

HARBINGERTM

Updates on regulatory changes affecting your business

November 2014



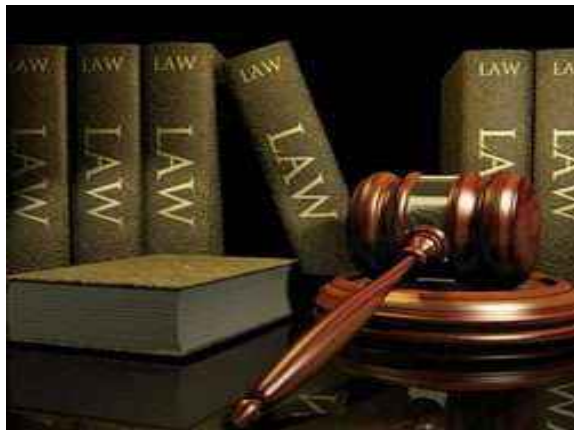
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COMPANY LAW



EXTENSION OF COMPANY LAW SETTLEMENT SCHEME 2014

The Ministry of Corporate Affairs (MCA) vide General Circular 34/2014 Dated 12/08/2014 had introduced Company law settlement scheme which enabled the companies who have defaulted in their annual filings with ROC to file it belated by granting immunity from prosecution and charging a reduced additional fees at 25 % of actual additional fees. This scheme at the time of introduction was declared that it will remain in force upto 15th October, 2014.

Now considering the request made the MCA has extended the said scheme upto 15th November, 2014

General Circular No 40/2014 Dated 15.10.2014

CLARIFICATION ON MATTERS RELATING TO CONSOLIDATED FINANCIAL STATEMENT

Government had received representations seeking clarifications on the manner of presentation of notes in Consolidated Financial Statement (CFS) to be prepared under Schedule III to the Companies Act, 2013(Act), which provides general instructions for preparation of Balance Sheet and Statement of Profit & Loss of a company.

These representations were examined in consultation with the Institute of Chartered Accountants of India (ICAI) and it is clarified by MCA that Schedule III to the Act read with the applicable Accounting Standards does not envisage that a company while preparing its CFS merely repeats the disclosures made by it under stand-alone accounts being consolidated. In the CFS, the company would need to give all disclosures relevant for CFS only.

General Circular No 39/2014 Dated 14.10.2014

COMPANY LAW SETTLEMENT SCHEME (CLSS -2014) CLARIFICATION U/S 164(2) OF COMPANIES ACT 2013

As the Company Law settlement scheme enabled companies to file their annual filings with ROC belated, and accordingly preventing the directors' disqualifications u/s 164(2) in case of companies who have not filed their annual statements for any three continuous financial years.

Considering representations received seeking clarifications as to whether

immunity from disqualification of directors pursuant to clause (a) of sub section (2) of section 164 of the companies act 2013 will be applicable with respect to companies who have filed balance sheets and annual returns on or after 01/04/2014 but before coming into force of CLSS-2014 with effect from 15.08.2014 as contained in General Circular 34/2014 dated 12/08/2014.

The matter has been examined and it is hereby clarified that in case of companies, who have filed their balance sheets and annual returns on or after 01/04/2014 but prior to launch of CLSS-2014 disqualification under clause (a) of sub section (2) of section 164 of the companies act 2013, shall apply only for prospective defaults, if any, by such companies.

General Circular No 41/2014 Dated 15.10.2014

FORM 20B - ANNUAL RETURN

Due date for filling Form 20B with ROC for the Financial Year 2013-14 is within 60 days from the date of AGM.

RESERVE BANK OF INDIA



PARTIALLY FREEZE KYC NON-COMPLIANT ACCOUNTS: RBI TO BANKS

Customers who have not complied with KYC (know your customer) requirements despite repeated reminders may face trouble as the Reserve Bank of India (RBI) has asked banks to partially freeze and subsequently close such accounts. While imposing 'partial freezing', the RBI said banks are advised to ensure that the option is exercised after giving due notice of three months initially to the customers and followed by a reminder for further period of three months.

"Thereafter, banks may impose 'partial freezing' by allowing all credits and disallowing all debits with the freedom to close the accounts."

"If the accounts are still KYC non-compliant after six months of imposing initial 'partial freezing' banks may disallow all debits and credits from / to the accounts, rendering them inoperative," it said.

