

HARBINGERTM

Updates on regulatory changes affecting your business

July 2016



B D Jokhakar & Co.

Chartered Accountants

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COMPANY LAW

Constitution of National Company Law Appellate Tribunal

The Central Government has constituted the National Company Law Appellate Tribunal for handling appeals against order of National Company Law Tribunal with effect from June 1, 2016.

Notification dated June 1, 2016

Transfer of cases of Company Law Board (CLB) to the National Company Law Tribunal

All matters and proceedings or cases pending before the CLB will be transferred to the National Company Law Tribunal and it will handle such matters as per the provisions of the Companies Act, 2013 or Companies Act, 1956.

Notification dated June 1, 2016

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INCOME TAX

Premature closure of Public Provident Fund (PPF) account

The Central Government has further amended the Public Provident Fund Scheme, 1968

The Scheme shall be called the Public Provident Fund (Amendment) Scheme, 2016

Upon such an amendment a subscriber shall be allowed premature closure of his account or the account of a minor of whom he is a guardian upon a written application on following grounds:

1. That such amount is required for the treatment of serious ailments or life threatening diseases of the account holder, spouse or dependent children or parents, on production of supporting from medical authority;
2. That the amount is required for higher education of account holder or minor account holder, on production of documents and fee bills in confirmation of admission.

Such a closure shall be allowed on completion of 5 financial years of the account

Also such a closure shall be subject to deduction of 1% less interest on the interest rate as applicable.

Notification No. GSR...E dated June 18, 2016

Clarifications regarding section 206C of the Income Tax Act vide Finance Act 2016

The Finance Act 2016 has amended section 206C to provide that the seller shall collect tax at the rate of 1% from the purchaser on sale in

cash on certain goods or provision of service exceeding Rupees 2 lakh.

The CBDT has further clarified the issue as regards applicability of the provisions as follows:

1. Tax collected at source will not be levied if the cash receipt does not exceed Rupees 2 lakh even if the sales consideration exceeds Rupees 2 lakh
2. The tax is required to be collected at source only on cash component of the consideration and not on the whole sale consideration.

Circular No. 23 of 2016 dated June 23, 2016

No deduction of TDS on certain payments to scheduled banks

The Central Board of Direct Taxes (CBDT) has notified that no deduction of tax shall be made on certain payments made by a person to following banks:

1. Bank listed in second schedule to the Reserve Bank of India Act, 1934, excluding a foreign bank and
2. Payment systems company authorised by the RBI under section 4(2) of the Payment and Settlement Systems Act, 2007

The payments made shall be of the nature specified below:

1. Bank guarantee commission;
2. Cash management service charges;
3. Depository charges on maintenance of DEMAT accounts;
4. charges for warehousing services for commodities;
5. underwriting service charges;
6. clearing charges (MICR charges) including interchange fee or any other similar charges by whatever name called charged at the time of settlement or for clearing activities;
7. Credit card or debit card commission for transaction between merchant establishment and acquirer bank.

This shall come into effect from the date of its publication in the official gazette.

Notification No. 47/2016 dated June 17, 2016

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RESERVE BANK OF INDIA



Foreign Exchange Management (Foreign currency accounts by a person resident in India) Regulations, 2015

The Reserve bank of India has made regulations for opening, holding and maintaining of Foreign Currency Accounts and the limits up to which amount can be held in such accounts by a person resident in India.

Such regulations shall be called Foreign Exchange Management (Foreign currency accounts by a person resident in India) Regulations, 2015.

These are effective from the 1st day of June, 2016.

Notification No. FEMA 10 (R) /2015-RB dated June 1, 2016

Format of Statutory Auditor's Certificate (SAC) to be submitted by NBFCs

All the NBFCs are required to submit a certificate from their Statutory Auditors every year to the

effect that they continue in the business of NBFI.

In order to ensure consistency in the information to be sent, RBI has introduced a unique format of the SAC.

