

HARBINGERTM

Updates on regulatory changes affecting your business

November 2017



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GOODS AND SERVICE TAX (GST)

13th October 2017



The Central Government empowers State Tax officers for processing and grant of refund.

In exercise of the powers conferred by sub-section (1) of section 6 of the Central Goods and Services Tax Act, 2017 (12 of 2017), on the recommendations of the Council, the Central Government specifies that the officers appointed under the respective State Goods and Services Tax Act, 2017 or the Union Territory Goods and Service Tax Act, 2017 (14 of 2017) who are authorized to be the proper officers for the purposes of section 54 or section 55 of the said Acts, by the Commissioner of the said Acts, shall act as proper officers for the purpose of sanction of refund under section 54 or section 55 of the CGST Act read with the rules made thereunder except rule 96 of the Central Goods and Services Tax Rules, 2017, in respect of a registered person located in the territorial jurisdiction of the said officers who applies for the sanction of refund to the said officers.

Notification No. 39/2017 – Central Tax, dated

Payment of tax by registered persons having aggregate turnover less than Rs 1.5 crores.

The Central Government, on the recommendations of the Council, notifies the registered person whose aggregate turnover in the preceding financial year did not exceed one crore and fifty lakh rupees or the registered person whose aggregate turnover in the year in which such person has obtained registration is likely to be less than one crore and fifty lakh rupees and who did not opt for the composition levy under section 10 of the said Act as the class of persons who shall pay the central tax on the outward supply of goods at the time of supply as specified in clause (a) of sub-section (2) of section 12 of the said Act including in the situations attracting the provisions of section 14 of the said Act, and shall accordingly furnish the details and returns as mentioned in Chapter IX of the said Act and the rules made thereunder and the period prescribed for the payment of tax by such class of registered persons shall be such as specified in the said Act

*Notification No. 40/2017 – Central Tax, dated
13th October 2017*

Extension of due date for filing the return in FORM GSTR-4: Return for Composite Tax Payer.

In exercise of the powers conferred by sub-section (6) of section 39 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner extends the time limit for furnishing the return by a composition supplier, in FORM GSTR-4 for the quarter July to September, 2017 till the **15th day of November, 2017**.

Notification No. 41/2017 - Central Tax, dated 13th October 2017

Extension of due date for filing the return in FORM GSTR-5A.

The Commissioner extends the time limit for furnishing the return in FORM GSTR-5A for the month of July, 2017, August, 2017 and September, 2017 by a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 and rule 64 of the Central Goods and Services Tax Rules, 2017, till the **20th day of November, 2017**.

Notification No. 42/2017 - Central Tax, dated 13th October 2017

Extension of due date for filing the return in FORM GSTR-6

The Commissioner extends the time limit for furnishing the return by an Input Service Distributor in FORM GSTR-6 under sub-section (4) of section 39 of the said Act read with rule 65 of the Central Goods and Services Tax Rules, 2017 for the months of July, 2017, August, 2017 and September, 2017 till the **15th day of November, 2017**.

Notification No. 43/2017 - Central Tax, dated 13th October 2017

Amendment in notification No. 8/2017-Central Tax issued on 27th June 2017.

The Central Government prescribes that an eligible registered person, whose aggregate turnover in the preceding financial year did not exceed one crore rupees, may opt to pay, in lieu of the central tax payable by him, an amount calculated at the rate of,—

(i) one per cent. of the turnover in State in case of a manufacturer,

(ii) two and a half per cent. of the turnover in State in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II of the said Act, and

(iii) half per cent. of the turnover in State in case of other suppliers.

Provided that the aggregate turnover in the preceding financial year shall be seventy-

five lakh rupees in the case of an eligible registered person, registered under section 25 of the said Act, in any following States, namely: -

- (i) Arunachal Pradesh,
- (ii) Assam,
- (iii) Manipur,
- (iv) Meghalaya,
- (v) Mizoram,
- (vi) Nagaland,
- (vii) Sikkim,
- (viii) Tripura,
- (ix) Himachal Pradesh

Notification No. 46/2017 – Central Tax, dated 13th October 2017

Tenth Amendment to the CGST rules, 2017.

