

# HARBINGER<sup>TM</sup>

*Updates on regulatory changes affecting your business*

**November 2016**



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## INDEX

<b>Sr. No</b>	<b>Topics covered</b>	<b>Page No.</b>
1.	<a href="#"><u>Company Law</u></a>	3
2.	<a href="#"><u>Income Tax</u></a>	3
3.	<a href="#"><u>Value Added Tax</u></a>	5
4.	<a href="#"><u>Economics</u></a>	5
5.	<a href="#"><u>Summary of Judgments</u></a>	6
6.	<a href="#"><u>Discussion on Judgments</u></a>	7
7.	<a href="#"><u>Due date chart for the month of November, 2016</u></a>	10

## **COMPANY LAW**

### **MCA notifies new form for company registration**

The Ministry of Corporate Affairs has introduced another form, INC-32 for a simplified integrated process for incorporation.

*Notification dated October 3, 2016*

[Index](#)

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## **INCOME TAX**

### **Applicability of TDS on lump sum lease premium paid for acquisition of long term lease**

Section 194I requires that tax be deducted from payment of any income by way of rent. Rent means any payment under any lease, sub-lease tenancy or any other agreement for use of land or building or machinery or plant or furniture or fittings.

The issue of whether TDS under Section 194I is applicable on lump sum lease premium or one time upfront lease charges for acquiring long-term leasehold rights for land or any other property has been examined by the CBDT.

The Delhi High Court ruled that lease premium paid by an assessee for acquiring a plot of land on 80 years lease was in the nature of capital expense and does not fall within the provisions of Section 194I.

The Chennai High Court held that onetime non-refundable upfront charges paid by the assessee for acquisition of leasehold rights over an immovable property for 99 years cannot be considered to be rental income in the hands of the lessor and hence will not attract TDS.

The Department has accepted the decision of the High Courts. Therefore, lump sum lease premium or one-time upfront lease charges are not in the nature of rent and do not fall within the meaning of Section 194I.

*Circular No. 35/2016 dated October 13, 2016*

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### **Order under Section 119 of the Act**

Some returns of income having claim of refund pertaining to Assessment Years 2014-2015, 2013-2014, and 2012-2013 were not processed within the prescribed time frame. The amount of refund due which is issued to the taxpayer after processing the return could not be sent. This has led to a situation where the taxpayer was unable to get his refund as per the provisions of the Act although the delay is not due to him.

Where a valid return having refund for Assessment Years 2014-2015, 2013-2014 and 2012-2013 was filed under Section 139, the Central Board of Direct Taxes has relaxed the time frame and such returns should now be processed by March 31, 2017.

This relaxation will not be applicable

where the demand is shown as payable or will arise after processing return.

*Order dated October 25, 2016*

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## **CBDT notifies rules on buy back of shares**

Dividend distribution tax (DDT) must be paid when a company pays dividends to its shareholders. The amount of dividend received by the shareholders is not included in the total income of the shareholder.

The consideration received by a shareholder on buy-back of shares is not treated as dividend but taxable as capital gains.

In order to avoid tax, unlisted companies would resort to buy-back instead of paying dividend where capital gains were either not chargeable to tax or taxable at a lower rate.

In order to stop such practice, 20% additional income tax on buy back will be levied. It is levied on consideration paid by the company for purchase of its unlisted shares which is more than the sum received by the company at the time of issue of such shares.

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## **Changes in Income Computation and Disclosure Standards (ICDS)**

The highlights and differences (compared to the earlier ICDS) are as follows –

1. Individuals and HUF taxpayers

will not be subject to tax audit have been exempted from complying with ICDS requirements. ICDS continue to apply to companies, limited liability partnerships and partnership firms irrespective of their turnover

