

HARBINGERTM

Updates on regulatory changes affecting your business

October 2016



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COMPANY LAW

Notification of Section 124 and 125 of on

The provisions of the Act relating to administration of Investor Education and Protection Fund will come into force from September 7, 2016.

Notification dated September 5, 2016

Amendment to Schedule V - Appointment and Remuneration of Managerial Personnel - of the Act

Companies having no profit or inadequate profits may without Central Government approval pay remuneration to the managerial person not exceeding the limits as under -

Where the effective capital is	Remuneration not to exceed
Negative or less than 5 crores	60 lakhs
5 crores and above but less than 100 crores	84 lakhs
100 crores and above but less than 250 crores	120 lakhs
250 crores and above	120 lakhs plus .01% of effective capital in excess of 250 crores

The limits stated above can be doubled by passing a special resolution.

In case of a managerial personnel who is functioning in professional capacity, approval of Central Government is not

required, if such person does not have any interest in the capital of the company or its subsidiaries directly or indirectly or related to the directors or promoters of the company or its subsidiary at any time during the last two years before or on or after the date of appointment and possesses graduate level qualification with specialized knowledge in the field in which the company operates.

Notification dated September 12, 2016

The Investor Education and Protection Fund Authority Rules, 2016

The Ministry of Corporate Affairs has introduced The Investor Education and Protection Fund Authority (Recruitment, Salary and other Terms and Conditions of Service of officers and other employees) Rules, 2016.

Relaxation of additional fees for filing Form IEPF-1

After introduction of Investor Education and Protection Fund (Accounting, Audit, Transfer and Refund) Rules, 2016, it is clarified that companies that have not filed the information in Form 1 INV can file in Form IEPF-1 on or before 6 October, 2016 without additional fees.

General Circular No. 10/2016

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INCOME TAX

Extension of due date for quarterly furnishing of 15G/15H declarations

The due date for uploading Form 15G/H are extended as under:

Scenario	Original Due Date	Revised Due Date
Form 15G/H received during the period 01/10/2015 to 31/03/2016	30/06/2016	31/10/2016
Form 15G/H received during the period 01/04/2016 to 30/06/2016	15/07/2016	31/10/2016
Form 15G/H received during the period 01/07/2016 to 30/09/2016	15/10/2016	31/12/2016

The due date for submitting declaration for the 3rd and 4th quarter will remain the unchanged.

Notification No. 10/2016 dated August 31, 2016

Income Declaration Scheme, 2016 – Instruction by RBI to banks to accept cash deposits

The Income Declaration Scheme (IDS) allows those who have not paid full taxes in the past to disclose their

undisclosed income and assets.

The RBI has instructed the banks to accept cash deposits from all declarants under the Scheme and accept cash, irrespective of the amount, over the counter for making payment under the Scheme.

Press Release dated September 9, 2016

Enquiry or investigation in respect of document/evidence relating to IDS 2016 found during Search or Survey

It is clarified that whatever is found during search or survey as a proof for already filed declaration under the Scheme, including acknowledgement issued by the Department for having filed a declaration, no enquiry would be made by the Department in respect of sources of undisclosed income or investment declared as per the provisions of the Scheme.

Circular No. 32/2016

Extension of Due Date for filing Income Tax Return

The last date for making declarations under the IDS is 30 September. This coincides with the last date of filing Income tax returns by tax payers whose accounts are audited and required to submit return by September 30.

In order to remove inconvenience the Central Board of Direct Taxes extends the due date for such returns to October 17.

Order dated September 9, 2016

Clarification regarding extension of due date for filing return

The Central Board of Direct Taxes has extended the due date for filing income tax return by taxpayers whose accounts are liable to tax audit and who are required to furnish return of income by September 30. Clarifications are sought whether the extended due date would apply for getting the accounts audited as per Section 44AB.

The accounts are to be audited by an accountant and furnished before the specified date. The specified date has been defined as the due date for submitting return. Therefore, the extended due date would apply for audit.

Clarification dated September 14, 2016

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GOODS AND SERVICES TAX

CBEC releases FAQs on GST

FAQs can be accessed on the following link-

<https://gst.taxmann.com/topstories/22233000000008994/cbec-releases-faq-on-gst.aspx>

President approves GST Bill

President Pranab Mukherjee approves

landmark Goods and Services Tax bill. This is a major step towards rolling out the new indirect tax which Prime Minister Modi wants to come into effect from April 1 next year.

