

HARBINGERTM

Updates on regulatory changes affecting your business

September 2014



B D Jokhakar & Co.

Chartered Accountants

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COMPANY LAW



Announcement of Company Law Settlement Scheme (CLSS), 2014 vide General Circular No. 34/2014 dated 12th August 2014

One Time Opportunity for Defaulting Companies and Its Directors

Companies Who Have Not Filed Their Annual Reports, Financial Statements and Related Documents Due for Filing on or before 30/06/2014 can File These Documents before 15/10/2014

And Avail Of The Following:

- i. Pay only 25% of Payable Additional Fee, and
- ii. Enjoy Immunity From Prosecution

- iii. Directors Will Also Not Be Disqualified Under Section 164(2) Of The Companies Act, 2013.

The Ministry has received representations from various stakeholders requesting for grant of transitional period or one-time opportunity to enable them to file their pending annual documents to avoid attraction of higher fees/fine and other penal action, especially disqualification of their Director prescribed under the new provisions of the Act.

In order to give such an opportunity to the defaulting companies to enable them to make their default good by filing these belated documents, the Central Government in exercise of powers conferred under section 403 and 460 of the Companies Act, 2013 has decided to introduce a Scheme namely **"Company Law Settlement Scheme 2014"** [CLSS-2014] condoning the delay in filing the above mentioned documents with the Registrar.

In addition, the scheme gives an opportunity to inactive companies to get their companies declared as 'dormant company' under section 455 of the Act (Chapter XXIX) by filing a simple application at reduced fees. The said provision enables inactive

companies to remain on the Register of Companies with minimal compliance requirements. For the details of the Scheme refer MCA General Circular No. 34/2014 dated 12th August 2014.

The scheme shall come into force on the 15th August 2014 and shall remain in force up to 15th October, 2014.

Clarification Accounting Standard (AS) 10 capitalisations of cost

Government has received a number of representations seeking clarifications on capitalization of costs in cases of Competitive Bid Power projects. The clarifications sought were with regard to capitalization of borrowing costs incurred during extended delay in commercial production for reasons beyond the developer's - control, and whether capitalization of power plant should be unit-wise or project-wise. The matter has been examined in consultation with the Accounting Standards Board (ASB) of the Institute of Chartered Accountants of India (ICAI).

Accounting Standards AS-10 and AS-16 prescribe the principles of capitalization of various costs based on the underlying concept that only such expenditure should be capitalized as form a part of the cost of fixed assets which increase the worth of the assets.

Cost incurred during the extended delay in commencement of commercial production after the plant is otherwise ready does not increase the worth of fixed assets. Such costs cannot, therefore, be capitalized.

Accounting Standard AS-16, inter alia provides guidance with regard to part capitalization where some units of a project are complete. In case one of the units of the project is ready for commercial production and is capable of being used while construction continues for the other units, costs should be capitalized in relation to that part once the part is ready for commercial production.

It is further clarified that AS-10 and AS-16 are applicable irrespective of whether the power projects are 'Cost Plus projects' or 'Competitive Bid projects'.

General Circular No. 35/2014 dated 27.08.2014

Amendment in Schedule II of Companies Act, 2013 Dated 29-8-2014

In exercise of the powers conferred by sub-section (1) of section 467 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following amendments further to amend Schedule II of the said Act with

effect from the date of publication of this notification in the Official Gazette, namely:-

1. In Schedule II of the Companies Act, 2013,

(a) in Part 'A', in paragraph 3, for sub-paragraph (i), the following sub-paragraph shall be substituted, namely:-

"(i) The useful life of an asset shall not ordinarily be different from the useful life specified in Part C and the residual value of an asset shall not be more than five per cent of the original cost of the asset:

Provided that where a company adopts a useful life different from what is specified in Part C or uses a residual value different from the limit specified above, the financial statements shall disclose such difference and provide justification in this behalf duly supported by technical advice";

(b) After Part C, under the heading Notes:

(i) For paragraph 4 the following paragraph shall be substituted namely:-

(a) Useful life specified in Part C of the Schedule is for whole of the asset and where cost of a part of the asset is significant to total cost of the asset and useful life of that part is different from

the useful life of the remaining asset, useful life of that significant part shall be determined separately.