2. The Standard Costing method is now permitted for inventory valuation.
3. Revenue recognition of construction contracts and service contracts continues to be made as per Percentage of Completion Method. The following relaxations are made –
  - Revenue from contracts existing on 31 March, 2016 can be recognized as per the existing policy
  - When the duration of the contract is up to 90 days, revenue can be recognized as per Completed Contract Method and
  - When a service contract involves indefinite number of activities over a specified period of time, the revenue can be recognized on straight-line basis over the contract duration
4. Interest income on any tax, duty or cess will be taxable on receipt basis
5. Borrowing costs related to borrowings for general purposes are required to be capitalized over the cost of the asset only if

the asset takes 12 months or more to be ready for its intended use

6. All foreign branches of an Indian entity will be considered as Integral Foreign Operations. The financial statements of these branches will be drawn in foreign currency and converted to Indian currency

## [Index](#)

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### **VALUE ADDED TAX**

#### **Extension of due date for filing refund application for the year 2014-2015**

The due date for submission of refund for the year 2014-15 was 30 September, 2016. The facility of uploading the form was not available on the system from 28 September to 30 September which resulted into inability to upload the refund application. Considering this, the due date has been extended by 7 days and the dealer could upload the refund application up to 8 October.

*Trade Circular dated 1 October, 2016*

## [Index](#)

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### **ECONOMICS**

#### **Indian Economy well-prepared for US Fed rate hike**

The Indian economy is well-prepared for an external risk in case the US

Federal Reserve normalizes rates in December.

The current account balance is likely to be below 1% this year, while the balance of payments is in surplus. There has also been a pick-up in foreign direct investments.

Lower borrowing costs have lowered the need for external commercial borrowings.

All these indicators lead to a lower vulnerability to external risk.

*Economictimes.com*

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#### **Cisco committed to help build 100 Smart Cities in India**

Cisco is working closely with state governments and partners to transform 14 cities and connect 100 cities as a part of the Prime Minister's Digital India initiative.

The networking company is focused on making a big raid into Cloud, Internet of Things (IoT) and cyber security. Last month it launched its manufacturing operations in Pune and announced it would build Nagpur into a Smart City.

*Economictimes.com*

## [Index](#)

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## **SUMMARY OF IMPORTANT INCOME TAX JUDGMENTS:**

<b>Sr. No</b>	<b>Tribunal/ Court</b>	<b>Section/ Area</b>	<b>Nature</b>	<b>Case Law</b>
1	P&H High Court	Section 37(1)	Expenditure for purchase of capital asset is capital expenditure, guarantee commission to acquire the asset on instalment basis is revenue expenditure	Haryana State Road & Bridges Development Corporation Ltd. vs. CIT
2	Kolkata Tribunal	Section 45(3)	No capital gain tax if capital contribution by partner is current asset and not capital asset	ITO vs. Orchid Griha Nirman
3	Ahemdabad Tribunal	Section 48	Sum paid to brothers for vacating house held as cost of improvement of house	Nanubhai Keshavlal Chokshi HUF vs. ITO
4	Bombay High Court	Section 143(1D)	Assessing Officer cannot withhold refunds as it has been struck down by Delhi High Court and binding on all AOs	Group M. Media India Pvt. Ltd. vs. UOI
5	ITAT Pune	Section 234E	Whether fee for late filing of TDS returns can be levied prior to 01/06/2015 and intimation issued u/s 200A is appealable	Gajanan Constructions vs. DCIT

[Index](#)

## DISCUSSION ON INCOME TAX JUDGEMENTS



### **1. Expenditure for purchase of capital asset is capital expense, guarantee commission to acquire asset on instalment terms is revenue expense**

*Haryana State Road & Bridges Development Corporation Ltd. vs. CIT*

Expenditure for purchase of machinery is capital expenditure as it brings into existence an asset. The guarantee commission is different. It does not bring into existence any asset nor any benefit. The acquisition of the machinery was only a business emergency. Interest paid on credit purchase of machinery could be revenue expense so guarantee commission paid to bank for acquisition of machinery could not be considered as capital payment.

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### **2. Whether an error has occurred in deleting the addition of Short Term Capital Gains on transfer of land to partnership firm as capital contribution stating that it is not taxable**

*ITO vs. Orchid Griha Nirman*

Section 45(3) is applicable only to a capital asset. The provision does not apply where the transfer by the partners was a current asset and not a capital asset.