<http://indianexpress.com/article/india/india-news-india/president-approves-gst-bill-goods-and-services-tax/>

Cabinet approves creation of Goods and Services Tax Council, Secretariat

The cabinet approved the creation of the GST Council in order to meet the April 1, 2017 deadline.

The council, headed by Finance Minister Arun Jaitley, is the main decision making body which will finalise the design, rates and help the centres and states resolve issues.

The GST Council will consist of the finance minister, minister of state, in charge of the revenue department and state finance ministers.

<http://www.hindustantimes.com/business-news/cabinet-approves-creation-of-goods-and-services-tax-council-secretariat/story-wgvbpgp1VOMsgARHhgL5iiM.html>

GST Council sets exemption threshold for tax at Rs. 20 lakh

The GST Council has decided that businesses in Northeastern states where turnover does not exceed Rs. 10 lakh will be out of GST and the exemption for the rest of India will be Rs. 20 lakh.

<http://www.thehindu.com/business/Economy/gst-council-sets-exemption-threshold-for-tax-at-rs20-lakh/article9141310.ece>

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ECONOMICS

39th Spot in Global competitiveness index signals Indian economy's potential - Arun Jaitley

India's position in the Global competitiveness index report has jumped by 16 places to rank 39. Finance Minister Arun Jaitley is of the opinion that a jump signals the competitiveness in the Indian economy. India has risen 32 spots in the last 2 years in the World Economic Forum's Competitiveness Index.

[Financialexpress.com](http://www.financialexpress.com)

GST to boost India's strong growth

The Indian economy is likely to continue to grow strongly as per the

International Monetary Fund. The latest Goods and Services Tax will boost it further.

India has taken important steps toward a national goods and services tax which when fully implemented will boost tax growth. The IMF also welcomed India's decision to shift to an inflation targeting framework.

[Economictimes.com](http://economictimes.com)

Modi Government just took the first steps to privatise Indian Railways

Prime Minister Narendra Modi's decision to merge the railway budget with the general budget is part of the government's strategy to privatise railways. Unlike other public sector units, it will not be easy to privatise the railways. The proposed scrapping of the railway budget is part of the reforms for which NITI Aayog stands for.

Scrapping the railway budget will make the railway dependent on capital support system of the government which will result in the department losing financial autonomy.

The railways cannot be treated as any other public sector company in India. It is not only one of the largest employers, but owns huge infrastructure and land. The NITI Aayog isn't considered to be a well thought plan to improve the efficiency of the railway.

[Firstpost.com](http://www.firstpost.com)

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**NOTE: The web links referred are as
on the date of this publication.**

SUMMARY OF IMPORTANT INCOME TAX JUDGMENTS:

Sr. No	Tribunal/ Court	Section/ Area	Nature	Case Law
1	Mumbai Tribunal	Section 9	Any income couldn't be deemed to be taxable just because tax at source has been deducted on it.	ABB Switzerland Ltd. Vs. ADIT Mumbai
2	Mumbai Tribunal	Section 10(10D)	No denial of exemption on maturity of life insurance just because the policy was taken from a foreign insurer.	Taragauri T. Doshi vs. ITO
3	Supreme Court	Section 143	An order is not barred by limitation when it is ready to be served on assessee before limitation period.	Binani Industries Ltd. Vs. CIT
4	Mumbai Tribunal	Section 244A	When refund is granted partly, it is first adjusted against interest payments and balance against tax.	Union Bank of India vs. ACIT
5	Mumbai Tribunal	Section 244A	Grant of interest on tax refund even when the refund was less than 10% of gross tax	Rajashekhar Swaminarayan Iyer vs. DCIT Mumbai

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DISCUSSION ON INCOME TAX JUDGEMENTS



1. Although TDS has been deducted on income that does not make it taxable.

ABB Switzerland Ltd. Vs. ADIT Mumbai

The assessee, a company incorporated in Switzerland, had taken a contract for turnkey power projects in India.

In the return of income, the assessee did not disclose the income claiming that it was not taxable in India.

The return was processed. However, the Assessing Officer (AO) initiated reassessment for two reasons - even though TDS had been deducted on income received the assessee did not offer it for tax and secondly, contract was taxable.