(b) The requirement under sub-paragraph (a) shall be voluntary in respect of the financial year commencing on or after the 1st April, 2014 and mandatory for financial statements in respect of financial years commencing on or after the 1st April, 2015."

(c) In paragraph 7, in sub-paragraph (b) for the words "shall be recognized", the words "may be recognized" shall be substituted.

Reserve Bank of India



Usage of ATMs – Rationalisation of number of free transactions

Taking into account the high density of ATMs, bank branches and alternate modes of payment available to the customers, the number of mandatory free ATM transactions for savings bank account customers at other banks' ATMs is reduced from the present five to three transactions per month (inclusive of both financial and non-financial transactions) for transactions done at the ATMs located in the six metro centres, viz. Mumbai, New Delhi, Chennai, Kolkata, Bengaluru and Hyderabad. Nothing, however, precludes a bank from offering more than three free transactions at other bank ATMs to its account holders if it so desires. This reduction will, however, not apply to small / no frills / Basic Savings Bank Deposit account holders who will continue to enjoy five free transactions, as hitherto.

At other locations i.e. other than the six metro centers mentioned above, the

present facility of five free transactions for savings bank account customers shall remain unchanged.

The ceiling / cap on customer charges of Rs.20/- per transaction (plus service tax, if any) will be applicable.

This will be applicable w.e.f 1st November 2014.

INTERNATIONAL TAX

Union Finance Minister's adviser favours lower Corporate Tax Rates

Union Finance Minister's adviser Partha Sarathi Shome today favoured lowering of corporate taxes saying it would lead to higher growth and development.

"Lowering of corporate taxes will result in higher job growth and is more development oriented," Shome said at an interaction organised by Bharat Chamber of Commerce here.

Shome said marginal rates of taxation for high net worth individuals (HNIs) in India was not steep as compared to countries like the UK and the USA.

Persons having an income of Rs 5 crores, for instance were taxed at 30 per cent plus a surcharge.

"This, according to me, is low by any standards and should be raised to bring

vertical equity in the taxation structure in the country.

"In India, that can go higher and it is not wise to slash top marginal rates. Some equity correction needs to be done," Shome said.

He also pointed out that some MNCs were engaged in profit shifting leading to payout of lower effective taxation.

"This has become an anathema to most of the governments and has become a major issue in international taxation."

(Economic Times dated February 2014)

Payment of Interest not taxable paid to overseas Head office

In case of assessee, a non-resident bank, interest paid by Indian branch to Head Office and overseas branches was not taxable in India on principles of mutuality and, therefore, tax was not required to be deducted.

[2014] 47 taxmann.com 378 (Mumbai - Trib.)

FEMA

Rs 5,600 crore FEMA violations by MNCs since 2010

NEW DELHI: Industrial houses and multinational companies indulged in foreign exchange violations of Rs 5,610.49 crore since 2010, government said.

"Directorate of Enforcement has issued

31 show cause notices involving alleged contraventions of Rs 5,610.49 crore from 2010 onwards for violation of various provisions of Foreign Exchange Management Act (Fema), 1999 in cases of industrial houses and multinational companies," finance minister Arun Jaitley said in a written reply in Lok Sabha.

He said, "Whenever, contraventions of the FEMA are observed, RBI advises the companies concerned to get the contravention compounded under FEMA and also if required, the cases are referred to the Directorate of Enforcement for further investigation."

During the last three years, RBI's cell for Effective Implementation of FEMA (CEFA), which has its central office in Mumbai, has compounded 844 cases of industrial houses and MNCs, he added.