Further, it would "always be open to the bank to close" the account of such customers, the notification added.

<http://profit.ndtv.com/news> - 21.10.2014

UNIVERSITIES MAY GET AID FROM RBI'S EDUCATION FUND

The Reserve Bank of India (RBI) has proposed that universities and educational institutions will be among those entities eligible for financial assistance under its Depositor Education and Awareness Fund (DEAF) Scheme 2014. Earlier, RBI had said that unclaimed deposits with banks – estimated to be in excess of Rs 3,600 crore – will be transferred to the DEAF. The scheme provided for banks to reclaim from the fund if any investor approached the bank after 10 years.

RBI said that it will also consider an institution wholly or partly financed by the government or a local authority; or a regimental fund or non-public fund established by the armed forces of the Union for the welfare of past or present members of such forces or their dependants. Unless RBI decides to give it special exemption, to be eligible an institution needs to have been in existence for five years prior to application for registration and its members should have a clean track record. Among other criteria, the institution should not be for the benefit of any particular individual, religion, community, or caste.

<http://timesofindia.indiatimes.com> – 29.10.2014

RBI ALLOWS ALL UCBS TO ACT AS PAN SERVICE AGENT

The Reserve Bank has allowed all urban cooperative banks (UCBs) to act as PAN service agent.

As per RBI rules, financially-sound UCBs should have a maintenance of a minimum CRAR (Capital to Risk-Weighted Assets Ratio) of 10 per cent on a continuous basis.

Their gross NPAs (non-performing assets) should be less than 7 per cent and net NPAs or bad loans should not exceed 3 per cent.

Also, there should not be any default in maintenance of CRR/SLR (cash reserve ratio/statutory liquidity ratio) during the preceding financial year; should have a continuous net profit for the last three years and sound internal control system with at least two professional directors on the board.

<http://timesofindia.indiatimes.com> 29.10.2014

FEMA

FINANCE MINISTRY ASKS STATE GOVT TO BE EXTRA ALERT OVER FOREIGNERS BUYING IMMOVABLE PROPERTIES

Noting that foreigners are continuing to buy immovable properties in Goa despite action by the Enforcement Directorate (ED) under the Foreign Exchange Management Act (FEMA), the Union finance ministry has written to the state government to issue instructions to authorities concerned to be extra vigilant before registering the sale deeds executed by foreigners in Goa. The Union government has also clarified that

under extant rules and regulations, an Indian citizen resident outside India, may acquire immovable property in India other than agricultural land, plantation or a farmhouse. It adds, "Whenever appropriate, authorities concerned may consider reviewing registration of sale/purchase already made to determine their compliance with legal requirements."

<http://timesofindia.indiatimes.com> 17.10.2014

ED BEGINS PROBE AGAINST A DOZEN ONLINE E-RETAIL FIRMS

The Enforcement Directorate has begun a comprehensive probe against a dozen popular online retail firms in the country for alleged violations of foreign direct investment rules in their e-commerce businesses.

The agency, according to sources, has received a communication from the country's banking regulator—the Reserve Bank of India regarding a few firms while it has took up the rest cases suo-moto for probe under the provisions of the Foreign Exchange Management Act (FEMA).

According to an official note accessed by PTI, close to a dozen firms are under the scanner of the agency. There are allegations that the companies have violated the foreign direct investment (FDI) norms of e-commerce sector. As per the current policy, FDI is not allowed in domestic e-commerce companies conducting B2C (business-to-consumer) transactions while 100 per cent foreign investment is permitted in B2B (business-to-business).

<http://www.moneycontrol.com> 31.09.2014

ECONOMICS

EPFO SUBSCRIBERS TO GET PF A/C UPDATES IN REAL TIME FROM OCT 16

The Universal Account Number (UAN) member's portal will help EPFO monitor whether their employers are depositing their PF contributions. As the UAN will be a portable account, the formal sector workers would not have to apply for transfer of PF accounts on changing jobs.

The senior official said that eventually the EPFO would provide more value added services like paperless settlement of provident fund withdrawal claims during retirement and fixing of pension after attaining the age of 58 years.

According to the official, the EPFO is on track to complete the seeding of over four crore UANs issued in the last week of July this year.

