by the auditor and indicate his membership number
- f. The report should be in the form of a statement specified in Form ADT-4

In case of a fraud involving an amount less than Rupees one crore the auditor should report to the Audit Committee or the Board within 2 days of

knowledge of such fraud and the following should be reported

- a. Nature of fraud along with a description
- b. Estimated amount involved
- c. Parties involved

The following details of each fraud reported to the Audit Committee or the Board during the year should be disclosed in the Board's Report

- d. Nature of fraud with description
- e. Estimated amount involved
- f. Parties involved (if action is not taken)
- g. Actions taken

This shall apply to a Cost Auditor and a Secretarial Auditor.

Notification dated December 14, 2015

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## RESERVE BANK OF INDIA



### **Due date for withdrawal of old series Bank Notes Issued prior to 2005 extended**

It has been decided to extend the date for exchanging pre-2005 banknotes to June 30, 2016.

Such exchange facility will only be available at specified bank branches and issue offices of RBI.

RBI/2015-16/275 dated December 23, 2015

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## INCOME TAX

### **Simplification of procedure for Form 15G & 15H**

As per the provisions of Section 197A of the Income Tax Act no deduction of tax shall be made when a declaration is submitted using Form 15G/15H. The person responsible for paying any income in the nature of interest or others shall enable the payee to furnish the declaration in electronic form after verification through an electronic process.

A unique identification number will be allotted to the declaration. The payer will digitize the paper declaration and upload all declarations received during a quarter on the income tax website on a quarterly basis.

The Principal Director General of Income Tax specifies the procedure, formats and standards as under:

#### 1. Submission and Verification of Electronic Declaration

The payer receives an electronic declaration after verification. The payer will be responsible for proper verification of the declarant through an electronic process.

## 2. Allotment of UIN (Unique Identification Number)

The UIN will consist of the following three components:

- a. 10 Alphanumeric number
  - For Form 15G □ G followed by 9 digits (EX: G000000001)
  - For Form 15H □ H followed by 9 digits (EX: H000000001)
- b. Financial Year for which declaration is submitted
- c. TAN of the payer

UIN sequence number will be reset to 1 in case of each TAN of the payer at the start of each financial year.

## 3. Submission of declaration to the income tax authority

The payer will upload the Form 15G/15H received during the quarter on the incometaxindiaefiling.gov.in website on a quarterly basis.

Also, the payer will quote a sequence number in quarterly TDS statement against the transaction covered under the 15G/H declaration irrespective of the fact that no tax has been deducted in the relevant quarter.

*Notification No. 4/2015 dated December 1, 2015*

## Income Tax (18<sup>th</sup> Amendment) Rules, 2015

These rules shall come into force from the date of publication in the Official Gazette.

The following will be inserted:

Service of notice, summons, requisitions, order and other communication

The address to which a summon or notice or requisition or order or any other communication under the Act may be delivered as per the following □

- a. The address available in the PAN database of the addressee
- b. The address available in the income tax return to which the communication relates
- c. The address available in the last income tax return furnished by the addressee
- d. In case of a company, the address of registered office as available on the Ministry of Corporate Affairs website
- e. Any communication will not be delivered to the addresses mentioned in points a to d if the addressee submits in writing any other address for communication to the income tax authority or any other person authorised.

For communications delivered electronically □

- a. Email address available in the income tax return submitted by the addressee to which the communication relates
- b. Email address available in the last income tax return submitted by the assessee
- c. In case of a company, email address of the company on the Ministry of Corporate Affairs website
- d. Any email address submitted by the addressee to the Income Tax Authority or any authorised person.

Notification dated December 2, 2015

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## **CBDT enhances monetary limits for filing appeals with retrospective effect**

CBDT has increased the monetary limits for filing of appeals before the ITAT and High Courts and SLP before the Supreme Court due to increasing litigation. The order will apply retrospectively to all pending appeals and all appeals below such limit should be withdrawn. The appeals with the Supreme Court should be governed by the limits in force at the time that the appeal was filed.

