

HARBINGERTM

Updates on regulatory changes affecting your business

December 2014



B D Jokhakar & Co.

Chartered Accountants
www.bdjokhakar.com

INDEX

Sr. No	Topics covered	Page No.
1	<u>Company Law</u>	3
2	<u>Reserve Bank of India</u>	5
4	<u>Economics</u>	6
6	<u>Income Tax</u>	7
7	<u>Summary of Judgments - Income Tax</u>	9
8	<u>Discussion on Judgments - Income Tax</u>	10
9	<u>Due date chart for the month of December, 2014</u>	13

COMPANY LAW



Extension of Company Law Settlement scheme 2014

The Ministry of Corporate Affairs (MCA) vide General Circular 34/2014 Dated 12/08/2014 had introduced Company law settlement scheme which enabled the companies who have defaulted in their annual filings with ROC to file it belated by granting immunity from prosecution and charging a reduced additional fees at 25 % of actual additional fees. This scheme at the time of introduction was declared that it will remain in force upto 15th October, 2014. This was further extended upto 15th November 2014.

Now considering the request made by various stakeholders the MCA has extended the said scheme upto 31st December, 2014.

General Circular No 44/2014 Dated 14.11.2014

Clarification on matters relating to Cost Accounting Records

Representations were received from stake holders seeking clarifications about rules 5(1) and 6 (2) of companies (Cost Records and audit) Rules, 2014 regarding maintenance of cost records and filling of notice of appointment of the Cost Auditor in form CRA-2 instead of form 23C in electronic mode. The matter is now clarified by the Ministry stating that, considering delay in availability of form CRA -2 on MCA website it has been decided to extend the date of filing of the said form without any Penalty / late filing fee upto 31st January 2015. Form CRA -2 will be made available on MCA website soon. In cases where the companies have already filed form 23C for the F.Y 2014-15 they need not file form CRA-2 afresh for the Financial Year 2014-15.

General Circular No 42/2014 Dated 12.11.2014

Company Accounts Rules, 2014

Ministry of corporate affairs has amended the rule 6 of Company Account rules 2014 which deals with manner of consolidation of accounts. The said rule is amended to include the following provision,

That nothing in this rule shall apply in respect of preparation of consolidated financial statement by an intermediate wholly owned subsidiary, other than a wholly-owned subsidiary whose immediate parent is a company incorporated outside India. Also that nothing contained in this rule shall subject to any other law or regulation, apply for the financial year commencing from the 1st day of April, 2014 and ending on the 31st

March, 2015, in case of a company which does not have a subsidiary or subsidiaries but has one or more associate companies or Joint ventures or both, for the consolidation of financial statement in respect of associate companies or joint ventures or both, as the case may be.

*MCA Notification as on 14th October 2014
New Delhi.*

Clarification regarding applicability of provisions of Chapter III of the Companies Act, 2013.

Number of references were received from stakeholders seeking clarity on applicability of provisions of Chapter III of the Companies Act, 2013 which deals with the rules relating to Prospectus and Allotment of securities to the issue of Foreign Currency Convertible Bonds (FCCB'S) and Foreign Currency Bonds (FCB's) by Indian companies exclusively to person's resident outside India in accordance with applicable sectoral regulatory provisions. After considering such references the Ministry in consultation with SEBI has clarified as under;

The issue of FCCB'S and FCB'S by companies is regulated by the Ministry of Finance's regulations contained in Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipts Mechanism) Scheme, 1993 (Scheme) and Reserve Bank of India through its various directions/regulations. It is, accordingly, clarified that unless otherwise provided in the said scheme or the directions/regulations issued by Reserve Bank of India, provisions of Chapter III of the Act shall not apply to an issue of a FCCB or FCB made exclusively to

persons resident outside India in accordance with the above mentioned regulations.

*General Circular No, 43/2014 Dated
13.11.2014*

Over Hauling of Companies Act

More than half of the Provision of the companies Act 2013 came into force from 1st April 2014, following this, several communications were received in the Ministry of Corporate Affairs from chamber of commerce and professional institutes etc. drawing attention to certain practical difficulties concerning these provisions or seeking clarifications about them. There was also an interactive session on such issues with the stakeholders on 21st June 2014. Pursuant to this Government have issued suitable circulars, statutory orders and amendments in the rules to provide transitional time, remove doubts or practical difficulties. The Ministry is carrying out Inter-Ministerial consultations to address issues that may require amendment in the Act. There is no such proposal pending to review the role of directors and responsibility for the decision taken by the company.

This was stated by Shri Arun Jaitley, Minister of Corporate Affairs in written reply to a question in the Lok Sabha.

RESERVE BANK OF INDIA



Review of the Non-Banking Financial Company – Factors (Reserve Bank) Directions, 2012

RBI has decided that the NBFC for registering as NBFC, Factor shall ensure that its financial assets in the factoring business constitute at least 50% of its total assets and its income derived from factoring business is not less than 50% of its gross income. Earlier this limit was 75% in both the cases.