The provisions of the section were not applicable for the assessment year 2008-09.

The provision will become applicable in the year of transfer by the partner of his capital asset to partnership firm. In this case, the year of transfer was March 31, 2006. The ITO was unjustified for applying the section which did not apply in Assessment Year 2006-07.

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### **3. Amount paid to brothers for vacating house will be held as cost of improvement**

*Nanubhai Keshavlal Chokshi HUF vs. ITO*

The assessee had shown income from long term capital gains on sale of house property.

It claimed a deduction on amount paid to brothers for vacating the

house as expense for improvement of asset.

The Assessing Officer (AO) declined the same stating that the assessee was the sole occupant and the brothers were not living there nor paying any rent.

The Tribunal held that - if both brothers residing in the house refused to vacate the house then what would be the situation before the assessee? The assessee would have to file a suit which would consume more than 10 years. The buyers would not be available in such circumstances.

Thus, payments made for improvement of title of property will be entitled for deduction when computing capital gains.

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#### **4. Assessing Officer cannot withhold refunds as it has been struck down by the Delhi High Court and is binding on all AOs across the country.**

*Group M. Media India Pvt. Ltd. vs. UOI*

The CBDT cannot direct an Assessing Officer to dispose of a case in a particular manner nor can the instructions be prejudicial to the assessee. The circulars/orders/instructions issued by CBDT would be binding on the Revenue only to the extent they are beneficial to the assessee. Such instructions, if not beneficial, cannot prevail over the Act. The officers

implementing the Act are bound by the decision of the Delhi High Court stating refunds should not be withheld. The Assessing Officer would apply his mind and take a decision whether or not to grant the refund.

The only argument to oppose the petition is that the Assessing Officer has time to process the refund until 31 March, 2017. Even after repeatedly asking reason as to why refund was not processed before 31 March, proper reasons were not given. The conduct of the AO is very disturbing. He does not find it proper to inform the petitioner in writing why he cannot deal with the application.

The CBDT has issued instructions specifically directing the officers to process all returns in which refunds are payable. The Citizen's Charter, issued by the Income Tax Department in 2014, states that the Department wishes to issue refunds along with interest within 6 months from date of filing of returns. In this case, the return was filed on 29 November, 2015, yet there is reason why the Assessing Officer has not processed the refund and taken a decision to grant or not grant a refund.

Therefore, considering the conduct of the AO, he is directed to process and dispose of the refund within a period of 8 weeks.

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**5. Whether fee for late filing of TDS returns can be levied prior to 01/06/2015 and whether intimation received under Section 200A is appealable**

*Gajanan Constructions vs. DCIT*

The Tribunal had to consider whether the Assessing Officer has the jurisdiction to charge fees payable under Section 234E w.e.f. 01/06/2015 while processing TDS returns. The assessee argued that the clause was inserted w.e.f. 01/06/2015 and nothing suggested that it was retrospective in nature. Hence, in respect of TDS returns filed prior to 01/06/2015, late fees charged cannot be levied.

It was held that – the assessee claims that the Assessing Officer (AO) could charge only the difference in tax deducted and not paid or any interest payable. However, the AO does not have power to charge fees. The Revenue argued that it was the duty of the deductor to deposit the late fees. Various regulations and provisions state that the responsibility of the deductor was to deposit TDS in time and if not then along with interest. If the statement of TDS could not be filed before the authority within the stipulated time the assessee is liable to fees. If any default occurs on non-payment of fees by the assessee, then the power to collect such fees vests with the prescribed authority. Once any provision of the Act has been made applicable from a respective date, then the requirement of the statute

should apply from the mentioned date and not retrospectively.

[Index](#)

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

**DUE DATES CHART FOR THE MONTH OF NOVEMBER, 2016 (VARIOUS ACTS)**

<b>November 2016</b>						
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	11	12
13	14	15 Provident fund payment	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, Return of income tax of all assesses covered under transfer pricing regulations**	**Due date for filing of MGT-7 and AOC-4		

[Index](#)

*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.*

[Back](#)