

HARBINGERTM

Updates on regulatory changes affecting your business

October 2017



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INDEX

Sr. No	Topics covered	Page No.
1.	Goods and Service Tax (GST)	3
2.	Income Tax	5
3.	Economics	6
4.	Summary of Judgments- Income Tax	8
5.	Discussion on Judgments - Income Tax	10
6.	Due date chart for the month of October,2017	14

GOODS AND SERVICE TAX (GST)**Extension of due date for filing the return in FORM GSTR-3B for the months of August to December, 2017.**

In exercise of the powers conferred by section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with sub-rule (5) of rule 61 of the Central Goods and Services Tax Rules, 2017 and notification, the Commissioner, on the recommendations of the Council, hereby specifies that the return for the months August to December shall be furnished in FORM GSTR-3B electronically through the common portal on or before the last dates as specified:

Sr. No.	Month	Last Date for filing of return in FORM GSTR-3B
1	August, 2017	20 th September, 2017
2	September, 2017	20 th October, 2017.
3	October, 2017	20 th November, 2017
4	November, 2017	20 th December, 2017.
5	December, 2017	20 th January, 2018

Every registered person furnishing the return in FORM GSTR-3B shall, subject to the provisions of section 49 of the said Act, discharge his liability towards tax, interest, penalty, fees or any other amount payable under the said Act by debiting the electronic cash ledger or electronic credit ledger, as the case may be, not later than the last date.

Notification No. 35/2017 – Central Tax dated 15th September 2017

section 51 of the CGST Act, 2017 for TDS.

In exercise of the powers conferred by sub-section (3) of section 1 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government hereby appoints the 18th day of September, 2017 as the date on which the provisions of sub-section (1) of section 51 of the said Act shall come into force with respect to persons specified under clauses (a) and (b) i.e.

(a) An authority or a board or any other body, -

(i) Set up by an Act of Parliament or a State Legislature; or

(ii) Established by any Government, with fifty-one percent or more participation by way of equity or control, to carry out any function;

(b) Society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860 (21 of 1860);

(c) Public sector undertakings:

Provided that the said persons shall be liable to deduct tax from the payment made or credited to the supplier of taxable goods or services or both with effect from a date to be notified subsequently, on the recommendations of the Council, by the Central Government.

Notification No. 33/2017 – Central Tax, Dated 15th September 2017

Exemption to casual taxable person making taxable supplies of handicraft goods from the requirement to obtain registration.

In exercise of the powers conferred by sub-section (2) of section 23 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, specifies the casual taxable persons making taxable supplies of handicraft goods as the category of persons exempted from obtaining registration under the aforesaid Act:

- Provided that the aggregate value of such supplies, to be computed on all India basis, does

not exceed an amount of twenty lakh rupees in a financial year:

- Provided further that the aggregate value of such supplies, to be computed on all India basis, does not exceed an amount of ten lakh rupees in case of Special Category States, other than the State of Jammu and Kashmir.

The above exemption shall be available to such persons who are making inter-State taxable supplies of handicraft goods and are availing the benefit of notification Number 8/2017 – Integrated Tax dated the 14th September, 2017

Notification No. 32/2017 – Central Tax, Dated 15th September 2017

Extension of due date for filing of GSTR-6.

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, hereby extends the time limit for furnishing the return by an Input Service Distributor, for the month of July, 2017 up to the 13th October, 2017.

Notification No. 31/2017 – Central Tax, Dated 11th September 2017

Extension of due date for filing of GSTR-1, GSTR-2 and GSTR-3.

In exercise of the powers conferred by the second proviso to sub-section (1) of section 37, first proviso to sub-section (2) of section 38 and sub-section (6) of section 39 read with section 168 of the Central Goods and Services Tax Act, 2017, the Commissioner, on the recommendations of the Council, hereby extends the time limit for furnishing the details or return as:

Sr. No	Details/return	Class of taxable/registered persons	Time period for furnishing of details/return
1	GSTR-1	Having turnover of more than one hundred crore rupee Having turnover of upto one hundred crore rupees	Up to 3rd October, 2017 Upto 10th October, 2017
2	GSTR-2	All	Upto 31st October, 2017
3	GSTR-3	All	Upto 10th November, 2017

Notification No. 30/2017 – Central Tax, Dated 11th September 2017

[Index](#)

INCOME TAX

CBDT specifies the procedure for TDS on interest on deposits made under the Capital Gains Accounts Scheme, 1988 where the depositor has deceased.