(Times of India dated 28th August, 2014)

Pay in dollars on domestic airlines flying abroad

"As per provisions of the Foreign Exchange Management Act (FEMA), 1999, and Regulation 3 of Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 as amended from time to time, a person (including any company) cannot take or send out of India or bring into India, Indian currency/currency notes beyond Rs 10,000," it said.

Due to this restriction and limitation as

prescribed under FEMA, Airlines cannot accept Indian currency for on-board sales on our international flights. No such disrespect is intended or caused to the Indian currency," it clarified.

(Times of India dated July, 2014)

ECONOMICS

Indian economy expected to grow by 5.5 per cent in current fiscal: UN report:

India's economy is expected to record stronger growth momentum of 5.5 per cent in the current fiscal, underpinned by "solid expansion" in industrial and services sectors, and impetus to economic reforms by the new government, according to a UN report.

In its report, the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) said a fragile global economy has "weighed" on Indian economy in recent years, but "delays" in tackling "structural impediments", such as rising inequality, high inflation and infrastructure shortages have also affected the growth rate.

"Indian economy expanded by 4.7 per cent in the fiscal year 2013, up from 4.5 per cent in the previous year. This rate is, however, far below the 9.5 per cent pace registered in the years prior to the global financial crisis," said the report, released at a meeting of UNESCAP here.

(Economic Times dated 4th August, 2014)

Modi celebrates 100 days of office:

"In just 100 days, the government has altered the direction of the economy from despair to hope. There is confidence and understated exuberance among the global community and investors. Result on ground will take time but there are clear signs of action, focus and accountability," said RPG Enterprise Chairman Harsh Goenka. D Bhattacharya, Managing Director of Aditya Birla group's flagship Hindalco and Vice-Chair-man of Novelos, said: "The business sentiment has greatly improved. The action on ground will take some time to show because of lag effect."

(Economic Times dated 28th August, 2014)

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 Chennai	Section 14A and Rule 8D	S. 14A & Rule 8D: Investments in subsidiaries to be excluded while computing disallowance	<i>EIH Associates Hotels Ltd. Vs. DCIT</i>
2	ITAT Mumbai	Section 14A and Rule 8D	S. 14A & Rule 8D cannot be applied in a mechanical manner. Disallowance cannot exceed expenditure claimed as a deduction	<i>ACIT Vs. Iqbal M. Chagala</i>
3	ITAT Agra bench	Section 57(iii)	Interest paid on a loan taken to avoid premature encashment of a fixed deposit is deductible against the interest earned on the fixed deposit	<i>Raj Kumari Agarwal Vs. DCIT</i>
4	High court of Karnataka	Section 80-IB	If the undertaking satisfies the conditions for eligibility in the initial year, it must get deduction for 10 years & non-compliance in a subsequent year is irrelevant	<i>Ace Multi Axes Systems Ltd. Vs. DCIT</i>
5	ITAT-Mumbai	Section 92B	Sec 92B Transfer Pricing: Share application money, though not allotted into shares for a long time, cannot be treated as a "loan" for taxing notional interest	<i>All Cargo Global Logistics Ltd. Vs. ACIT</i>
6	High Court - Gujrat	Section 204	Upon issue of Form 16A TDS certificate, TDS credit has to be given to the payee even if there is Form 26AS mismatch or deductor is at fault for non-deposit of TDS with Govt.	<i>Sumit Devendra Rajani Vs. ACIT</i>



1. S. 14A & Rule 8D: Investments in subsidiaries to be excluded while computing disallowance

EIH Associates Hotels Ltd. Vs. DCIT (ITAT Chennai)

i) The investments made by the assessee in the subsidiary company are not on account of investment for earning capital gains or dividend income. Such investments have been made by the assessee to promote subsidiary company into the hotel industry.

ii) A perusal of the order of the CIT(A) shows that out of total investment of Rs. 64.18 crore, Rs. 63.31 crore is invested in wholly owned subsidiary. This fact supports the case of the assessee that the assessee is not into the business of investment and the investments made by the assessee are on account of business expediency. Any dividend earned by the assessee from investment in subsidiary company is purely incidental.

iii) Therefore, the investment made by the assessee in its subsidiary is not to be reckoned for disallowance u/s 14A. The AO is directed to re-compute the average value of investment under the provisions of Rule 8D after deleting investments made by the assessee in subsidiary company.