<http://businesstoday.intoday.in> 8.10.2014

RAJAN REJIGS RBI OPERATIONS, CREATES 4 CLUSTERS

Reserve Bank of India governor Raghuram Rajan has finalized organizational restructuring of the central bank by reassigning responsibilities of deputy governors under four new clusters. However, the missing piece in the exercise is the chief operating officer — which entails appointment of a fifth deputy governor by the government through an amendment of the RBI Act.

A key element of RBI's restructuring has been the separation of supervision and regulatory functions. It also involves the merging of some departments but the central bank has made it clear that there will not be any redundancies.

The RBI is also expected to induct some lateral talent as part of its skill-building attempt. Rajan had said that the objective of the restructuring was to get maximum effect with minimum change. "Our aim is to identify strengths and weaknesses. Plug weaknesses, and in a very small way bring in new talent. But we want to keep it minimal because this is a home-grown organization and we want to keep it that way for the most part."

<http://timesofindia.indiatimes.com> 22.10.2014

INDIA RANKS 142 IN LATEST "EASE OF DOING BUSINESS" REPORT: WORLD BANK

India has slipped further on the World Bank's 'Ease of Doing Business' index, at 142 among 189 countries as on June 1 from 134 last year, but the global lender has taken care to distance from this slide the Narendra Modi led NDA government which took charge barely a week earlier and soon set about improving the country's business environment and perception among overseas investors. The NDA government has announced a series of measures to fast-track decision making, reduce regulatory compliance burden and bring down cost of doing business, setting itself the goal of improving India's rank to within top 50 on this widely followed index. There was some good news, too, for India, with the report pointing out that the country follows the

largest share of the good practices measured by the new indices introduced to capture protection of minority investors. These are to the extent of shareholder rights, strength of governance structure and extent of corporate transparency.

<http://articles.economictimes.indiatimes.com>
30.10.2014

GST MUST TO BOOST MANUFACTURING, GROWTH IN INDIA, SAYS WORLD BANK

Implementation of the goods and service tax (GST) is the most critical reform needed for Indian manufacturing, the World Bank has said weeks after Prime Minister Narendra Modi invited global firms to 'Make in India' to spur manufacturing in the country. According to Denis Medvedev, senior country economist of the World Bank-India, implementing the GST will transform India into a common market, eliminate inefficient tax cascading and go a long way in boosting the manufacturing sector.

According to its estimates, simply halving the delays due to road blocks, tolls and other stoppages could cut freight times by 20-30% and logistics costs by an even higher 30-40%.

As per the update, a twice yearly report on the Indian economy and its prospects, India's economic growth is expected to rise to 5.6% in 2014-15, followed by further acceleration to 6.4% and 7.0% in the next two financial years respectively.

"With economic reforms gaining momentum, long-term prospects for growth remain bright for India," Onno Ruhl, World Bank country director in India said. "To realise its

full potential, India needs to continue making progress on its domestic reforms agenda and encourage investments.

<http://articles.economictimes.indiatimes.com/28.10.2014>

FIVE ECONOMIC TRENDS YOU SHOULD PICK UP FROM IMF FORECAST FOR INDIA

The International Monetary Fund (IMF) is one among many organizations that bravely tries to guess where various national economies will be in the coming years with great precision. Its latest forecasts have been released with the new edition of the World Economic Outlook. Here are five that deserve attention.

1. The economic recovery will be gradual rather than spectacular.
2. India will be more vibrant than most of the economies it is usually compared to.
3. Inflation will continue to be a problem.
4. Economic imbalances have not gone away.
5. The balance of global economic power continues to change.

<http://www.livemint.com/Opinion/8.10.2014>

FALLING GLOBAL CRUDE PRICES BOLSTER INDIA'S ECONOMIC OUTLOOK

As well as making the lives of millions of middle class Indians easier, the sharp drop in Brent crude prices since June is a boon for Prime Minister Narendra Modi in his fight to revive an economy growing at its slowest rate since the 1980s. The biggest external vulnerability the Indian economy has is its exposure to fluctuations in oil prices, given that it imports more than 70 percent of its crude needs. Falling prices have quickly cooled inflation and boosted foreign reserves. Cheaper oil allowed Modi to end government price caps on diesel without it hurting consumers. The move was aimed at cutting subsidy costs and attracting energy investment, and it is expected to bring down road and rail freight costs at a time when the summer harvest is arriving into markets, helping further cool price pressures. India is also among the world's biggest importers of coal and gold, both of which have become cheaper this year. "Overall, lower commodity prices further support our view that India is entering a 'goldilocks period' of lower inflation and higher growth," said Sonal Varma, an economist at Nomura.