In exercise of the powers delegated by the Central Board of Direct Taxes (Board) under sub-rule (5) of Rule 31A of the Income-tax Rules, 1962, the Principal Director General of Income-tax (Systems) specifies that in case of deposits under the Capital Gains Accounts Scheme, 1988 where the depositor has deceased:

- TDS on the interest income accrued for and up to the period of death of the depositor is required to be deducted and reported against PAN of the depositor, and
- TDS on the interest income accrued for the period after death of the depositor is required to be deducted and reported against PAN of the legal heir, unless a declaration is filed under sub-rule(2) of Rule 37BA of the

Income-tax Rules, 1962 to that effect.

Notification No. 08/2017- CBDT, Dated 13th September 2017

Form 67 is enabled in e-Filing for claiming foreign tax credit.

An assess, being a resident shall be allowed a credit for the amount of any foreign tax paid by him in a country or specified territory outside India, by way of deduction or otherwise, in the year in which the income corresponding to such tax has been offered to tax or assessed to tax in India, in the manner and to the extent as specified in Rule 128 of the Income Tax rules 2016.

In exercise of powers delegated by CBDT, the Principal Director General of Income Tax lays down the following procedures:

1. Online filing of Form 67- All assessee's who are required to file return of income electronically, are required to prepare and submit Form 67 along with the return of Income if credit for the amount of any foreign tax paid by the assesses in a country or specified territory outside India by way of deduction or otherwise, in the year in which the income corresponding to such tax has been offered to tax or assessed to tax in India.

2. Preparation and Submission of Form

Form 67 shall be available to all the assesseees after login. Instruction to fill the form are enclosed along with the Form. Digital Signature Certificate or Electronic Verification code is mandatory to submit form 67.

Submission to Form 67 shall precede filling of return of Income.

Notification No. 09/2017- CBDT, Dated 19th September 2017

[Index](#)

ECONOMICS

New Registration process to facilitate effective communication is carried out by CBDT.

New Registration process to facilitate effective communication between the taxpayer and department is enabled. The existing e-Filing users are required to update their profile by logging into e-Filing account. Users who have registered already and not activated has to register again.

Our information now reveals that considering the complexities involved, CBDT has not made it mandatory for the time being.

SEBI removes wall between stock, commodity brokers

On September 21, for providing a major fillip to the ease of doing business, commodity and capital market regulator SEBI on Thursday paved the way for integration of stock and commodity brokers. The move will also reduce costs for investors as they can use a fund with one broker to take a position in both the commodity and stock market. This, to an extent, will also ease the margin requirement on investors.

The restriction on stockbrokers handling commodity derivatives from dealing in other securities has also been done away with.

Under the single registration process, SEBI will issue one-time registration certificate to stockbrokers and clearing members. Subsequently, permissions to act as a stock broker/clearing member of stock exchanges and clearing corporations shall be granted by the respective stock exchanges and clearing corporation after proper due diligence.

Business Line dated 21st September, 2017

Trade policy review may be delayed.

Exporters may have to wait an extra month, or even more, for the foreign trade policy review, earlier scheduled for September, as the government is still grappling with implementation issues related to the GST.

The Centre has also not taken a call on export-incentive schemes, which may no longer be permissible under WTO rules as India has moved out of the list of poorer countries allowed to provide export subsidies.

Business Line dated 21st September, 2017

World trade likely to grow at 3.6% in 2017

World trade in goods is estimated to grow 3.6 per cent in 2017 compared with the 1.6 per cent increase in 2016, according to the revised estimates circulated by the World Trade Organisation (WTO).

However, the rapid pace of trade growth in 2017 is unlikely to be sustained next year for a number of reasons and the increase could be at a more moderate 3.2 per cent, the forecast cautioned.

The strength of the revision is partly due to a modest improvement in the consensus forecast for world GDP growth (2.8 per cent in 2017 at market exchange rates, up from 2.3 per cent in 2016) and partly due to the composition of that growth.