In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely: -

- (i) in rule 89, in sub-rule (1), for third proviso, the following proviso shall be substituted, namely: - “Provided also that

in respect of supplies regarded as deemed exports, the application may be filed by, -

- (a) the recipient of deemed export supplies; or (b) the supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund”;
- (ii) in rule 96A, in sub-rule (1), in clause (a) after the words “after the expiry of three months”, the words “, or such further period as may be allowed by the Commissioner,” shall be inserted.

Notification No. 47/2017 – Central Tax, dated 13th October 2017

Certain supplies are deemed exports under section 147 of the CGST Act, 2017.

In exercise of the powers conferred by section 147 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, notifies the supplies of goods as deemed exports, namely: -

1. Supply of goods by a registered person against Advance Authorization.
2. Supply of capital goods by a registered person against Export Promotion Capital Goods Authorization.

3. Supply of goods by a registered person to Export Oriented Unit

4. Supply of gold by a bank or Public Sector Undertaking specified in the notification No. 50/2017-Customs, dated the 30th June, 2017 (as amended) against Advance Authorization.

Notification No. 48/2017 – Central Tax, dated 18th October 2017

The evidences required to be produced by the supplier of deemed export supplies for claiming refund under rule 89(2)(g) of the CGST rules, 2017.

The Central Government notifies the following, as evidences which are required to be produced by the supplier of deemed export supplies for claiming refund, namely:-

1. Acknowledgment by the jurisdictional Tax officer of the Advance Authorization holder or Export Promotion Capital Goods Authorization holder, as the case may be, that the said deemed export supplies have been received by the said Advance Authorization or Export Promotion Capital Goods Authorization holder, or a copy of the tax invoice under which such supplies have been made by the supplier, duly signed by the recipient Export Oriented Unit that

said deemed export supplies have been received by it.

2. An undertaking by the recipient of deemed export supplies that no input tax credit on such supplies has been availed of by him
3. An undertaking by the recipient of deemed export supplies that he shall not claim the refund in respect of such supplies and the supplier may claim the refund.

Notification No. 49/2017 – Central Tax, dated 18th October 2017.

Waiver of late fee payable for delayed filing of FORM GSTR-3B for Aug & Sep, 2017.

In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby waives the late fee payable under section 47 of the said Act, for all registered persons who failed to furnish the return in FORM GSTR-3B for the **months of August and September, 2017 by the due date.**

Notification No. 50/2017 – Central Tax, dated 24th October 2017.

Extension in due date for submission of details in FORM GST ITC-01

In pursuance of section 168 of the Central Goods and Services Tax Act, 2017 the Commissioner, extends the time limit for making a declaration, in FORM GST ITC-01, by the registered persons, who have become eligible during the months of July, 2017, August, 2017 and September, 2017, to the effect that they are eligible to avail the input tax credit under sub-section (1) of section 18 of the said Act, till the 30th day of November, 2017.

Notification No. 52/2017 - Central Tax, dated 28th October 2017.

Extension in due date for submission of details in FORM GST ITC-04

In pursuance of section 168 of the Central Goods and Services Tax Act, 2017. the Commissioner, with the approval of the Board, hereby extends the time limit for making the declaration in FORM GST ITC-04, in respect of goods dispatched to a job worker or received from a job worker or sent from one job worker to another, during the quarter July to September, 2017, **till the 30th day of November, 2017.**

Notification No. 53/2017 - Central Tax, dated 28th October 2017.

Extension in due date for filing FORM GSTR-2 and GSTR-3 for the month of July 2017.

In exercise of the powers conferred by the first proviso to sub-section (2) of section 38 the Central Goods and Services Tax Act, 2017 the Commissioner hereby makes the following amendments:

SI No	Details/ returns	Class of Taxable person	Time period for furnishing of Details/ returns
1	GSTR-2	All	30 th November, 2017
2	GSTR-3	All	11 th December, 2017

Notification No. 54/2017 - Central Tax, dated 30th October 2017.

