

HARBINGERTM

Updates on regulatory changes affecting your business

May 2016



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COMPANY LAW

Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Amendment Rules, 2015

Companies in banking, insurance, power sector, non-banking financial companies and housing finance companies need not file statements under this rule.

Notification dated April 4, 2016

Companies (Auditor's Report) Order, 2016

The CARO, 2016 will apply to every company including a foreign company except -

- A banking company
- An insurance company
- A company registered as a non-profit organization
- A one person company and a small company
- A private limited company, not being a subsidiary or holding company of a public company, having a paid up share capital and reserves not more than one crore as on the balance sheet date and does not have total revenue exceeding ten crore during the financial year .

The Order will be effective from April 1, 2015.

Order dated March 29, 2016

Clarification with regard to Companies (Accounting Standards) Amendment Rules, 2016

Accounting Standards 1 to 7 and 9 to 29 will come into effect in respect of accounting periods commencing on or after the publication of these Standards. AS 2, 4, 13, 21 and 29 have been amended and AS 6 and AS 10 have been replaced with revised AS 10.

The Ministry of Corporate Affairs has clarified that the amended Accounting Standards should be used for preparation of accounts for accounting periods commencing on or after the date of notification.

General Circular No. 04/2016 dated April 27, 2016

Guidance Note on Companies (Auditor's Report) Order, 2016

The ICAI has issued a Guidance Note on CARO, 2016 on April 23, 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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MVAT

Amendment to Schedule A and Schedule C to the MVAT Act, 2002

The Government of Maharashtra has made amendments to the Schedule A and Schedule C of the MVAT Act, showing the list of goods chargeable to VAT and rates thereon.

Under Schedule 'C' the rate 5% has been substituted by 5.5% for most of the commodities except a few.

These amendments are effective from 1st April, 2016.

Notification Number VAT. 1516/C.R. 31/Taxation-1 dated March 31, 2016

Maharashtra Value Added Tax (Amendment) Rules, 2016

The Government of Maharashtra has made further amendments to the Maharashtra Value Added Tax Rules, 2005.

These rules shall be called the

Maharashtra Value Added Tax (Amendment) Rules, 2016 and are effective from 1st April, 2016.

Notification Number VAT. 1516/C.R. 53/Taxation-1 dated April 1, 2016

Amendments to the Composition Scheme

The Government of Maharashtra has amended the Composition scheme u/s 42 which provides for composition scheme for Restaurants, Bakers, retailers and second hand motor car vehicle dealers.

A. Restaurants -

- a) In case of a registered dealer (RD) whose turnover of sale of food and non-alcoholic beverages in the previous year is 3crore or below, composition rate will be 5% of such turnover.
- b) In case of a dealer (RD) whose turnover of sale of food and non-alcoholic beverages in the previous year exceeds 3crore, composition rate will be 8% of such turnover.
- c) In case of unregistered dealers the rate has remained unchanged to be 10%.

B. Bakers -

A baker (both RD and URD) opting for composition scheme will now be able to take deduction of turnover of the tax free bread while making the payment

under the composition scheme.

C. Retailer -

A dealer whose turnover of sales in the previous year is upto Rs. 1 crore is now eligible to opt for the retailer composition scheme.

Any dealer who desires to opt for this scheme would be required to upload an application in form 4A on or before 30th April, 2016. A retailer who is already in the scheme need not do so even if his turnover exceeds 50 lakhs but not 1 crore in the previous year.

These amendments are effective from 1st April, 2016.

Trade Circular 09T of 2016 dated April 22, 2016 and Notification no VAT. 1516/CR 5 March 30, 2016

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RESERVE BANK OF INDIA



Revision of interest rates for Small Saving Schemes

The interest on small saving schemes are to be notified on a quarterly basis by the Government of India.

Accordingly the revised rate of interest for the first quarter of 2016-2017 are as under:

Instrument	Rate for 15-16 (%)	Rate for 01.04.2016 to 30.06.2016 (%)
Savings deposit	4.0	4.0
1 year time deposit	8.4	7.1
2 year time deposit	8.4	7.2
3 Year time deposit	8.4	7.4
5 year time deposit	8.5	7.9
5 year recurring deposit	8.4	7.4
5 yr senior citizens saving scheme	9.3	8.6
5 yr monthly income account scheme	8.4	7.8
5 yr. national savings certificate	8.5	8.1
Public Provident Fund scheme	8.7	8.1
Kisan Vikas Patra	8.7	7.8
Sukanya Samriddhi account scheme	9.2	8.6

Notification no RBI/2015-16/362 dated April 7, 2016

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SERVICE TAX

Amendment to the Mega Exemption Notification

The Central Government has made further amendments to the exemption notification no 25/2012 by adding further entries so as to exempt from service tax certain services provided by Government or a local authority.

