

# HARBINGER<sup>TM</sup>

*Updates on regulatory changes affecting your business*

August 2018



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## INCOME TAX



### Amendments in Tax Audit Report for AY 2018-19 pertaining to GST

1. The Central Board of Direct Taxes (CBDT) vide Notification No. GSR 666(E) (No. 33/2018) dated 20th July, 2018 made amendments to FORM 3CD as appearing in the Appendix II to the Income Tax Rules, 1962.
2. The amendments will be effective from. 20th August, 2018. However the revised form is applicable only where the audit report is filed on or after 20th August, 2018..
3. Amongst several changes which are incorporated , following are the two important changes in Form 3 CD pertaining to GST

- a. Clause 4 of the form has been amended to seek details of GSTIN in cases where the assessee is liable to pay the GST.
- b. Clause 44 in the form is being inserted to provide for the disclosure of the break-up of total expenditure in respect of the entities whether registered under GST or not in the format specified therein .

## Goods & Service Tax



### **CBIC notifies due date for filing GSTR-1 from July 2018 - March 2019**

1. The Central Board of Indirect Taxes and Customs (CBIC) vide Notification No. 33/2018 - Central Tax dated 10th August, 2018 has modified the due date for filing of final GST returns by businesses with turnover exceeding Rs. 1.5 crore to the 11<sup>th</sup> day of the succeeding month.
2. Currently, such businesses are required to file GSTR-1 or final sales return of a particular month by the 10th day of the succeeding month.
3. For businesses with turnover up to Rs. 1.5 crore, and who are required to file quarterly returns, the GSTR-1 giving

details of outward supplies has to be filed by the last date of the subsequent month.

4. The Central Board of Indirect Taxes and Customs (CBIC) vide Notification No. 34/2018 - Central Tax dated 10th August, 2018 has continued the due date for filing GSTR-3B and payment of taxes to 20<sup>th</sup> day of the succeeding month. GSTR-3B is a summary sales return which is filed every month.

## **RESERVE BANK OF INDIA**



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### **RBI makes PAN mandatory for making all remittances under Liberalized Remittance Scheme**

1. The Reserve Bank of India (RBI) has tightened the rules for remitting money abroad under the Liberalised Remittance Scheme (LRS).
2. It has made PAN mandatory for anyone using this scheme. Earlier PAN was not insisted upon for making current account transactions of up to \$25,
3. The LRS scheme is used by resident Indians to send money outside India. LRS was opened up to Indian residents in 2004.
4. LRS allows a resident Indian to buy stocks of foreign companies on foreign stock exchanges or to buy properties abroad. Using LRS scheme, one can invest or send your money anywhere in the world.
5. The rules of the scheme allow individuals only to buy stocks and properties abroad and not for pure speculative bets on instruments like derivatives.
6. The annual LRS limit (per individual) was raised in 2015 from \$1,25,000 to \$2,50,000.



## **Ministry of Corporate Affairs**



### **KYC to be made mandatory for directors by 31<sup>st</sup> August, 2018**

5. After the due date, filing of DIR-3 KYC in respect of such deactivated DINs would be allowed upon payment of a fee of Rs 5000/.
1. The Ministry of Corporate Affairs (MCA) has decided to conduct KYC for all directors of companies annually through a new form namely DIR-3 KYC.
2. Accordingly, it would become mandatory for every director who has been allotted a DIN on or before 31<sup>st</sup> March, 2018 and whose 'DIN' is in 'approved' status, to file form DIR-3 KYC on or before 31<sup>st</sup> August, 2018.
3. This form should be duly certified by a practicing professional (CA/CS/CMA).
4. After expiry of the due date by which the KYC form is to be filed, the MCA-21 system will mark all approved DIN's (allotted on or before March 31, 2018) against which DIR-3 KYC forms have not been filed as 'deactivated' with reason as 'non-filing of DIR-3 KYC'. (allotted on or before March 31, 2018)

## Economics



4. It said India was facing a "broadly positive outlook" thanks to "strengthening investment and robust private consumption".
5. But it also warned of risks from higher fuel prices and a weakening rupee.

## **IMF predicts India's growth to be 7.3 % in 2018-19**

The International Monetary Fund (IMF) issued a report on 8<sup>th</sup> August, 2018:-

1. IMF said that India will remain one of the world's fastest-growing major economies in coming years.
2. It commended the government's economic reforms but also called for action to contain inflation and increase the number of women in the workforce.
3. It forecasted the GDP growth for the fiscal year 2018-2019 at 7.3 % which would rise to 7.5 % the following year.

## **SUMMARY OF IMPORTANT TAX JUDGEMENTS**

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

Sr No.	Tribunal/Court	Section/Code	Nature	Case Law
1	ITAT Delhi (Special Bench)	Section 32	Goodwill is an intangible asset. It falls under the expression "any other business or commercial rights of similar nature" and is eligible for depreciation u/s 32(1)(ii) of the Act. The question whether when a firm has been succeeded by a company and net assets of the firm have vested in the company, there is any transfer of goodwill in the real sense and whether the valuation of goodwill done by the assessee is erroneous has to be decided by the Division Bench	CLC & Sons Pvt. Ltd vs. ACIT
2	Bombay High Court	Section 147, 148	S. 147/148: If the recorded reasons do not specify, prima-facie, the quantum of tax which has escaped assessment but merely states that it would be at least Rs.1,00,000, and if the reopening is to "verify" suspicious transactions, prima-facie, the reasons do not indicate reasonable belief of the AO and the notice is without jurisdiction	Dulraj U. Jain vs. ACIT
3	Bombay High Court	Section 158BC	S. 158BC: The fact that the second proviso to s. 158BC (a) prohibits an assessee who is subjected to search from filing a revised return of income does not mean that the assessee is prohibited from raising an additional claim before the appellate authorities	Alok Textile Industries Ltd vs. DCIT
4	Supreme Court	Section 220(6)	S. 220(6): CBDT's OMs dated 29.02.2016 & 31.07.2017 by which AO's have been directed to grant stay of disputed demand on payment of 20%/ 15% does not fetter the power of the AO & CIT to grant stay on payment of amounts lesser than 15%/ 20%. The AO/ CIT have to deal with the prima facie merits and give reasons for rejection of the stay application	PCIT vs. LG Electronics India Pvt Ltd
5	ITAT Mumbai (Special Bench)	Section 269SS/ 271D Penalty	It is not enough for the assessee to show that the transaction of taking loan/ deposit by cash is genuine or bona fide. It has also to be shown that there was reasonable cause u/s 273B for the assessee being unable to take the loan/deposit by account payee cheque or account payee bank draft	Deepak Sales & Properties Pvt. Ltd vs. ACIT