A.P. (DIR Series) Circular No. 38 dated 20.11.2014

Acquisition/Transfer of Immovable property – Payment of taxes

It had been observed that doubts persisted in the members of public regarding requirement of payment of taxes while undertaking property transactions under Foreign Exchange Management (Acquisition and Transfer of immovable property in India) Regulations, 2000, it is clarified that transactions involving

acquisition of immovable property under these regulations shall be subject to the applicable tax laws in India.

A.P. (DIR Series) Circular No. 38 dated 20.11.2014

Revised Regulatory Framework for NBFC

The NBFC (Non-Banking Finance Company) sector has evolved considerably in terms of its size, operations, technological sophistication, and entry into newer areas of financial services and products. NBFCs are now deeply interconnected with the entities in the financial sector, on both sides of their balance sheets. Being financial entities, they are as exposed to risks arising out of counterparty failures, funding and asset concentration, interest rate movement and risks pertaining to liquidity and solvency, as any other financial sector player. At the same time there are segments within the sector that do not pose any significant risks to the system. There is therefore, a felt need to address the risks, without impeding the dynamism displayed by NBFCs in delivering innovation and last mile connectivity for meeting the credit needs of the productive sectors of the economy.

With the above background, a review of the entire regulatory framework for the NBFC sector has been undertaken with a view to transitioning, over time, to an activity based regulation of NBFCs. As a first step in this direction, certain changes to the regulatory framework are sought to be made to a) address risks wherever they exist, b) address regulatory gaps and arbitrage arising from differential regulations, both within the sector as well

as vis-a-vis other financial institutions, c) harmonise and simplify regulations to facilitate a smoother compliance culture among NBFCs, and d) strengthen governance standards

For the details relating to Revised Regulatory Framework for NBFC kindly refer the circular,

DNBR (PD) CC.No. 002/03.10.001/2014-15, RBI/2014-15/299 dated 10.11.2014

ECONOMICS

Reforms poised to put India on a strong, sustainable and inclusive growth path

The Indian economy is showing signs of a turnaround. New reforms, some of which are included in the package presented by Prime Minister Narendra Modi, need to be implemented to put the country on a path to strong, sustainable and inclusive growth

Investment and exports are driving the rebound, but growth will be sustained at a stronger pace if further steps are taken. In the near term, stable and lower inflation and smaller deficits are needed. Structural improvements to the business climate are crucial for medium term growth, and in the longer-term, health improvements and increased female participation in the labour market will sustain strong and inclusive growth.

The OECD identifies policies critical for future growth. It says India should formally adopt a flexible inflation-targeting framework, which will help contain inflation expectations and provide support

for saving and investment. It also suggests implementing a broad national value-added tax (GST) and cutting energy subsidies, as part of wider efforts to put public finances on a stronger footing.

Ensuring better living conditions for all Indians – notably access to sanitation – and putting additional public resources into health care would improve health outcomes and contribute to more inclusive growth and well-being, the OECD said.

<http://www.oecd.org/india/reforms-needed-to-keep-india-on-a-strong-sustainable-and-inclusive-growth-path.htm>

Government firm on reforms despite Opposition roadblocks, says Arun Jaitley

Finance minister Arun Jaitley took The Economic Times Awards platform to warn the Opposition parties that no amount of obstacles could stop the Narendra Modi government's resolve to lift India's economic growth back to 8% and more, signaling that a joint session of Parliament would be called if needed.

The government, which has been busy fixing the basic administrative problems caused by years of policy paralysis, aims to make the goods and services tax a reality, push reforms in land acquisition, encourage manufacturing, private investment in mining minerals, and end the notorious tax regime that became a nightmare for businessmen. The subsidy for the rich may well become history while the poor may still be eligible for it.

The Indian rupee and the stock market, which were pummelled last year due to collapse of governance, are buoyant this year, with international investors pouring in more than \$40 billion in equity and debt. The rupee, which was the worst performer last year, is the best performer among emerging market currencies this year despite a surging US dollar. Though the economy is growing slower than its best days, it expanded 5.3% in the September quarter, beating estimates of 5.1%.

http://articles.economictimes.indiatimes.com/2014-11-30/news/56582790_1_et-awards-corporate-excellence-goods-and-services-tax

INCOME TAX

Approval of long term bonds and rate of interest for the purpose of Section 194LC of Income Tax Act

The deduction of income tax at the rate of 5% under section 194LC on payment of interest income outside India on borrowings made upto 1st July 2015 has been extended to borrowings made upto 1st July, 2017.