2. S. 14A & Rule 8D cannot be applied in a mechanical manner. Disallowance cannot exceed expenditure claimed as a deduction

ACIT Vs. Iqbal M. Chagala (ITAT Mumbai)

i) The assessee had debited direct expenses on account of dematerialization and STT in the capital account and not in the Profit and loss account.

ii) The AO had presumed that the assessee must have incurred some expenditure under the heads salary, telephone and other administrative charges for earning the exempt income. It is further found that the total expenditure claimed by the assessee for the year is about 13 lakhs and the AO had made a disallowance of about Rs.16 lakhs. He has just adopted the formula of estimating expenditure on the basis of investments. But, the justification for calculating the disallowance is missing. The assessee had not claimed any expenditure in its P&L account and so

the burden was on the AO to prove that out of the expenditure incurred under various heads were related to earning of exempt income.

iii) Not only this he had to give the basis of such calculation. In any manner disallowance of Rs.16.35 lakhs as against the total expenditure of Rs.13 lakhs claimed by the assessee in P&L account is not justified. Rule 8D cannot and should not be applied in a mechanical way.

iv) Facts of the case have to be analyzed before invoking them. Consequently the disallowance is deleted.

Corollary : If there is no expenditure claimed , there cannot be a disallowance.

3. S. 57(iii): Interest paid on a loan taken to avoid premature encashment of a fixed deposit is deductible against the interest earned on the fixed deposit

Raj Kumari Agarwal Vs. DCIT (ITAT Agra)

i) In order to protect the interest earnings from fixed deposits and to meet her financial needs, when an assessee raises a loan against the fixed deposits, so as to keep the source of earning intact, the expenditure so

incurred in wholly and exclusively to earn the fixed deposit interest income.

ii) The authorities below were apparently swayed by the fact that the borrowings were triggered by assessee's financial needs for personal purposes and, by that logic, the borrowing cannot be said to be wholly and exclusively for the purposes of earning interest income, but what this approach overlooks is whether the expenditure is incurred for directly contributing to the beginning of or triggering the source of income or whether the expenditure is for protecting, and thus keeping alive, that source of income, in either case it is expenditure incurred wholly and exclusively for the purpose of earning that income.

iii) The assessee indeed required that money, so raised by borrowing against the fixed deposits, for her personal purposes but that's not relevant for the present purposes. The assessee could have gone for premature encashment of bank deposits, and thus ended the source of income itself, as well, but instead of doing so, she resorted to borrowings against the fixed deposit and thus preserved the source of earning.

iv) The expenditure so incurred is an expenditure incurred wholly and

exclusively for earning from interest on fixed deposits. We are alive to the fact that in the case of a business assessee, and in a situation in which the borrowings against fixed deposits were resorted to for use in business, consideration for end use of funds so borrowed would be relevant because the interest deduction is claimed as a business deduction u/s 36(1)(iii).

v) On the facts before us, the interest on borrowings against the fixed deposits could be said to protect the interest income from fixed deposit interest and thus, incurred wholly and exclusively for the purposes of earning such income.

4. S. 80-IB: If the undertaking satisfies the conditions for eligibility in the initial year, it must get deduction for 10 years & non-compliance in a subsequent year is irrelevant

Ace Multi Axes Systems Ltd. Vs. DCIT (Karnataka High Court)

i) There is no indication in s. 80-IB that the conditions stipulated therein has to be fulfilled by the assessee in all the 10 years. When once the benefit of 10 years, commencing from the initial year, is granted, if the undertaking satisfy all these conditions initially, the undertaking is entitled to the benefit of 10 consecutive years.