<http://www.hellenicshippingnews.com/22.10.2014>

SERVICE TAX

EXTENSION IN DUE DATE OF FILING OF SERVICE TAX RETURN

In exercise of the powers conferred by sub-rule (4) of rule 7 of the Service Tax Rules, 1994, the Central Board of Excise & Customs hereby extends the date of submission of the Form ST-3 for the period from 1st April 2014 to 30th September 2014, from 25th October, 2014 to 14th November, 2014.

F.No.137/99/2011-Service Tax, New Delhi, the 24th October, 2014

INCOME TAX

CLARIFICATION REGARDING ALLOWABILITY OF DEDUCTION U/S. 10A/10AA ON TRANSFER OF TECHNICAL MAN-POWER IN CASE OF SOFTWARE INDUSTRY: (CIRCULAR NO. 14/2014 DATED 8TH OCTOBER, 2014)

The limit has been enhanced from **20% to 50%** for the number of technical manpower transferred from existing unit to a new SEZ unit in the first year of commencement of business, not to be interpreted as splitting up or reconstruction of an existing business. This limit has been increased due to increasing global competitiveness for an assessee engaged in the software industry and providing IT enabled Services in SEZ units.

CHANGE IN CALCULATION OF DEEMED ARM'S LENGTH PRICE (NOTIFICATION NO.45/2014)

The difference to determine deemed arm's length price for A.Y. 2014-15 (between arm's length price determined u/s. 92C and price of specific domestic transaction or international transaction) has been decreased from **three percent to one percent**.

Explanation: For the purpose of this notification, "wholesale trading" means an international transaction or specific domestic transaction of trading in goods which fulfills the following conditions:

1. Purchase cost of finished goods is 80% or more of the total cost pertaining to such trading activities and
 2. Average monthly closing inventory of such goods is 10% or less of sales pertaining to such trading activities.
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FALSE DECLARATION IN FORM NO.15G AND 15H:

CPC TDS has issued a notice to all banking companies stating that a person having taxable income submitting 15G or 15H to them is considered to be false declaration of income attracts consequences including prosecution.

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 - Hyderabad | Section 2(1A) | Gains from sale of agricultural land is exempt even though purchaser intends to use the land for commercial purposes | <i>B. Ramakotiah AM v.s Sakijit Dey (JM)</i> |
| 2 | High Court- Delhi | Section 14A and Rule 8D | S. 14A & Rule 8D disallowance cannot be made if there is no exempt income or if there is a possibility of the gains on transfer of the shares being taxable. | <i>CIT v.s Holcim India P Ltd.</i> |
| 3 | High Court- Mumbai | Section 37(1) | Advertisement expenditure incurred by agent to popularize the business of the channel run by the foreign principal is allowable as there is a direct business between the expenditure and the assessee's business as agent. The fact that the foreign principals also benefited does not entail right to deny deduction under section 37(1) | <i>CIT v.s N.G.C. Network (India) Pvt Ltd</i> |
| 4 | High court -Gujrat | Section 147 | If AO contests the audit objection but still reopens to comply with the audit objection, it means he has not applied his mind independently and the reopening is void | <i>Raajratna Metal Industries Ltd v.s ACIT</i> |
| 5 | ITAT- Mumbai | Section 271(1)(c) | Wrong claim for depreciation by showing a finance or loan transaction as a lease transaction attracts penalty | <i>Times Guaranty Ltd v.s ACIT</i> |

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| Sr. No | Tribunal / Court | Area/ Section covered | Nature | Case Law |
|--------|---------------------|-----------------------|---|---|
| 6 | High Court - Mumbai | Section 244A(1)(b) | Refund of Self-Assessment tax is also entitled to interest | <i>CIT vs. Indian Oil Corporation Ltd (Bombay High Court)</i> |
| 7 | High Court- Mumbai | 271(1)(c) | Non-offering of stamp duty/DVO value as consideration for capital gains does not attract penalty if facts are on record | <i>CIT v.s Fortune Hotels And Estates Pvt. Ltd(High Court-Mumbai)</i> |



1. S. 2(1A): Gains from sale of agricultural land is exempt even though purchaser intends to use the land for commercial purposes

B. Ramakotiah AM v.s Sakijit Dey (JM)
(ITAT Hyderabad)

i) The only reason the A.O. treated the land as non-agricultural land was that 'agreement of sale' read with 'Irrevocable GPA (Grade Point Average)' does not indicate that land retained the character of agriculture at the time of transfer. This was also the ground raised by Revenue in the appeal that M/s. Ramky Estates and Farms P. Ltd., may put the property to commercial use, therefore, the land was meant for commercial exploitation and did not have the character of agricultural land at the time of his transfer.

ii) There is no dispute that assessee has purchased agricultural land and put to agricultural use as such earlier.