Henceforth, appeals should not be filed where the tax effect does not exceed the limits as under □

Appellate Tribunal	Rs. 10 lakhs
High Court	Rs. 20 lakhs
Supreme Court	Rs. 25 lakhs

Tax effect means the difference between the tax on the total income assessed and the tax that would have been chargeable if such income is to be reduced by the total amount of income in respect of issues against which appeal is filed.

*Circular No. 21/2015 dated December 10, 2015*

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## **Relaxation in rules regarding furnishing of information in respect of payments made to non-residents**

Significant changes have been made to strike a balance between reducing compliance and collection of information.

These changes will be applicable from April 1, 2016.

The significant changes are as under □

No Form 15CA and 15CB will be required to be furnished by an individual for remittance which doesn't require RBI approval under the Liberalised Remittance Scheme

The list of specified payments which do not require Form 15CA and 15CB has been increased from 28 to 33 and includes payments for imports.

A CA certificate in Form 15CB will be required to be submitted for payments made to non-residents which are taxable and the amount exceeds Rs. 5 lakhs.

*Notification dated December 17, 2015*

## Allowability of employer's contribution to funds for the welfare of employees

As per Section 43B of the Income Tax Act, certain deductions are allowed only on payment basis. Some officers allow employer's contribution to provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees if it has been paid after the due dates as per the relevant Acts.

In case of Commissioner vs. Alom Extrusions Ltd., the Apex Court held that the deletion of second proviso and amendment in the first proviso will be retrospectively applicable from April 1, 1988. The contribution to welfare funds is at par with any other duty, cess, fee, etc. Thus, the proviso is applicable to welfare funds too. Therefore, deduction is allowable to the assessee if he deposits the contribution to welfare funds on or before the due date of filing return of income.

With effect from April 1, 1988, if the assessee deposits any sum payable by way of tax, duty, cess or any contribution to a provident fund, superannuation fund or gratuity fund or any other fund for the welfare of employees on or before the due date of filing of return, no disallowance can be made under Section 43B of the Act.

*Circular No. 22/2015 dated December 17, 2015*

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## ECONOMICS

### India may be 3rd largest economy by 2030, beating China later to be world No.1

According to The Financial Express, Indian economy forecast says that the country could become No.3 in the world by 2030 and this may well lead France and Italy kicked out of the exclusive G8 group or its membership increased to 10 to accommodate the emerging markets economy. The study was conducted by UK think tank Centre for Economics Business and Research (CEBR) and following are the top five points about the study's finding:

1. India is finally starting to catch up with China and will eventually overtake the Communist-giant in the second half of the century to be world No.1 economy.
2. China will overtake the US as the largest economy in the world in 2029 with the US slipping to the second place and India close behind at third.
3. India's projected GDP in 2030 was seen at \$10,133 Billion, behind America's \$32,996 Billion and China at the top with a projected GDP of \$34,338 Billion.
4. India will become the largest economy in the Commonwealth in 2019 when its economy overtakes the British economy.
5. As Brazil and India meet the political criteria for membership of the exclusive G8 club of the developed democracies, their ascension could see France and Italy kicked out of the group or the club expanded to a G10.

*Financialexpress.com dated December 31, 2015*



## Five factors shaping Indian economy in 2016

As 2015 has ended, here are the top five factors that are expected to play a major role in shaping India's economy next year:

1. GST Bill
2. Budget
3. Monsoon
4. Crude and commodities prices
5. Indradhanush (to revamp state-run banking) and Uday (power sector reforms)

*Times of India dated December 31, 2015*

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## From January 1, UK to stop financial aid to India

From January 1, 2016, India will no longer receive financial aid from the UK, a decision taken by the British government in 2012 after a domestic outcry about India's growing economic status.

The transition has taken three years during which the existing financial grant projects were completed and the unutilized funds moved into "technical assistance" projects. The Ministry of External Affairs informed Parliament last week that "it was agreed that the existing financial grant projects will be completed responsibly as planned and technical cooperation would continue by sharing skills and expertise or in investments in private sector projects".

In 2012, then finance minister Pranab Mukherjee had famously said British

aid was "a peanut" in India's total development spend and that the country could very well do without it. This followed loud voice in the UK protesting against British aid to India, a country which, they said, has a robust space and defence programme. Aid activists, however, pointed to India's poor millions to make a case for retaining the programme.