## Discussion on Judgments - Income Tax



1. Goodwill is an intangible asset. It falls under the expression "any other business or commercial rights of similar nature" and is eligible for depreciation u/s 32(1)(ii) of the Act. The question whether when a firm has been succeeded by a company and net assets of the firm have vested in the company, there is any transfer of goodwill in the real sense and whether the valuation of goodwill done by the assessee is erroneous has to be decided by the Division Bench

### **Facts:-**

It is vivid from the discussion made supra that qua the issue of depreciation on goodwill, the authorities below have divided it into two broader compartments by holding that:-

- no depreciation can be legally allowed on the amount of genuine goodwill in terms of section 32 of the Act; and
  - when a firm is succeeded by a company and all its net assets vest in the company, there is no transfer of goodwill in real sense and further the valuation of goodwill done by the assessee in the instant case is fallacious.
2. If the recorded reasons do not specify, prima-facie, the quantum of tax which has escaped assessment but merely states that it would be at least Rs.1,00,000, and if the reopening is to "verify" suspicious transactions, prima-facie, the reasons do not indicate reasonable belief of the AO and the notice is without jurisdiction

### **Facts:-**

- This petition was in response to a notice U/s 148 of Income Tax, 1961 which sought to reopen the assessment for AY2010-11.
- The notice stated certain transactions as suspicious transactions.
- The reasons in the support of the notice do not indicate that income chargeable to tax has escaped assessment.

- Further, the reasons also did not specify, prima-facie, the quantum of tax which had escaped assessment but merely stated that it would be at least be Rs.1,00,000/-. Thus the notice was without any Jurisdiction.
  - Thus an interim stay was put on notice.
3. **The fact that the second proviso to s. 158BC(a) prohibits an assessee who is subjected to search from filing a revised return of income does not mean that the assessee is prohibited from raising an additional claim before the appellate authorities**

**Facts:-**

We note that the prohibition in Second Proviso to Section 158BC (a) of the Act of filing a revised return of income before the Assessing Officer would not prohibit a Assessee from raising the additional claim before Appellate Authorities as held by this Court in **Pruthvi Brokers and Shareholders P. Ltd. (Supra)**. This is based on consideration of the decision of the Supreme Court

in **National Thermal Power Co. Ltd. v. CIT 229 ITR 384 and Goetze (India) Ltd. v. CIT 284 ITR 323**. In fact, in **Goetze (India) Ltd.**, the Apex Court after holding that Assessing Officer has no power to entertain claim for deduction otherwise than by filing revised return of income by Assessee, clarified that the same would not fetter the appellate authority from entertaining a claim not made before the Assessing Officer.

4. **CBDT's OMs dated 29.02.2016 & 31.07.2017 by which AOs have been directed to grant stay of disputed demand on payment of 20%/ 15% does not fetter the power of the AO & CIT to grant stay on payment of amounts lesser than 15%/ 20%. The AO/ CIT have to deal with the prima facie merits and give reasons for rejection of the stay application**

**Facts:-**

Having heard Shri Vikramjit Banerjee, learned ASG appearing on behalf of the appellant, and giving credence to the fact that he has argued before us that the

administrative Circular will not operate as a fetter on the Commissioner since it is a quasi judicial authority, we only need to clarify that in all cases like the present, it will be open to the authorities, on the facts of individual cases, to grant deposit orders of a lesser amount than 20%, pending appeal.

5. **It is not enough for the assessee to show that the transaction of taking loan/ deposit by cash is genuine or bona fide. It has also to be shown that there was reasonable cause u/s 273B for the assessee being unable to take the loan/deposit by an account payee cheque or account payee bank draft.**

#### **Facts:-**

There is no dispute between the parties that bonafide nature of transactions alone would not be sufficient to escape the clutches of sec. 271D of the Act. As per the decision rendered by Hon'ble Supreme Court in the case of Kum. A.B. Shanthi (supra), it is required to be established that there was some

bonafide reasons for the assessee for not taking or accepting loan or deposit by account payee cheque or account payee bank draft, so that the provisions of sec.273B of the Act will come to the help of the assessee. Only in such cases, the AO is precluded from levying penalty u/s 271D of the Act.

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

## DATE CHART FOR THE MONTH OF JULY 2018

### August 2018

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4
5	6	7	8	9	10	11
		Monthly TDS Payment				GSTR-1 (T/O> 1.5 Crores)
12	13	14	15	16	17	18
			Provident fund Payment			GSTR-4
19	20	21	22	23	24	25
	GSTR-3B GSTR-5A GSTR-5	ESIC Payment				
26	27	28	29	30	31	
					GSTR-6 GSTR-1 (T/O up to 1.5 Crore)	

*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.*