The facts indicate that assessee has sold only agricultural land which was also used and put to agricultural use earlier and the purpose for which the purchaser utilized the land cannot be considered as an evidence of change of nature of land as was considered by Assessing Officer.

iii) The chargeability to tax under s. 45 arises only if on the date of sale, the land in question retained its character as a capital asset, which means, an asset, which does not answer the definition of a capital asset and which is an agricultural land would automatically be outside the scope of s. 45. It is no doubt true that the purpose for which the purchaser had purchased was totally different from what the transferor had intended to use the land in question but with the admitted finding that the lands in question were under agricultural operation on the date of sale for the purpose of considering the meaning of capital assets, it matters very little how the subsequent purchaser intended the land in question to be put to use.

iv) Hence it can be concluded that gains from sale of agricultural land is exempt even though purchaser intends to use the land for commercial purposes

2. S. 14A & Rule 8D Disallowance cannot be made if there is no exempt income or if there is a possibility of the gains on transfer of the shares being taxable.

CIT v.s Holcim India P Ltd. (High Court-Delhi)

i) Income exempt under Section 10 in a particular assessment year, may not have been exempt earlier and can become taxable in future years. Further, whether income earned in a subsequent year would or would not be taxable, may depend upon the nature of transaction entered into in the subsequent assessment year. For example, long term capital gain on sale of shares is presently not taxable where security transaction tax has been paid, but a private sale of shares in an off market transaction attracts capital gains tax.

ii) It is an undisputed position that assessee is an investment company and had invested by purchasing a substantial number of shares and thereby securing right to management. Possibility of sale of shares by private placement etc. cannot be ruled out and is not an improbability. Dividend may or may not be declared. Dividend is declared by the company and strictly in legal sense, a shareholder has no control and cannot insist on payment of

dividend. When declared, it is subjected to dividend distribution tax

3. Advertisement expenditure incurred by agent to popularize the business of the channel run by the foreign principal is allowable as there is a direct business between the expenditure and the assessee's business as agent. The fact that the foreign principals also benefited does not entail right to deny deduction under section 37(1)

CIT v.s N.G.C. Network (India) Pvt Ltd (High Court-Mumbai)

i) Advertisers who advertise on these channels act through media houses and advertising agencies and they work to media plans designed in the manner so as to maximise value for the advertiser. They will evaluate expenditure with channel penetration in the market place inasmuch as only channels with high viewership would justify the higher advertising rates which is normally sold in seconds.

ii) Merely having high quality content will not ensure high viewership. This content has to be publicized. The great reach of the publicity, the higher chances of larger viewership. The larger the viewership, the better chances of obtaining higher advertisement

revenue. The higher advertisement revenue, the higher will be commission earned by the assessee. Accordingly, we have no doubt that there is a direct nexus between advertising expenditure and revenue albeit the fact that there may be a lean period before revenue picks up notwithstanding high amount spent on such publicity. This justifies the higher expenditure vis-a-vis revenue noticed by the department.

4. S. 147: If AO contests the audit objection but still reopens to comply with the audit objection, it means he has not applied his mind independently and the reopening is void

*Raajratna Metal Industries Ltd v.s ACIT
(High Court-Gujrat)*

Observation : To satisfy ourselves, whether the reassessment proceedings have been initiated at the instance of the audit party and solely on the ground of audit objections On a perusal of the files, the noting made therein and the relevant documents, it appears that the assessment is sought to be reopened at the instance of the audit party, solely on the ground of audit objections. It is also found that, as such, the AO tried to sustain his original assessment order and submitted to the audit party to drop the audit objections if the

reassessment proceedings are initiated merely and solely at the instance of the audit party and when the Assessing Officer tried to justify the Assessment Orders and requested the audit party to drop the objections and there was no independent application of mind by the Assessing Officer with respect to subjective satisfaction for initiation of the reassessment proceedings, the impugned reassessment proceedings cannot be sustained and the same deserves to be quashed and set aside.