Notification Number 22/2016 dated April 13, 2016

Service Tax (Determination of Value) Rules, 2016

The central Government has amended the Service Tax (Determination of Value) Rules, 2006 by making the following rules, to be called as the Service Tax (Determination of Value) Amendment Rules, 2016

Rule 6 sub rule (2) clause (iv) states that the interest on delayed payment of any consideration for the provision of any service or sale of property, whether moveable or immovable shall not be included for valuation of taxable service.

The Central Government has inserted a proviso to this rule where, this clause shall not apply to any service provided by Government or a local authority to a business entity where payment for such service is allowed to be deferred on payment of interest or any other consideration.

Notification Number 23/2016 dated April 13, 2016

Amendment to the Point of Taxation Rules, 2011

The Central government has inserted the following provisos to Rule 7 (Determination of Point of taxation in case of specified services or persons) to the Point of Taxation rules, 2011:

1. Where there is a change in the liability of a person to pay tax as a recipient of service where the service has been provided and invoice issued before the change but payment has not been made on such a date, the point of taxation shall be the date of issuance of invoice.
2. In case of services provided by Government or local authority to any business entity, the point of taxation shall be:
 - a) date on which the payment is due as per the invoice, bill or Challan,
 - b) date of payment,
Whichever is earlier

Notification Number 21/2016 dated March 30, 2016 and 24/2016 dated April 13, 2016

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ECONOMICS

Government cancels new PF withdrawal norms and the old system to continue

The Government cancelled the new provident fund withdrawal norms which restricted workers from withdrawing the entire amount from the PF till they attend the age of 58.

Thus an employee can now withdraw the entire corpus accumulated under the EPF tax free including the employers share of 3.67%

www.zeenews.india.com dated April 19, 2016

EPFO to launch system for discouraging premature withdrawals

EPFO plans to launch 'One Employee One EPF Account' system on May 1 to discourage premature PF withdrawals and encourage state governments to join its pension system.

The decision was taken after the government removed the restrictions on withdrawal of accumulated balance from the EPF before attaining the age of 58.

EPFO believes that once their services are improved then more people will voluntarily join the system.

www.zeenews.india.com dated April 24, 2016

Minimum wage to Contract Workers hiked to Rs. 10,000

The minimum wage for contract workers has been increased to Rs 10,000 per month.

The minister of state for labour and employment informed Lok Sabha that the wage hike has been implemented based on a Supreme Court verdict.

Union minister Bandaru Dattatreya said workers are being protected through all the rights and the decision is taken for the betterment of working class

He said that the decision has been taken to make changes to the Rule 25 of Contract Labour (Regulation and Abolition) Central Rules. Thus every worker will be entitled to get Rs. 10,000 per month.

www.zeenews.india.com dated April 25, 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	Mumbai Tribunal	Section 2(14)	An advance or debt is a capital asset; loss on sale of debt allowed as short term capital loss.	Siemens Nixdorf Informationsysteme Gmb vs. DDIT (International Tax)
2	Supreme Court	Section 15	Tips collected by hotel from customers and paid to employees couldn't be taxable as salary	ITC Ltd. Gurgaon vs. CIT Delhi
3	Ahmedabad Tribunal	Section 32	Depreciation is allowable on trademark although it is not registered in the name of assessee.	Trio Elevators Company (India Ltd. Vs. ACIT
4	Bangalore Tribunal	Section 54	Cancellation of agreement on non-completion of construction of house won't affect exemption of capital gains tax	T. Shiva Kumar vs. ITO
5	Mumbai Tribunal	Section 195	No penalty on for TDS default if assessee relied on her Chartered Accountant.	Ashwarya Rai Bachchan vs. ACIT
6	Bangalore Tribunal	Section 195(2)	Assessing Officer's order determining amount of TDS to be deducted isn't appealable.	Malabar Gold (P.) Ltd. Vs. CTO
7	Mumbai Tribunal	Section 263	Premium received for grant of tenancy rights is taxable as capital gain	ITO vs. Dr. Vasant J Rath Trust
8	Chandigarh Tribunal	Section 269SS	No penalty will be levied on company if Rs. 20,000 or more was received from directors for meeting business urgency.	Valley Extraction P. Ltd. Vs JCIT
9	Mumbai Tribunal	DTAA	Lower rate of TDS as per DTAA would apply even though assessee failed to fill up schedule of 'Special Income' in return.	Pramerica ASPF II Cyprus Holding Ltd. Vs. DCIT
10	Mumbai	-	Assessee's salary was understated	Richa Dubey vs.