Thus all the NBFCs will now be required to fill the information as applicable in COSMOS website and then scan the SAC and upload in COSMOS.

Notification no RBI/2015-16/433 dated 23rd June, 2016

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SERVICE TAX

Amendment to the Mega exemption notification

The Central Government has substituted clause (c) of entry 6 of the Mega Exemption Notification as under:

Service provided by a senior advocate by way of legal services to-

a) Any person other than a business entity; or

b) A business entity with a turnover up to Rupees ten lakhs in the preceding financial year.

Thus service covered by the above entry shall now be exempt from tax.

Notification no. 32/2016- Service tax dated June 6, 2016

Service Tax (Fourth Amendment) Rules, 2016

The Central Government has further amended the Service Tax Rules, 1994.

These rules may be called the Service Tax (Fourth Amendment) Rules, 2016.

Notification No. 33/2016-Service Tax dated 6th June, 2016

Amendment relating to Reverse Charge Mechanism

The Central Government has made further amendments to reverse charge mechanism. Pursuant to the amendment in case of following services, service tax is liable to be paid under RCM.

1. Services provided by an individual advocate or a firm of advocates by way of legal services other than representational services by senior advocates.
2. Services provided by a senior advocate by way of representational services before any court, tribunal or authority, directly or indirectly, to any business entity located in the taxable territory, including where contract for provision of such

service has been entered through another advocate or a firm of advocates, and the senior advocate is providing such services, to such business entity who is litigant, applicant, or petitioner, as the case may be.

3. Services by a director of a company or a body corporate to the said company or a body corporate

Notification No. 34/2016-Service tax date June 6, 2016

Exemption from Krishi Kalyan Cess (KKC) for services, in respect of which the invoice has been issued prior to 31st May, 2016

The Central Government has exempted taxable services from the whole of KKC levied thereon subject to following conditions:

1. The invoice for the service is issued on or before 31st May, 2016 and,
2. The provision of service has been completed on or before 31st May, 2016

Notification no 35/2016-Service tax date June 23, 2016

Exemption from service tax levied on services by way of transportation of goods by a vessel from outside India up to customs station in India

The Central Government has

exempted the taxable services by way of transportation of goods by a vessel from outside India up to the customs station in India, from the whole of the service tax, subject to following conditions:

1. Invoice for the service has been issued on or before 31st May, 2016 and,
2. Import manifest or import report required to be delivered u/s 30 of the Customs Act, 1962 has been delivered on or before 31st May, 2016 and,
3. The service provider or the recipient produces customs certified copy of such import manifest or import report.

Notification No. 36/2016-Service tax date June 23, 2016

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ECONOMICS

EPFO may soon allow members to contribute for pension scheme

EPFO shall soon allow its members to contribute to the pension scheme in addition to the employer's mandatory contribution.

At present an employer contributes 8.33% of the basic wages of Rs. 15,000 per month and the government contributes 1.16 % of the basic wages towards the pension scheme.

Considering the enhanced paying capacity of a large number of subscribers, the EPFO is working on the proposal to allow them to contribute more in addition to employers' contribution for ensuring higher pension after retirement

Once the proposal is approved the member shall be eligible to contribute to the pension fund in addition to the employer's contribution.

economictimes.indiatimes.com dated June 13, 2016

Press Release of Finance Minister Arun Jaitley on UK Referendum

We have just seen the final vote of the people of the United Kingdom in the referendum on whether to remain or leave the European Union. We respect the referendum's verdict. At the same time, we are also aware of its significance in the days ahead and also for the medium term.

As I have often said, in this globalized world, volatility and uncertainty are the new norms. This verdict will, obviously, further contribute to such volatility not least because its full implications for the UK, Europe and the rest of the world are still uncertain. All countries around the world will have to brace themselves for a period of possible turbulence while being watchful about, and alert to,

the referendum's medium term impacts.

objective for development of all.
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As regards, the Indian economy, we are well prepared to deal with the short and medium term consequences of Brexit. We are strongly committed to our macro-economic framework with its focus on maintaining stability. Our macro-economic fundamentals are sound with a very comfortable external position, a rock-solid commitment to fiscal discipline, and declining inflation. Our immediate and medium-term firewalls are solid too in the form of a healthy reserve position.