5. S. 271(1)(c): Wrong claim for depreciation by showing a finance or loan transaction as a lease transaction attracts penalty

Times Guaranty Ltd.v.s ACIT (ITAT Mumbai)

Observation : The contention that whether a transaction is a lease transaction or a finance transaction is a debatable legal issue, we are not inclined to accept this argument also. Whether a transaction is a lease transaction or a loan transaction, in our view, is a factual issue which is to be decided after appreciation of the relevant facts. If the facts show that the assessee has put a wrong claim of depreciation by showing a finance or loan transaction as a lease transaction, certainly the claim is to be disallowed. However, in cases, where from the facts and evidences on the file it can be shown that the transaction was

real or genuine, the relief of claim of depreciation is to be allowed. In the case in hand, from the facts, it was clearly established that the assessee had put a wrongful claim of depreciation and thereby had furnished inaccurate particulars of income for the purpose of concealment of real income, hence, the penalty proceedings were correctly initiated by the AO.

6. S. 244A(1)(b): Refund of Self-Assessment tax is also entitled to interest

*CIT vs. Indian Oil Corporation Ltd
(Bombay High Court)*

i) The Tribunal held that a refund on account of self-assessment tax was entitled to interest u/s 244A(1)(b). On appeal by the department to the High Court held by the High Court dismissing the appeal

ii) In view of the judgement of the Madras High Court in Cholamandalam Investment and Finance Ltd 294 ITR 438 (Special Leave Petition dismissed by the Supreme Court) and Sutlaj Industries Ltd 325 ITR 331 (Del) and the fact that there is nothing contrary, the appeal of the department is dismissed.

7. S. 271(1)(c): Non-offering of stamp duty/DVO value as consideration for

capital gains does not attract penalty if facts are on record

CIT v.s Fortune Hotels And Estates Pvt. Ltd(High Court-Mumbai)

i) The assessee was the owner of office premises which were sold in AY 2004-05 for Rs. 2 crore. The AO noted that the stamp duty valuation of the property was Rs.3,72,42,000 and that the DVO had valued the property at Rs. 2,70,03,920. The value adopted by the DVO was taken as the consideration for sale of the property u/s 50C and capital gains was assessed on that basis. The assessee accepted the same. The AO levied penalty u/s 271(1)(c) for furnishing inaccurate particulars of income. This was upheld by the CIT(A) though deleted by the Tribunal. Before the High Court, the department relied on **Chuharmal vs. CIT** 172 ITR 250 (SC) and argued that even though s. 50C created a liability for deemed income, still penalty u/s 271(1)(c) could be levied. HELD by the High Court dismissing the appeal

ii) The Tribunal finding that the case was not one of furnishing inaccurate particulars of income or of concealment in as much as there was a registered sale deed and the consideration was mentioned therein cannot be faulted. Also, the DVO determined the value at a figure lower from that of the stamp value. The larger question posed for

consideration as to whether s. 271(1)(c) penalty can apply to deemed income is left open for consideration in an appropriate case.

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

DUE DATES CHART FOR THE MONTH OF NOVEMBER 2014

(Various Acts):

| Date | Particulars |
|------------------|--|
| 5 th | Service Tax payment for the previous month (6 th if paid electronically) for all assessees |
| 6 th | Payment of Excise Duty for all assesses for the previous month for all assessees (including SSI units) |
| 7 th | TDS remittance for the previous month |
| 10 th | Monthly Excise return by all assesses (except SSI Units) coming under CEA in Form ER-1 |
| 10 th | Monthly Excise return by specified class of assesses regarding principal inputs coming under CEA in Form ER-6. |
| 15 th | P.F Payment for month of October. |
| 20 th | Payment of contribution under Employee EPF & MP Act, 1952 (including 5 days of grace) |
| 20 th | Payment & returns of Monthly MVAT under MVAT Act, 2002* |
| 21 st | Payment of contribution under Employees State Insurance Act, 1948 |
| 30 th | Filing of Annual Financial Information Statement in Form ER-4 by the specified assessees. |
| 30 th | Return of income tax wealth tax of all assesses covered under transfer pricing regulations |
| 30 th | Professional tax of employees for month of October |

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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.