ii) The argument that, in the course of 10 years, if the growth of the industry is fast and it acquires machinery and the total value of the machinery exceeds Rs.1 crore, it ceases to have the said benefit, do not follow from any of the provisions.

iii) It is true that there is no express provision indicating either way, what would be the position if the small scale industry ceases to be a small scale industry during the said period of 10 years. Because of that ambiguity, a need for interpretation arises. If we keep in mind the object of the Legislature providing for these incentives and when a period of 10 years is prescribed, that is the period, probably, which is required for any industry to stabilize itself. During that period the industry not only manufactures products, it generates employment and it adds to the wealth of the country. Merely because an industry stabilizes early, makes profits, makes future investment in the said business, and it goes out of the definition of the small scale industry, the benefit u/s 80IB cannot be denied. If such a literal interpretation is placed on the said provision, it would run counter to the very object of granting incentives. It would kill the industry.

iv) Therefore keeping in mind the object with which these provisions are enacted, keeping in mind the industrial growth which is required to be achieved, if two interpretations are possible, the courts have to lean in favour of extending the benefit of deduction to an assessee who has availed the opportunity given to him under law and has grown in his business.

v) Therefore we are of the view, if a small scale industry, in the course of 10 years, stabilizes early, makes further investments in the business and it results in it's going outside the purview of the definition of a small scale industry, that should not come in the way of its claiming benefit u/s 80IB for 10 consecutive years, from the initial assessment year.

5. Sec 92B Transfer Pricing: Share application money, though not allotted into shares for a long time, cannot be treated as a "loan" for taxing notional interest

All Cargo Global Logistics Ltd.Vs. ACIT (ITAT Mumbai)

i) The TPO has not disputed that the transactions were in the nature of payments for share application money, and thus, of capital contributions. The

TPO has not made any adjustment with regard to the ALP of the capital contribution.

ii) He has, however, treated these transactions partly as of an interest free loan, for the period between the dates of payment till the date on which shares were actually allotted, and partly as capital contribution, i.e. after the subscribed shares were allotted by the subsidiaries in which capital contributions were made.

iii) No doubt, if these transactions are treated as in the nature of lending or borrowing, the transactions can be subjected to ALP adjustments, and the ALP so computed can be the basis of computing taxable business profits of the assessee, but the core issue before us is whether such a deeming fiction is envisaged under the scheme of the transfer pricing legislation or on the facts of this case. We do not find so. We do not find any provision in law enabling such deeming fiction.

6. Upon issue of Form 16A TDS certificate, TDS credit has to be given to the payee even if there is Form 26AS mismatch or deductor is at fault for non-deposit of TDS with Govt.

Sumit Devendra Rajani Vs.ACIT (Gujrat High Court)

U/s 204, the liability to deduct TDS is on the employer / payer. U/s 205, when tax is deductible at source, the assessee shall not be called upon to pay tax himself to the extent to which tax has been deducted from that income. This means that the assessee / deductee is entitled to credit of such amount of TDS. Even if the deductor, after deducting the TDS, does not deposit the sum with the department, the department has to recover the said amount from the deductor and cannot deny credit to the deductee .

Observation : This judgment is of vital importance in the present day electronic filing regime .

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

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

Date	Particulars
5 th	Service Tax payment for the previous month (6 th if paid electronically)
6 th	Payment of Excise Duty for all assesses for the previous month (except 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 ER1
10 th	Monthly Excise return by specified class of assesses regarding principal inputs coming under CEA in Form ER 6
15 th	Advance Income Tax payment for all assesseees as per Income Tax Act, 1961
20 th	Payment of contribution under Employee EPF & MP Act, 1952 (including 5 days of grace)
21 st	Payment of contribution under Employees State Insurance Act, 1948
20 th	Payment and returns of Monthly MVAT under MVAT Act, 2002*
30 th	Income Tax Return and Wealth for others covered under Audit and Companies but other than covered under Transfer Pricing regulations
30 th	Payment of Profession Tax for the employees

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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.