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Sr. No	Tribunal / Court	Area/ Section covered	Nature	Case Law
	Tribunal		in her return due to mistake by return filing portal hence concealment penalty is not justified	ITO

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DISCUSSION ON JUDGEMENTS - INCOME TAX



1. An advance or debt is a capital asset, loss on sale of debt allowed as short-term capital loss.

Siemens Nixdorf Informationssysteme Gmb vs. DDIT (International Tax) (Mumbai Tribunal)

The assessee, a foreign company, granted a loan of Euro 90,00,000 to its subsidiary in India.

The assessee sold the debt for Euro 7,31,000 as its subsidiary was in a financial crisis. The assessee claimed short term capital loss on this transaction.

The Assessing Officer (AO) disallowed the claim stating that a loan cannot be treated as a capital asset.

It was held that – as per the definition of capital asset, property held by an assessee of any kind except one specifically excluded in the section. Advance is not covered in the exclusion. Therefore, the question which arises is what is covered under the definition of property.

Property means every possible interest which a person can hold or enjoy.

An advance/debt given by the assessee to its subsidiary in India was a property in the sense that it was an interest which it held and enjoyed and property was not specifically excluded in the Section. It was required to be considered as a capital asset.

2. Whether tips collected by hotel from customers and paid to employees should be taxable as salary.

ITC Ltd. Gurgaon vs. CIT Delhi (Supreme Court)

Section 15 of the Income Tax Act states that the employee should have a right to claim salary from an employer.

Tips are purely voluntary that may or may not be paid by customers for services rendered to them. This would not fall under section 15 as there is no right with the employee to claim tip from employer.

Salary paid or allowed must be with reference to contract of employment. Amount paid under contract of employment should be treated as salary.

The tip paid had no reference to contract of employment. Hence, tips should not be chargeable to tax as salary.

3. Depreciation should be allowed on trademark, even though it may not be registered in the name of the assessee.

Trio Elevators Company (India) Ltd. Vs. ACIT (Ahemdabad Tribunal)

Assessee acquired the business of a company including its trademark. It claimed depreciation on cost incurred on acquisition of trademark.

Assessing Officer (AO) disallowed depreciation stating that the trademark was not registered in the name of the assessee.

The Tribunal held that – The Income Tax Act allows for depreciation on trademark which is owned, wholly or partly, by the assessee and used for the purpose of business and profession. The allowability of depreciation on trademark is not dependent on registration.

The entire business was transferred to the assessee as a going concern and the assessee conducted business under the same trademark. The use of such trademark was not disputed.

The right to use such trademark was given to the assessee by a person who had legal rights over it. Therefore, the fact that the trademark wasn't registered in the name of the assessee would not affect his rights. The assessee would be eligible to claim depreciation on said trademark.

4. Cancellation of agreement on non-completion of construction of house won't affect exemption of capital gains u/s 54 where the assessee must purchase another residential property within one

year or construct another property within 3 years from date of transfer/sale.

T. Shiva Kumar vs. ITO (Bangalore Tribunal)

The assessee had to pay capital gains on sale of house property. Thereafter, he purchased another house property from X to claim exemption from capital gains.

As per the agreement, X had to transfer house property to the assessee after getting it constructed. However, X failed to construct the property and the purchase agreement was cancelled. The purchase consideration was refunded.

The Assessing Officer (AO) was of the view that the assessee neither purchased nor constructed the house property within the time limit and rejected his claim for exemption.

The tribunal held that – completion of construction within the time limit is not mandatory. What is necessary is that the construction should have commenced.

The construction of property had already begun. Whether the agreement delivered was a different matter.

The assessee had satisfied all the conditions u/s 54 and demonstrated his intention to invest in the house.

Although the transaction did not materialize and consideration was refunded, exemption will still be allowed to the assessee.

5. No penalty on Ashwarya Rai (Assessee) if she relied on her CA for advice for TDS default.

Ashwarya Rai Bachchan vs. ACIT (Mumbai Tribunal)

Ashwarya, the assessee, made a payment of \$77,500 to a non-resident for the development of a website without deducting TDS.

The Assessing Officer (AO) observed that the payment for development of website would fall under the definition of “fees for technical services.” The payment was taxable in India and the assessee made a default by not deducting TDS. A penalty was imposed by the AO.

The assessee argued that she had not deducted TDS by relying on the advice of her CA. Hence, penalty should not be imposed as it was unintentional. The CIT held the order in the favour of the AO.

The Tribunal held that - no penalty should be imposed if the assessee proves there was a reasonable cause for failure to deduct TDS.

All citizens are not aware of the provisions of the Income Tax Act and therefore take advice of professionals.

In this case, the Chartered Accountant had issued a certificate stating that tax was not to be deducted on such remittance. Therefore, failure to deduct TDS was unintentional. Hence, penalty should not be imposed.