Circular No. 15/2014 dated 17th October, 2014

Increase in limit of term deposit with a scheduled bank

In line with increase of 80C limit from one lakh rupees to one lakh fifty thousand rupees, the deduction of term deposits with scheduled banks claimed under clause (xxi) of sub-section (2) of section 80C has also been increased to one lakh fifty thousand rupees.

Notification No.63/2014 dated 13th November, 2014

Settlement of cases - Clarification in respect of Circular No.3 of 2008 dated 12/3/2008 of CBDT:

In respect of Settlement of cases as per Income-tax Settlement Commission (ITSC), an explanatory Circular No. 3/2008 dated 12.03.2008 was issued by CBDT vide para 61 (comprising sub paras 61.1 to 61.17) dealing with Revised Settlement Scheme.

Para 61.2 of said Circular No.3 of 2008 now reads as under:

Under the existing provisions, an assessee may make an application to the Commission at any stage of the proceedings in his case pending before any Income-tax Authorities. After 31st May, 2007, an assessee can make an application to the Commission only during the pendency of the proceedings before the Assessing Officer. It is further clarified that (a) since intimation under section 143(1) is not an assessment order, there will be no bar in filing an application for settlement subsequent to receipt of an intimation under section 143(1). It is not material whether time-limit for issue of notice under section 143(2) has expired or not; (b) the assessment shall be deemed to have been completed **"on the date on which the assessment order is passed."**

In earlier circular in part (b) date on which assessment is completed was the date of **service of assessment order**. This was not in agreement with Section 245A of Income Tax Act which stated that the date of completion of assessment shall be on the date on which the assessment order is passed.

Circular No.16/2014 dated 17th November, 2014

Extension of due date of filing return of income

Due to the floods in the State of Jammu & Kashmir, the CBDT in exercise of powers under section 119 has extended the due date "duedate" of furnishing return of income from **30th November, 2014 to 31st March, 2015.**

ITO 28 dated 28th November, 2014.

SUMMARY OF IMPORTANT TAX JUDGEMENTS:

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

Sr. No	Tribunal / Court	Area/ Section covered	Nature	Case Law
1	ITAT - Hyderabad	Section 2(1A)	For constituting a long-term capital asset, date of allotment of property and not date of registration to be considered. Benevolent approach should be adopted and not a hyper-technical or legalistic one	<i>Andhra Networks Limited v.s DCIT</i>
2	ITAT - Hyderabad	Section 2(47)	No deemed transfer on handing over of possession of land to developer if he didn't perform his part of contract	<i>ACIT-Hyderabad v.s R.Srinivasa Rao</i>
3	High Court- Delhi	Section 9(1)(vi)	Broadcast or live coverage does not have a "copyright" & is consequently not assessable as "royalty" for purposes of TDS	<i>Sanjiv Khanna J, v.s Kameswar Rao J</i>
4	ITAT- Bangalore	Section-28	Profits on sale of carbon credits is not a taxable revenue receipt	<i>Subhash Kabini power Corporation Ltd v.s CIT</i>
5	High Court- Delhi	section 8(1)(j) of Right to Information Act, 2005	I-T returns and info provided to tax authorities are exempt from disclosure under RTI Act	<i>Naresh Trehan v.s Rakesh Kumar Gupta</i>



1. For constituting a long-term capital asset, date of allotment of property and not date of registration to be considered. Benevolent approach should be adopted and not a hyper-technical or legalistic one

Andhra Networks Limited v.s DCIT (ITAT – Hyderabad)

i) Even in the absence of a registered deed of transfer, if the transaction in question demonstrates the intention of the parties and after paying the entire consideration agreed upon, the purchaser enjoys the property. The fact that the transaction is not completed by execution of the registered sale deed makes no difference in the eye of law for the purpose of taxes. If the Revenue is entitled to collect tax on such capital gains, even in the absence of a registered document, on the same analogy, the assessee, who is liable to pay the capital gains, is also entitled to the exemption granted under the very Act on such capital gains.

ii) In that view of the matter When capital gain is accrued in him instead of paying tax to the Government, he has invested the money in the aforesaid manner, which gives him the benefit of exemption from payment of capital gains. He satisfies the requirement of the law. By hypertechnical or legalistic approach, such benefit conferred on an assessee cannot be denied. Very fact that the law encourages an assessee to make such investments to avoid payment of tax, such benevolent provision which is meant for such assesses has to be equitably interpreted and justly administered.