*Economic Times dated December 31, 2015*

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## For India IPOs, 2016 promises to be best year

Volatile markets and slowing economic growth had dampened IPO launches in India in the past few years, and led to sluggish revenue growth and rising debt at companies in Asia's third-largest economy. However, Prime Minister Narendra Modi's push to improve ease of doing business and attract more foreign capital is now set to give a boost to the IPO momentum.

Indian IPOs are set to raise more than \$5 billion in 2016, a six-year high, as corporate profit growth and a pickup in the economy drive investor demand for equities and lure firms such as Vodafone's local unit to list.

India has been a bright spot in an otherwise dull Asian initial public offering (IPO) market in 2015 with companies in the country raising a combined \$2.1 billion. In contrast, sums raised by bigger markets such as Hong Kong and Australia have fallen.

According to Investment bankers, there will be several financial and technology sector companies going public next year. The IPO momentum, however, could stall if the government fails to implement key reforms, including a new law to harmonise all state taxes to give a fillip to economic growth, some bankers said.

*Economic Times dated December 31, 2015*

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## SUMMARY OF IMPORTANT TAX JUDGMENTS:

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

Sr. No	Tribunal / Court	Area/ Section covered	Nature	Case Law
1	Bombay High Court	Section 5, 40(a)(i), 195	Commission earned by a non-resident agent who carried on business of selling Indian goods outside India cannot be deemed to have income which has accrued or arisen in India	<i>CIT vs. Gujarat Reclaim &amp; Rubber Products</i>
2	Supreme Court	Section 3 of Indian Evidence Act	Compact Disc is a document and is considered to be evidence	<i>Shamsher Singh Verma vs. State of Haryana</i>
3	Delhi High Court	Section 68	It is wrong to assume that a company which has not commenced business has unaccounted money.	<i>CIT vs. Five Vision Promoters Pvt. Ltd.</i>
4	ITAT Mumbai	Section 68	Despite admitting bogus share capital, addition cannot be made in assessee's company's hands	<i>ITO vs. Superline Construction P. Ltd.</i>
5	Bombay High Court	Section 92CA	An adjustment to transfer pricing is to be confined to transactions with Associate Enterprises and cannot be made with unrelated third parties	<i>CIT vs. Thyssen Krupp</i>
6	Delhi High Court	Section 92 & 92F	Whether adjustment for advertisement & market promotion (AMP) can be made	<i>Maruti Suzuki India Ltd. Vs. CIT</i>
7	ITAT Kolkata	Section 271(1)(c), 274	A penalty which does not specify whether the penalty is for concealment or for furnishing inaccurate particulars considers the penalty void	<i>Suvaprasanna Bhattacharya Vs. ACIT</i>

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**DISCUSSION ON JUDGEMENTS** □  
**INCOME TAX**



**1. Commission earned by a non-resident agent who carried on business of selling Indian goods outside India cannot be said have deemed to be income which has accrued and/or arisen in India.**

*CIT vs. Gujarat Reclaim & Rubber Products (Bombay High Court)*

The assessee had made expenditure on account of payments of commission to non-resident agents in respect of sales made outside India. The AO disallowed the expenditure for non-deduction of TDS.

It was held that, the commission earned by the non-resident agent who carried on the business of selling Indian goods outside India, cannot be said have deemed to be income accrued or arisen in India.

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**2. Compact Disc is a document and is considered to be evidence.**

*Shamsher Singh Verma vs. State of Haryana (Supreme Court)*

The word "document" is defined in Section 3 of the Indian Evidence Act, 1872. As per the Act, a document means any

matter expressed or described upon any substance by means of letters, figures or marks, or by one of those means for the purpose of recording that matter.

In *R.M. Malkani vs. State of Maharashtra* the Court had held that tape recorded conversations are acceptable provided the conversation is relevant to the matters in issue, there is identification of the voice, and thirdly, the accuracy of the tape recorded conversation is proved by eliminating the possibility of erasing the tape record.

It was held that a compact disc is also a document.