The CIT(A) held in favour of the AO. On further appeal it was held that - regarding the first reason, just

because TDS had been deducted does not mean the income from offshore supply is taxable in India, especially when the sale was outside India.

As far as the second reason is concerned, the document of contract on which the Officer had relied upon was not a source of income for the assessee in the relevant year.

Hence, the AO relied on wrong material and facts which would render the entire assessment void ab initio.

2. Maturity of life insurance policy cannot be denied an exemption just because it was taken from a foreign insurer.

Taragauri T. Doshi vs. ITO

The assessee received a certain sum from maturity of a life insurance policy taken by her husband from a company in Dubai. She claimed exemption of such amount.

The Assessing Officer denied the exemption arguing that insurance policy was not taken from an Indian insurance company.

The Commissioner (Appeals) held in favour of the Officer.

The assessee filed an appeal before the ITAT. It was held that - as per the Act, any sum received under life insurance policy is eligible for exemption except in case of certain

exemptions. The assessee does not fall under any of the exemptions.

The term “insurer” as per Section 2(28BB) has not been used in Section 10(10D). Therefore, the intention of the provision is not to provide benefit of exemption only on policies taken from Indian insurance companies.

Hence, the assessee is entitled for exemption on sum received under life insurance policy from a foreign insurance company.

3. Foreign exchange loss is not a “notional” or “speculation” loss and allowable as a deduction.

CIT vs. Vinergy International Pvt. Ltd.

The assessee claimed an expenditure/loss of Rs. 62.62 lakhs and Rs. 34.37 lakhs as gain on account of foreign exchange fluctuation related to purchase and sales transactions. The Assessing Officer did not allow the expenditure/loss of Rs. 62.62 considering it to be a contingent liability. The CIT(A) confirmed the order of the Assessing Officer. On further appeal, the Tribunal allowed the assessee’s appeal claiming that expenditure is allowed as per the Section. The Tribunal stated that loss suffered by an assessee due to fluctuation of foreign exchange as on balance sheet date for purchase or sales of goods is allowed as an expense.

4. An order is not barred by limitation if it is ready to be served upon the assessee before limitation period.

Binani Industries Ltd. Vs. CIT

The issue before the High Court was – whether the Tribunal made an error in stating that scrutiny assessment order received by the assessee was barred by limitation and hence unreasonable.

The High Court held in favour of the revenue. The assessee filed a special leave petition in the Supreme Court. However the apex court dismissed it.

The observations of the High Court are as under –

- a. a representative of the assessee, without any intimation from the Department, visited the office and found the assessment order ready
- b. the probability of the order being made and ready to be collected by the representative of the assessee before the period of limitation cannot be ruled out.

Hence, the assessment order is not barred by limitation.

5. When refund is granted partly, it must first be adjusted against interest payments and balance against tax.

Union Bank of India vs. ACIT

The Income Tax Department refunded part of the amount of tax and balance in the second phase.

The assessee argued that it was entitled to interest on balance tax refunded in the second phase but the Assessing Officer did not grant the same.

The issue was - whether the refund paid in the second phase should be adjusted against the interest component and balance should be adjusted against the principal?

The ITAT held that - where the amount of tax demanded is paid to the assessee then it should be adjusted against interest payable and balance adjusted against tax payable.

justification for withholding the refund.

Up to the date of passing the order, no interest will be payable by the department to the assessee. Delay in issuing the refund after passing the order entitles the assessee to interest.

The Assessing Officer was directed to grant the interest for the period between the date of order and actual date of granting refund as if the refund would have been for an amount more than 10% of gross tax.

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

6. Interest on tax refund granted even when refund was less than 10% of gross tax

Rajashekhar Swaminathan Iyer vs. DCIT

The assessee claimed interest on refund. The Assessing Officer (AO) held that since the refund determined was less than 10% of gross tax, no interest will be payable to the assessee and the application was rejected.

Upon appeal, the Commissioner agreed with the Assessing Officer.

The Tribunal held in favor of the assessee that - there was no proper

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

October 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	11	12	13	14	15 Provident fund payment	
16	17 Due date for filing of Income Tax Return by assessee liable to get their accounts audited	18	19	20	21 MVAT Payment, ESIC Payment, Payment and filing of quarterly/ monthly MVAT Return	22	
23	24	25 Half Yearly Service Tax Return	26	27	28	29	
30	31 Profession Tax Payment						

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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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