6. Assessing Officer’s order for determining amount of TDS to be deducted isn’t appealable.

Malabar Gold (P.) Ltd. vs. CTO (Bangalore Tribunal)

The assessee was required to make a payment to non-resident for preparation of bid papers and proposal for a project undertaken by it.

It approached the AO by filing an application seeking to make the payment without deducting TDS.

The Officer stated that the payment was in the nature of Fees for Technical Services. Therefore, there is a liability to deduct TDS.

The Tribunal held that - As per the Act, which talks about orders which are appealable, the order stated does not fall in such category. Therefore, such appeal could not be accepted.

7. Premium received on grant of perpetual tenancy right in property is taxable as capital gain.

ITO vs. Dr. Vasant J Rath Trust (Mumbai Tribunal)

The assessee, an HUF, received one time premium for grant of tenancy rights. The amount was taken for tax under capital gains and exemption was claimed in respect of investment made in Rural Electrification Corporation Board.

The Assessing Officer (AO) allowed such exemption. However, the Commissioner held that the amount was chargeable to

tax as income from house property and disallowed the exemption.

The Tribunal held that - one time premium could not be considered as receipt of advance rent as the tenancy right granted by the assessee in favour of the tenant under a registered agreement.

As per the agreement, assessee had right to evict the tenant but only where default in making of payment of monthly rent. A notice of six months should have been granted to rectify the default.

A property includes rights and transfer by allotment of perpetual tendency with the right of occupancy and transfer of one of the rights which the property carries should be charged to tax under capital gains.

Premium received by the assessee for allotment of tenancy will be taxable under capital gains and exemption will be allowed to the assessee.

8. No penalty on company if cash in excess of Rs. 20,000 was received from directors for business emergencies.

Valley Extraction P. Ltd. vs. JCIT (Chandigarh Tribunal)

The assessee received share application money of Rs. 5,00,000 in cash from its directors.

The Assessing Officer (AO) imposed a penalty as the amount received in cash exceeds the limit of Rs. 20,000.

The assessee argued that the amount was received to discharge a liability. Therefore, such transaction should not attract a penalty.

It was held that - no penalty should be imposed for receiving cash in excess of Rs. 20,000 if the assessee proves that there was a valid reason for failure to take loan or deposit otherwise than by account-payee cheque or bank draft.

The ITAT observed that the cash flow of the assessee was less due to losses. Therefore, such cash was received to meet urgencies.

The assessee proved that the transaction was genuine and there was a reasonable cause for accepting cash. Therefore, there was no reason to levy the penalty.

9. Lower tax rate of DTAA will apply even if assessee forgot to fill up schedule of 'Special Income' in ITR

Pramerica ASPF II Cyprus Holding Ltd. vs. DCIT (Mumbai Tribunal)

The assessee, incorporated in Cyprus, received interest from investment made in debentures of an Indian Company.

Tax was deducted at the rate 10% as per the provisions of the Double Taxation Avoidance Agreement (DTAA).

The Assessing Officer (AO) argued that the interest would be taxable at the rate 43.23% as the assessee did not fill up the 'Special Income' schedule in the return.

It was held that – the assessee is entitled to the benefit of India-Cyprus DTAA and hence the income would be taxable at 10%. Hence, the benefit cannot be denied on the grounds that assessee failed to fill a schedule in its return of income.

10. The assessee's salary was understated due to the mistake of an online filing portal and she was unable to verify its contents due to immense office pressure. Hence, the concealment penalty was not justified.

Richa Dubey vs. ITO (Mumbai Tribunal)

The assessee is a salaried employee who submitted her Form no. 16 to a tax return filing website. Due to a mistake committed by the website, her income was understated.

The assessee received ITR-V from the website but due to office pressure and pregnancy she could not verify the content and signed it and sent it to the Department.

The Assessing Officer levied a concealment penalty for understating the income.

The Tribunal held that – The assessee's salary income was subject to deduction of TDS by her employer and the employer had intimated the revenue about the gross salary and tax deducted by filling TDS return. Thus, the revenue was fully aware of her salary.

It is not possible for a person earning salary income to conceal such income in the return as the mismatch filed by the

assessee and employer will be caught by the Department.

In this case, salary was understated due to an error committed by the tax filing portal and the refund was granted to the assessee. However, once she came to know about such mistake, she took the necessary steps to refund the Government and intimated the AO.

Thus, there was no intention to conceal income although a mistake took place while filing the return.

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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 MAY 2016 (VARIOUS ACTS):

May 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 Income Tax - TDS payment for April
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	12	13	14
15 Provident fund payment for April, Filing of TDS return for Q4	16	17	18	19	20 MVAT Payment for April	21 ESIC Payment for April, Payment and filing of quarterly/ monthly MVAT Return
22	23	24	25	26	27	28
29	30 Issue of TDS certificate by non- government deductor for Q4	31 Profession Tax Payment				

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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