Business Line dated 22nd September, 2017

[Index](#)

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.	Allahabad High Court	Section 12AA	At the time of registration of a charitable institution u/s 12AA, the CIT is not required to look into the activities, where such activities have not or are in the process of its initiation. The registration cannot be refused on the ground that the trust has not yet commenced the charitable or religious activity. At this stage, only the genuineness of the objects has to be tested and not the activities, unless such activities have commenced	CIT Vs. Shreedhar Seva Trust
2.	Bombay High Court	Section 40a(ia)	Disallowance of reimbursement of salary for non-deduction of TDS: Displeasure and unhappiness expressed at the manner in which the Tribunal approached the matter insofar as the applicability of s. 40(ba) is concerned. Tribunal cautioned that it should not use abbreviations in the order without indicating what the terms stand for as it causes confusion	CIT Vs. ITD CEM India JV
3.	ITAT Mumbai	Section 69C	If the AO has not rejected the books of accounts and has only doubted the genuineness of the suppliers but not the genuineness of the purchases and if the payments are made by account payee cheques, s. 69C is not attracted.	M/s. Fancy Wear vs. ITO (ITAT Mumbai)
4.	Supreme Court	Section 119	The CBDT has no jurisdiction to issue a Circular to amend the legislative provisions set out in the Act. Such action is ultra vires and liable to be	CIT Vs. S.V. Gopala Rao

			quashed	
5.	ITAT Delhi	Section 195	Entire law explained on whether payment of commission to non-resident agents for services rendered outside India is liable to tax in India u/s 5(2)(b) and 9(1)(i) on the ground that the "source" of the payment is in India and that the insertion of the Explanation to s. 9(2) with retrospective effect by the Finance Act 2010 makes such payments taxable	Divya Creation Vs. ACIT

[Index](#)

Discussion on Judgments - Income Tax



1. **At the time of registration of a charitable institution u/s 12AA, the CIT is not required to look into the activities, where such activities have not or are in the process of its initiation. The registration cannot be refused on the ground that the trust has not yet commenced the charitable or religious activity. At this stage, only the genuineness of the objects has to be tested and not the activities, unless such activities have commenced**

The preponderance of the judicial opinion of all the High Courts including Allahabad court is that:

- at the time of registration under section 12AA of the Income-tax Act, which is necessary for claiming exemption under sections 11 and 12 of the Act, the Commissioner of Income-tax is not required to look into the activities, where such activities have not or are in the process of its initiation.
- Where a trust, set up to achieve its objects of establishing educational institution, is in the

process of establishing such institutions, and receives donations, the registration under section 12AA cannot be refused, on the ground that the trust has not yet commenced the charitable or religious activity.

- Any enquiry of the nature would amount to putting the cart before the horse. At this stage, only the genuineness of the objects has to be tested and not the activities, which have not commenced.
- The enquiry of the Commissioner of Income-tax at such preliminary stage should be restricted to the genuineness of the objects and not the activities unless such activities have commenced.
- The trust or society cannot claim exemption, unless it is registered under section 12AA of the Act and thus at that such initial stage the test of the genuineness of the activity cannot be a ground on which the registration may be refused.

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2. **Disallowance of reimbursement of salary for non-deduction of TDS: Displeasure and unhappiness expressed at the manner in which the Tribunal approached the matter insofar as the applicability of s. 40(ba) is concerned. Tribunal cautioned that it should not use abbreviations in the order without indicating what the terms stand for as it causes confusion**

The Tribunal approached the matter by bifurcating the disallowance in relation to salary and administrative expenses. The Tribunal, after noting the rival contentions and particularly the argument that no disallowance has been made in the assessment years 2006-2007 and 2007-2008 which were framed under Section 143(3), proceeded further to hold that the departmental representative relied on some decision, details of which are not disclosed to justify the disallowance.

It then mixes up its findings and in relation to the applicability of Section 40(a)(ia) and 40 (ba), but concludes that it does not find any reason to sustain the disallowance under Section 40(a)(ia) as the payments made by the assessee to ITD Cementation India Limited were only on account of salary and related expenses.

Then it purports to divert its attention to Section 40(ba) of the IT Act, but proceeds to state that this provision is specific. It calls for disallowance of payment of any kind by the association of persons to its members. Then it holds that it could have accepted the arguments of the departmental representative had the member of the assessee been an individual because the provision seeks to prevent the enrichment of members through back door.

However, in the case at hand, the payment has been made to a company, which is a separate juridical person, distinct from its shareholders/directors. It then holds

that payment has been made on account of reimbursement of an expense incurred by the company. Therefore, the question of enrichment of a member does not arise. There is no profit element. That is why the Section 40(ba) does not get attracted.