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**3. It is wrong to assume that a company which has not commenced business has unaccounted money. The fact that investors have a common address is not relevant. The fact that shares were subsequently sold at a reduced rate is irrelevant.**

*CIT vs. Five Vision Promoters Pvt. Ltd. (Delhi High Court)*

The Revenue argues that the assessee is charging on money which is taken in cash. The assessee is involved in the construction of a shopping mall. The assessee had not commenced any business. The construction of the mall was not yet complete. The profit and loss of the assessee shows that the only income is interest on deposits with the bank. The assessee is right that the argument of the Revenue is incorrect. The allegation that such money is routed back to the origin in the form of capital is wrong.

Coming to the issue regarding the identity, creditworthiness and

genuineness of the investors, only 9 were searched and it was found that they not only existed but the assessee had discharged its liability of proving their creditworthiness and genuineness. Directors of these companies appeared before the AO and submitted their books of accounts.

The fact that some of the investors had a common address is not a valid reason to doubt their identity or genuineness.

Also, the fact that the shares of the Assessee were sold at a lower price is not appropriate to the question of the genuineness of the investment in the share capital of the Assessee.

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#### **4. Whether adjustment for advertisement and market promotion (AMP) expenses can be made on the basis that there is an assumed international transaction**

*Maruti Suzuki India Ltd. Vs. CIT (Delhi High Court)*

The High Court had to consider the issue of arm's length price of the advertisement, marketing and sales promotion (AMP) expenses incurred by the assessee i.e. Maruti Suzuki India Ltd. The Tribunal followed its decision as held in LG Electronics India Pvt. Ltd. and held that the Assessing Officer (AO) was entitled to make a transfer pricing adjustment in respect of the AMP expenditure incurred by Maruti Suzuki on the terms that such expenditure creates brand value and marketing intangibles in respect of the brands/trademarks.

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#### **5. An adjustment with respect to transfer pricing has to be confined to transactions with Associated Enterprises and cannot be made with respect to transactions with unrelated parties**

*CIT vs. Thyssen Krupp (Bombay High Court)*

The assessee entered into international transactions with independent parties. The Transfer Pricing Officer proposed an increased profit margin on all transactions of the assessee. Only transactions entered into with assessing enterprises are subject to transfer pricing adjustment.

It was held that, re-determination of consideration is done only with income arising from International Transactions on determination of Arm's Length Price. The adjustment is not permitted for independent unrelated third parties. This is done so as to avoid issue of avoidance of tax requiring adjustment in the valuation of transactions entered between third parties. The adjustment proposed by the Revenue would result in increasing profit in respect of transactions entered into with a non-AE.

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#### **6. A penalty notice u/s 274 which does not specify whether the penalty is for concealment or for furnishing inaccurate particulars renders the penalty void**

*Suvaprasanna Bhattacharya Vs. ACIT (ITAT Kolkata)*

The assessee argued that the printed form of the notice does not strike out whether the penalty is to be levied for furnishing inaccurate particulars of income or

□concealing particulars of income.□ The Assessing Officer did not strike out the irrelevant part.

The Karnataka High Court in the case of CIT & Anr. V. Manujunatha Cotton and Ginning Factory held that notice u/s 274 of the Act should specifically state as to whether the penalty is being levied for concealment of income or for submitting inaccurate particulars of income. It is clear from the above decision that the notice is defective.

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## **7. Despite admitting bogus share capital, addition cannot be made in assessee-company's hands**

*ITO vs. Superline Construction P. Ltd (ITAT Mumbai)*

The share application money is received by the assessee company from bogus shareholders whose name is given to the AO then the department is free to reopen their individual assessments but it will not be considered as undisclosed income of the company.

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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 January 2016(Various Acts):**

## January 2016

Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	2
3	4	5 Service Tax Payments By Companies/ Excise Duty Payment	6 Service Tax Payments by Companies (if paid electronically )	7	8	9
10 Monthly Excise Return (ER- 1)/ ER-2 monthly return by 100% EOU	11 Monthly Excise Return (ER-6)	12	13	14	15 P.F Payment for month of December, Quarterly TDS return	16
17	18	19	20 EPF Payment (including 5 days of grace), Payment & returns of Monthly MVAT under MVAT Act, 2002	21 ESIC Payment/ MVAT(WCT)- Payment for December	22	23
24	25	26	27	28	29	30
31 PT return if tax > 50000 PA						

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