2. No deemed transfer on handing over of possession of land to developer if he didn't perform his part of contract

ACIT-Hyderabad v.s R.Srinivasa Rao (ITAT Hyderabad)

i) The assessee entered into an agreement for development of land in terms of which he handed over the possession of land to the developer. As per development agreement, assessee was to receive a part of built-up area. Besides, the developer had also given certain advance to assessee.

ii) During the course of assessment, the Assessing Officer ('AO') opined that as the assessee had delivered possession of the property to the

developer, there was a transfer within the meaning of section 2(47)(v), read with section 53A of the Transfer of Properties Act ('TP Act') and, thus, assessee was subject to capital gains tax.

iii) The handing over of possession by the assessee towards part performance of contract would not amount to transfer unless the transferee was also willing and ready to perform his part of the contract under the development agreement.

iv) In the instant case, the developer had not taken any step towards development of the property. He had not taken any steps to get sanction/approval of plan for construction of building from the competent authorities. Not even a single development activity like levelling of land, sales promotion had been initiated by the developer. The department had not controverted these facts, thus, it clearly demonstrated unwillingness on the part of the developer to perform his part of the contract.

v) Therefore, when the developer had not performed or there was unwillingness to perform his part of the contract, it could not be concluded that there was transfer of capital asset in terms of section 2(47)(v), read with section 53A of the TP Act.

"copyright" & is consequently not assessable as "royalty" for purposes of TDS

*Sanjiv Khanna J, v.s Kameswar Rao J
(Delhi High Court)*

i) A live T.V coverage of any event is a communication of visual images to the public and would fall within the definition of the word "broadcast" in Section 2(dd). That apart we note that Section 13 does not contemplate broadcast as a work in which "copyright" subsists as the said Section contemplates "copyright" to subsist in literary, dramatic, musical and artistic work, cinematograph films and sound recording.

ii) Similar is the provision of Section 14 of the Copyright Act which stipulates the exclusive right to do certain acts. A reading of Section 14 would reveal that "copyright" means exclusive right to reproduce, issue copies, translate, adapt etc. of a work which is already existing

iii) In view of the aforesaid position of law which brought out a distinction between a copyright and broadcast right, suffice would it be to state that the broadcast or the live coverage does not have a "copyright".

iv) Hence it can be said that Broadcast or live coverage does not have a "copyright" & is consequently not assessable as "royalty" for purposes of TDS

3. S. 9(1)(vi): Broadcast or live coverage does not have a

4. Profits on sale of carbon credits is not a taxable revenue receipt

Subhash Kabini power Corporation Ltd v.s CIT (ITAT Bangalore)(Section 28)

i) Carbon credit is in the nature of “an entitlement” received to improve world atmosphere and environment reducing carbon, heat and gas emissions. The entitlement earned for carbon credits can, at best, be regarded as a capital receipt and cannot be taxed as a revenue receipt. It is not generated or created due to carrying on business but it is accrued due to “world concern”.

ii) Carbon credits are made available to the assessee on account of saving of energy consumption and not because of its business. Thus, the assessee who have surplus carbon credits can sell them to other assessee to have capped emission commitment under the Kyoto Protocol. Transferable carbon credit is not a result or incidence of one's business and it is a credit for reducing emissions.

iii) Hence carbon credit is entitlement or accretion of capital and hence income earned on sale of these credits is capital receipt.

5. I-T returns and info provided to tax authorities are exempt from disclosure under RTI Act

Naresh Trehan v.s Rakesh Kumar Gupta (High Court-Delhi)

i) Income-tax returns and other information provided to Income Tax Authorities by individuals and unincorporated assessee are confidential in nature and cannot be placed in public domain, as it would be exempt under section 8(1)(j) of Right to Information Act, 2005 (RTI Act).

ii) In cases of widely held companies, most information relating to their income and expenditure would be in public domain and, therefore, it is only confidential information that would be exempt from disclosure under section 8(1)(d) of RTI Act.

iii) Information furnished by an assessee in income-tax return can be disclosed only where it is necessary thing to do so in public interest and where such interest outweighs in importance any possible harm or injury to assessee or any other third party. However, information furnished by corporate assessee that neither relates to another party nor is exempt under section 8(1)(d) RTI Act can be disclosed.

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

DUE DATES CHART FOR THE MONTH DECEMBER 2014 (Various Acts):

Date	Particulars
5 th	Service Tax payment for the previous month (6 th if paid electronically)
6 th	Payment of Excise Duty for the previous month for all Assesseees(other than SSI units)
7 th	TDS remittance for the previous month
10 th	Monthly Excise return by all assesseees (except SSIs & EOUs) coming under CEA in Form ER1
10 th	Monthly Excise return by EOU assesseees coming under CEA in Form ER 2
15 th	Payment of Advance Tax for CORPORATES (not less than 75% of the estimated tax)
15 th	Payment of Advance Tax for Non Corporate (not less than 60% of the estimated tax)
20 th	Payment of contribution under EPF & MP Act, 1952 (including 5 days of grace)
21 st	Payment of contribution under Employees State Insurance Act, 1948
31 st	Payment of Profession Tax for the employees

----- XXXXX-----

This communication is intended to provide general information, guidance on various professional subject matter and should not be regarded as a basis for taking decisions on specific matters. In such instances, separate advice should be taken.