As investors look around the world for safe havens in these turbulent times, India stands out both in terms of stability and of growth. India, as you are all well aware, is amongst the fastest growing major economies in the world today. Our growth and inflation prospects are further improving in the wake of the good monsoons that are now moving well across India.

The government and the Reserve Bank of India as well as other regulators are well prepared, and working closely together, to deal with any short term volatility. Our aim will be to smooth this volatility and minimize its impact on the economy in the short term. At the same time, for the medium term, we will steadfastly pursue our ambitious reform agenda— including early passage of the GST—that will help us realize our medium term growth potential of 8-9% and help achieve our

SUMMARY OF IMPORTANT TAX JUDGMENTS:

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

| Sr. No | Tribunal/ Court | Section/ Area | Nature | Case Law |
|--------|----------------------------------|--------------------------------|--|---|
| 1 | ITAT Ahmedabad | Section 56(2)(viii) | Interest on compensation paid to accident victim is tax-free | Urvi Chirag Sheth vs. Income Tax Officer |
| 2 | Mumbai Tribunal | Section 194C | TDS needs to be deducted for payments made to automobile dealers for servicing vehicles under warranty | Mahindra Navistar Automotives Ltd. vs. Deputy Commissioner of Income Tax |
| 3 | Mumbai Tribunal | Section 194J | TDS need not be deducted for transaction charges paid to Stock Exchange | Fiduciary Shares & Stock (P.) Ltd. vs. Assistant Commissioner of Income Tax |
| 4 | Chennai Tribunal | Section 234B | Interest chargeable for the period of | Nuts 'n' Spices vs. ACIT Chennai |
| 5 | Mumbai Tribunal | Section 246A | Appeal cannot be filed for order issued under Section 195(2) for payment to non-residents | Deputy Commissioner of Income Tax vs. Abu Dhabi Ship Building PJSC |
| 6 | High Court of Punjab and Haryana | Chartered Accountant Act, 1949 | CA gets lifetime ban for being master-mind of accommodation entries | Institute of Chartered Accountants of India vs. Vivek Kapoor |

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DISCUSSION ON JUDGEMENTS - INCOME TAX



1. Interest on compensation paid to accident victim is tax-free

Urvi Chirag Sheth vs. ITO (Ahemdabad Tribunal)

The assessee met with a serious accident, leaving her permanently disabled. She claimed compensation for this tragic loss. She eventually received it.

The settlement of the accident compensation led to new litigation - taxability of a component of compensation i.e. interest component.

The Assessing Officer (AO) held that interest component is taxable. The CIT confirmed this.

On appeal it was held that - a capital receipt is not considered as income unless it is in the nature of revenue receipt. The accident compensation is not taxable as income of the assessee.

The interest is a compensation of time value of money for delayed payment. When interest received by an assessee is in the nature of income it can be taxable. Unless a receipt is not an income it will not be taxable.

2. Payment to automobile dealers for servicing vehicles under warranty would attract TDS under Section 194C

The assessee company, manufacturing and selling vehicles, was charging customers for services in the nature of repair and maintenance of vehicles.

Assessee's authorised dealers were required to provide services to vehicles that satisfied conditions of warranty against coupons issued to customers.

The assessee allowed payment/credit to authorised dealers on presentation of such coupons received by them from owners. The Assessing Officer (AO) disallowed such payments made to dealers for non-deduction of TDS under Section 194C.

It was held that - The assessee company was responsible for making payment to the dealers. It is not necessary that the payer or specified person should be the recipient of the services for deducting TDS.

The assessee company was the beneficiary of these services, making

it a part of the sale arrangement. Such payments made by the vehicle manufacturer to dealers were liable to TDS under Section 194C.