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ECONOMICS

Direct Tax Collections for F.Y. 2017-2018 show Growth of 15.8% up to September, 2017

The provisional figures of Direct Tax collections up to September, 2017 show that net collections are at Rs. 3.86 lakh crore which is 15.8% higher than the net collections for the corresponding period of last year. Net Direct Tax collections represent 39.4% of the total Budget Estimates of Direct Taxes for F.Y. 2017-18 (Rs. 9.8 lakh crore). Gross collections (before adjusting for refunds) have increased by 10.3% to Rs. 4.66 lakh crore during April to September, 2017. Refunds amounting to Rs.79,660 crore have been issued during April to September, 2017.

Press Release by Government of India dated 11th October 2017

Shri Arun Jaitley hints at cutting down GST rates on products in 28% tax slab

Finance Minister Shri Arun Jaitley today hinted at bringing down the number of products in 28% GST slab. While speaking at India Today Conclave Next 2017, the Finance Minister said that some of the items should never have been in the 28 per cent slab.

"We have been gradually bringing them down. The whole idea is, as your revenue collections neutralize we must prune it and

that is the pattern in which the Council has so far been functioning. I see that as a future guide as far as the Council is concerned," he said. The GST Council in the last 3-4 meetings has slashed rates on over 100 items.

The Finance Minister's hint came a day after reports emerged that the GST Council may consider lowering the taxes on some of the products placed in higher tax category. The Council is scheduled to meet on November 10. According to the reports, the government may slash taxes on certain common use items such as handmade furniture, plastic products and daily use items like shampoo.

Business Today dated 7th November, 2017

One year of demonetization: Income Tax scanner on 80,000 cases for huge deposits

A year since demonetization of high-value currency notes, the income-tax (I-T) department has identified 80,000 "actionable cases" (people) who deposited cash of over Rs 10 lakh each in bank accounts but have no tax profile.

This is the new addition to the tax data, which had identified over 600,000 people for scrutiny over huge inconsistencies in the cash deposits made during the period under the two phases of Operation Clean Money – an exercise to identify black money stashed in the form of cash deposits in banks.

According to sources, the I-T department has sought explanations from these 80,000 people who have no record of income-tax filing in the system. Some of them deposited cash of more than Rs 20 lakh in the bank account but have never filed returns.

Business Standards dated 8th November, 2017

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SUMMARY OF IMPORTANT TAX JUDGEMENTS

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

Sr. No	Tribunal/Court	Section/Area	Nature	Case Law
1.	Supreme Court	Section 2(22)(e)	Any payment by a closely-held company by way of advance or loan to a concern in which a substantial shareholder is a member holding a substantial interest is deemed to be "dividend" on the presumption that the loans or advances would ultimately be made available to the shareholders of the company giving the loan or advance. However, the legal fiction in s. 2(22)(e) does not extend to, or broaden the concept of, a "shareholder"	CIT Vs. Madhur Housing And Development Co.
2.	Supreme Court	Section 2(47) Section 245	Entire law on whether a joint development agreement entered into by an owner of land with a developer constitutes a "transfer" u/s 2(47) and whether the same gives rise to capital gains chargeable to tax u/s 45 and 48 of the Income-tax Act explained in the context of the provisions of the Transfer of Property Act, Registration Act and real income theory	CIT Vs. Balbir Singh Maini
3.	Bombay high Court	Section 14A	The AO is not entitled to make any disallowance under Rule 8D if he does not specifically record that he is not satisfied with the correctness of the assessee's claim. The fact that the CIT(A) and ITAT were not	Pr CIT Vs. Reliance Capital Asset Management Ltd.

			satisfied with the assessee's disallowance and enhanced it does not mean that Rule 8D becomes applicable and the disallowance should be computed as per the prescribed formula	
4.	ITAT Ahmadabad	Section 140A Section 221(1)	Law explained on whether an assessee who defaults on paying self-assessment tax u/s 140A while filing the return of income is liable for penalty u/s 221(1) if he files a revised return of income and pays the tax thereon at the time of filing the revised return of income.	Claris Life Science Limited Vs. DCIT

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Discussion on Judgments – Income Tax