- 3. If the AO has not rejected the books of accounts and has only doubted the genuineness of the suppliers but not the genuineness of the purchases and if the payments are made by account payee cheques, section 69C is not attracted.**

The AO has not rejected the books of accounts of the assessee nor have doubted the purchases made by it. The recognized principles of accountancy and tax jurisprudence hold that no sales can take place without purchases. Thus, the case under appeal is not about non genuineness of purchases itself, but it is about non genuineness of suppliers outside the books of accounts. Section 69C was introduced in to the statute with a specific purpose, Section 69C cannot be applied where all purchase and sales transactions are part of regular books of accounts. The basic precondition for invoking section 69C is that the expenditure incurred by the assessee should be out of books of accounts.

In same light of the case of Parekh Corporation UI Building (32 CCH 129) the Tribunal has discussed the applicability of provisions of section 69C of the Act and has held as under:

- In so far as the application of 69C is concerned, we find that the same cannot be attracted because section 69C applies here in any financial year and assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, of by the assessee is not satisfactory.
- It is then that the amount covered by such expenditure or part thereof is deemed as income of the assessee for such financial year.
- The bedrock for making an addition under section 69C is that there must have been some expenditure incurred by the assessee, the source of which is not disclosed.

In that view of the matter it is held that provisions of section 69C were not attracted.

4. The CBDT has no jurisdiction to issue a Circular to amend the legislative provisions set out in the Act. Such action is ultra vires and liable to be quashed.

The Department filed an appeal to challenge the judgement of the Andhra Pradesh High Court in S.V. Gopala Rao vs. Commissioner of Income-tax 270 ITR 433 (AP) where it was held that the CBDT had no jurisdiction under section 119 of the Act to issue a Notification [see [1996] 218 ITR (St.) 121] to amend

rule 68B of the Second Schedule to the Act.

The Honorable Supreme Court held that:

- The Central Board of Direct Taxes (CBDT) issued a Circular under Section 119 of the Income Tax Act, 1961. In fact, it amended the provisions contained in Rule 68B of the second Schedule to the Income Tax Act, 1961, which otherwise have statutory force.
- Such legislative provisions cannot be amended by CBDT in exercise of its power under Section 119 of the Act. The High Court has, therefore, rightly held the circular ultra vires and quashed the same.

5. Entire law explained on whether payment of commission to non-resident agents for services rendered outside India is liable to tax in India u/s 5(2)(b) and 9(1)(i) on the ground that the "source" of the payment is in India and that the insertion of the Explanation to s. 9(2) with retrospective effect by the Finance Act 2010 makes such payments taxable

The Assessing Officer made addition of Rs.62,19,609/- u/s 40(a)(i) on the ground that assessee has not deducted tax from the foreign agency commission paid as per the provisions of section 195 of the Income Tax Act. According to him although the non-resident agent has rendered services and procured orders abroad but the

right to receive the commission certainly arise in India when the order gets executed by the assessee. According to him, the mere fact that the agent is to render services abroad and the commission is to be remitted to him abroad are wholly irrelevant for the purpose of determining the income since income is from a source in India.

In the similar case of CIT vs. Model Exims reported in 363 ITR 66 the Honourable Allahabad High Court has held that:

- Failure to deduct tax at source from payment to non-resident agents, who has their own offices in foreign country, cannot be disallowed, since the agreement for procuring orders did not involve any managerial services.
- The Explanation to section 9(2) is not applicable
- The situation contemplated or clarified in the Explanation added by the Finance Act, 2010 was not applicable to the case of the assessee as the agents appointed by the assessee had their offices situated in the foreign country and that they did not provide any managerial services to the assessee.
- Section 9(1)(vii) deal with technical services and has to be read in that context

- The agreement of procuring orders would not involve any managerial services. The agreement did not show the applicability or requirement of any technical expertise as functioning as selling agent, designer or any other technical services.

Hence, the failure to deduct tax at source from payment to non-resident agents, who has their own offices in foreign country, cannot be disallowed.

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

[Index](#)

DUE DATE CHART FOR THE MONTH OF OCTOBER 2017

OCTOBER 2017						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	3 Last date of filing GSTR-1 who have turnover more than 100crore	4	5	6	7 Monthly TDS payment	8
9	10 Last date of filing GSTR-1 who have turnover up to 100 crore	11	12	13	14	15 Quarterly return of TDS Payment of Provident Fund
16	17	18	19	20	21 ESIC Payment	22 .
23	24	25	26	27	28	29
30	31 Profession Tax Payment. Tax Audit Return filing (

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	Extended Due Date) . Last date of filing GSTR-2						
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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.

[Back](#)