3. Transaction charges paid to stock exchange don't attract TDS under Section 194J

Fiduciary Shares & Stock (P.) Ltd. vs. Assistant Commissioner of Income Tax (Mumbai Tribunal)

The assessee debited a certain amount for transaction charges paid to the Exchange. The Assessing Officer (AO) disallowed such charges on the ground that assessee did not deduct TDS when making payment.

The Commissioner held that the charges were paid for managerial services which are considered as fees for technical services under section 194J. Hence the assessee was liable to deduct TDS before payment. The assessee filed an appeal.

It was held that - the question whether TDS is deducted on payment made by members to Stock Exchange has been considered in CIT vs. Kotak Securities Ltd. where it was held that no TDS is required to be deducted in transaction charges as it is not 'technical services' but are payments for facilities provided by the Stock Exchange.

4. Interest chargeable for the period of

Nuts 'n' Spices vs. ACIT Chennai (Chennai Tribunal)

The assessee filed a return showing income of Rs. 1.92 crore. A survey was conducted and the case was reopened. The assessee again filed a return showing total income of Rs. 5.21 crore.

The assessing officer completed the assessment and passed an order demanding tax of Rs. 1,23,150. He calculated interest under Section 234B.

The assessee challenged the period for which interest was levied and sought rectification under Section 154.

It was held that - the case be considered from first day of April next following such financial year till the date of assessment.

5. Appeal cannot be filed for Order passed under Section 195(2).

ONGC entered into an agreement with a foreign company for construction of Immediate Support Vessels (ISV).

ONGC filed an application requesting approval for non-deduction of TDS on payment for construction of the ISVs.

The Assessing Officer (AO) rejected the application as he was of the view that such payments were taxable in India and liable for deduction of TDS.

The foreign company filed an appeal before CIT challenging the order. The CIT reversed the order of the AO.

The revenue filed an instant appeal before the Tribunal arguing whether the appeal filed would be an appealable order as per Section 246A.

It was held that - Section 246A does not state an order passed under Section 195 (2) as an appealable order. However, there is a specific provision under Section 248 under which an appeal against Section 195 can be filed by the deductor. If there is a specific provision for filing an appeal, it can be filed only in terms of such provision and no other manner. Hence, the order passed by the AO cannot be challenged as there is a specific provision for filing appeal.

6. CA gets lifetime ban for manipulating entries

The Chartered Accountant was a master-mind in a scam of providing accommodation entries to various concerns after charging commission from 1% to 3%. He was operating benami bank accounts.

After receiving complaints, proceedings were initiated against him. A copy of the complaint was sent to him however the notice was

undelivered with remarks "left country." The Chartered Accountant was found guilty of professional and other misconduct.

The Council decided to recommend to the court for removal of the chartered accountant from the register of members for a period of 10 years.

The High Court held that - the Chartered Accountant has violated the code of ethics. He admitted to defrauding the revenue. Thereafter, he left the country.

A professional who behaves in such manner deserves to be dealt with sternly.

This person is unworthy of a Chartered Accountant, who is expected to maintain high level of professional conduct. The Chartered Accountant will be removed from the register of members of the ICAI for life.

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 JULY 2016 (VARIOUS ACTS):

| July 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 | 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, Filing of TDS return for Q1, Filing FCGPR Part B for companies with foreign investment | 16 |
| 17 | 18 | 19 | 20 | 21 MVAT Payment, ESIC Payment, Payment and filing of quarterly/ monthly MVAT Return | 22 | 23 |
| 24 | 25 | 26 | 27 | 28 | 29 | 30 Profession Tax Payment |
| 31 Filing of return of income by salaried employees and other individuals* | *having incomes other than from business and non- company assesseees** | **having business income | | | | |

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This communication is intended to provide general information, guidance on various professional subject matters and should not be regarded as a basis for taking decisions on specific matters. In such instances, separate advice should be taken.

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