- 1. Any payment by a closely-held company by way of advance or loan to a concern in which a substantial shareholder is a member holding a substantial interest is deemed to be “dividend” on the presumption that the loans or advances would ultimately be made available to the shareholders of the company giving the loan or advance. However, the legal fiction in s. 2(22)(e) does not extend to, or broaden the concept of, a “shareholder”.**

The assessee, a company, received advances of Rs. 6.32 crores by way of book entry from Jacksons Generators Pvt. Ltd, a closely held company. The shareholders having substantial interest in the assessee company were also having 10% of the voting power in Jacksons Generators. The AO & CIT(A) held that as the shareholders who held substantial interest in Jacksons Generators also had substantial interest in the assessee company, for purposes of s. 2(22)(e), the amount received by the assessee from Jacksons constituted “advances and loans” and was assessable as deemed dividend. On appeal, the Tribunal, relying on Bhaumik Colour 313 ITR 146 (Mum) (SB), deleted the addition on the ground that though the amount received by the assessee by way of book entry was “deemed dividend” u/s 2(22)(e), it was not assessable in the hands of assessee

company as it was not a shareholder of Jacksons Generators.

On appeal by the department to the High Court, the High Court dismissed the appeal on the basis that:

- U/s 2(22)(e), any payment by a closely-held company by way of advance or loan to a concern in which a substantial shareholder is a member holding a substantial interest is deemed to be “dividend” on the presumption that the loans or advances would ultimately be made available to the shareholders of the company giving the loan or advance.
- The legal fiction in s. 2(22)(e) enlarges the definition of dividend but does not extend to, or broaden the concept of, a “shareholder”. As the assessee was not a shareholder of the paying company, the “dividend” was not assessable in its hands
- As the conditions stipulated in s. 2(22) (e) treating the loan and advance as deemed dividend are established in these cases, it is open to the Revenue to take corrective measure **by treating this dividend income at the hands of the shareholders** and tax them accordingly as otherwise it amounts to escapement of income at the hands of those shareholders.

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- 2. Entire law on whether a joint development agreement (JDA) entered into by an owner of land with a developer constitutes a "transfer" u/s 2(47) and whether the same gives rise to capital gains chargeable to tax u/s 45 and 48 of the Income-tax Act explained in the context of the**

provisions of the Transfer of Property Act, Registration Act and real income theory.

The Supreme Court had to consider the following substantial questions

- Whether the transactions in hand envisage a “transfer” eligible to tax by reference to Section 2(47) (v) of the Income Tax Act, 1961 read with Section 53-A of the Transfer of Property Act, 1882?
 - Whether the Income Tax Appellate Tribunal, has ignored rights emanating from the JDA, legal effect of non-registration of JDA, its alleged repudiation etc.?
 - Whether “possession” as envisaged by Section 2(47) (v) and Section 53-A of the Transfer of Property Act, 1982 was delivered, and if so, its nature and legal effect?
 - Whether there was any default on the part of the developers, and if so, its effect on the transactions and on eligibility to tax?
 - Whether amount yet to be received can be taxed on a hypothetical assumption arising from the amount to be received?”
- A reading of the present case’s Joint Development Agreement (JDA) shows that, it is essentially an agreement to facilitate development of 21.2 acres so that the developers build at their own cost, after obtaining necessary approvals, flats of a given size, some of which were then to be handed over to the members of the society. Payments were also to be made by the developer to each member in addition to giving each member a certain number of flats depending upon the size of the member’s plot that was handed over.
 - What is important to bear in mind is that payments under the third instalment were only to be made after the grant of approvals and not otherwise, and that it is an admitted position that this was never done because no approvals could be obtained as the High Court ultimately interdicted the project. Also, the termination clause is of great significance because it shows that in the event of the JDA being terminated, whatever parcels of land have already been conveyed, will stand conveyed, but that no other conveyances of the remaining land would take place.

Supreme Court held for dismissing the appeal:

- Effect of non-registration of documents required to be

registered. No document required by Section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 1882), to be registered shall- (a) affect any immovable property comprised therein, or (b) confer any power to adopt, or (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1887 (1 of 1877) or as evidence of any collateral transaction not required to be effected by registered instrument."

The present case can be concluded as:

If an agreement, like the JDA in the present case, is not registered, then it shall have no effect in law for the purposes of Section 53A. In short, there is no agreement in the eyes of law which can be enforced under Section 53A of the Transfer of Property Act.

3. The AO is not entitled to make any disallowance under Rule 8D if he

does not specifically record that he is not satisfied with the correctness of the assessee's claim. The fact that the CIT(A) and ITAT were not satisfied with the assessee's disallowance and enhanced it does not mean that Rule 8D becomes applicable and the disallowance should be computed as per the prescribed formula

The Assessing Officer did not specifically record that he is not satisfied with the correctness of the claim of the assessee in respect of the expenditure in relation to the income which does not form part of the total income under the Act. However, he felt obliged and going by the presence of Rule 8D that once Section 14A is attracted, the disallowance is to be made as per Rule 8D only which has been prescribed by the Legislature.

The Court Held That:

- The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts of the assessee is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act.
- The Assessing Officer should consider the working of expenses made by the assessee and when he is not satisfied with the said working and terms it as incorrect, based on objective criteria and for cogent reasons, he can then proceed to work out the disallowance under

Section 14A as per Rule 8D of the Rules.

4. Law explained on whether an assessee who defaults on paying self-assessment tax u/s 140A while filing the return of income is liable for penalty u/s 221(1) if he files a revised return of income and pays the tax thereon at the time of filing the revised return of income.

The Special Bench had to consider the following important question of law:

Whether an assessee is liable to penalty under section 221(1) of the Act in a case in which though the assessee has not paid the self-assessment tax under section 140A, while filing the return of income, but revises the income, by filing revised return of income, and pays the tax on the revised return of income at the time of filing the revised return of income?"

Held by the Special Bench:

- The assessee has undoubtedly committed the default in not making payment of admitted tax liability under section 140A(1) at the point of time when this income tax return was filed, and it is this default in respect of which penalty is imposable under section 221(1).
- As Section 221(1) itself states in so many words, the assessee "shall not cease to be liable to any penalty under this sub-section merely by reason of the fact that before the levy of such penalty he has paid the

tax". Subsequent payment of tax, whether with or without revision of income tax return, is thus of no help to the assessee so far as penal consequences under section 221(1) are concerned.

- The law is clear and unambiguous. As regards learned counsel's submissions regarding event based triggers for penal consequences and time based triggers for penal consequences, even if we accept that penalty under section 221(1) r.w.s. 140A(1) requires an event based trigger, rather than a time based trigger, nothing really turns on this plea of the assessee since the event triggering the penal consequences under section 221(1) r.w.s. 140A(1) is non-payment of admitted tax liability at the time of filing original income tax return and subsequent revision of income tax return with due payment of admitted tax liability, for the detailed reasons set out above, does not obliterate the default at the time of filing original return of income.
- The payment of admitted tax liability, while filing revised return of income under section 139(5), does not affect the lapse committed at the time of filing the original return of income, even though claims made in such original income tax return

stand supplanted by the claims made in the revised income tax return.

Note: The judgments should not be followed without studying the complete facts of the case Law.

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DUE DATE CHART FOR THE MONTH OF NOVEMBER 2017

NOVEMBER 2017						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4
5	6	7 Due Date of filing Return of Income Due date for Tax Audit (Extended)	8	9	10	11
12	13	14	15 Due Date for Filing FORM GSTR-4 Due Date for Filing FORM GSTR-6 Quarterly TDS Certificate for payments other than Salary Due date for PF payment Due date for ESIC payment	16	17	18
19	20 Filing FORM GSTR-3B for the month of october	21	22	23	24	25
26	27	28 Due Date for Annual Filing of Accounts in	29	30 Due date for filing GSTR -2 for the month		

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Updates on regulatory changes affecting your business

			FORM AOC-4/ AOC-4 CFS			of July 2017 (Extended)			
						Due Date for filing FORM GST ITC-4 (Extended)			
						Due Date for filing FORM GST ITC-01. (Extended)			
						Due date for Annual Return of Income for the assesses falling under 92E transactions			

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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