

HARBINGERTM

Updates on regulatory changes affecting your business

July 2015



B D Jokhakar & Co.

Chartered Accountants

www.bdjokhakar.com

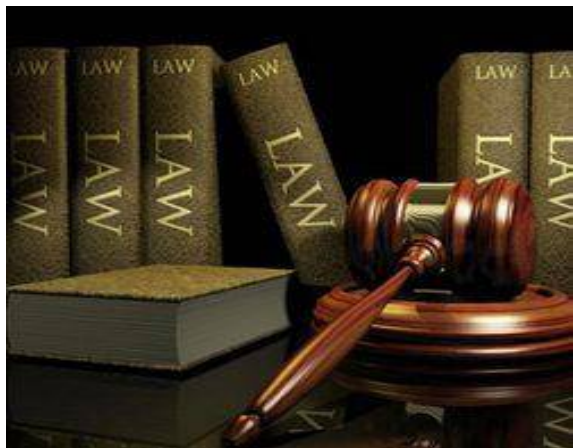
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COMPANY LAW



Filing of cost audit report to the Central Government for the F.Y. 2014-15 in form CRA-4

Additional fees on delayed filing of form CRA-4 beyond the prescribed period of 30 days from the date of receipt of a copy of Cost Audit Report from the Cost Auditor for the Financial Year starting on or after 1st April 2014 is waived for all such filings till 31st August, 2015.

General circular no 08/2015 dated 12th June 2015.

Clarification on repayment of deposits accepted by the companies before the commencement of the Companies Act, 2013 under section 74 of the said Act

The Ministry has received representations seeking clarification regarding processing of the deposits related complaints received from investors under section 74 of the Companies Act, 2013 (the said Act) in

respect of defaults made by companies in repayment of deposits accepted by them before the commencement of the said Act i.e. before 1st April, 2014 and filing of prosecutions against defaulting companies by the Registrars of Companies/Regional Directors.

It has been clarified that depositor is free to file an application under section 73(4) of the said Act, with the Company Law Board if the company fails to make repayment of deposits accepted by it. Further the company may also file application under section 74(2) of the said Act with the Company Law Board seeking extension of time in making the repayment of deposits accepted by it before the commencement of the provisions of the said Act.

General circular no 09/2015 dated 18th June 2015

Exemption to private companies

Vide notification dated 5th June 2015, private companies are exempted from certain provisions of the Companies Act 2013. Below are some important changes-

1. Now as per Section 2(76) of the Companies Act, 2013 following body corporates will not be considered as Related Party of the Private Limited Company-
 - Holding Company
 - Subsidiary Company
 - Associate Company
 - Fellow Subsidiary Company

2. Where MOA and AOA provides then provisions relating to Section 43 with respect to Kinds of Share Capital and Section 47 with respect to Voting Rights will not be applicable.
3. Notice period & minimum-maximum period for which rights issue can remain open as mentioned in Section 62 for rights issue can be reduced if consent is obtained from 90% of the members of the Company.
4. ESOP can be granted to employees by private limited company by passing ordinary resolution instead of Special Resolution (Section 62).
5. Section 67 with respect to restrictions on purchase or giving of loans by company on its shares and Section 185 with respect to Loans to Directors will not be applicable to such private company in which -
 - (1) No other body corporate has invested any money in such a company;
 - (2) The borrowings of such a company from banks or financial institutions or any body corporate are less than twice its paid up share capital or fifty crore rupees, whichever is lower; and
 - (3) It is not in default in repayment of such borrowings subsisting at the time of making transactions under this section.
6. Acceptance of deposits from members of a private company has been simplified by providing that clauses (a) to (e) of subsection (2) of section 73 of the Act shall not apply to a private company which accepts from its members monies not exceeding one hundred per cent of the aggregate of the paid up share capital and free reserves. It has been clarified that such company shall have to file return of the money so accepted with the ROC.
7. Section 101 to Section 107 with respect to meetings and Section 109 with respect to Demand for a poll shall apply to private company unless otherwise specified in respective sections or Articles of Association specify otherwise.
8. Board resolutions passed by private limited company under Section 179(3) of the Act need not be filed with Registrar of Company.
9. Number of Companies for which a auditor can do audit does not include following companies-
 - One Person Company
 - Dormant Company
 - Small Company
 - Private Limited Company with paid up share capital less than one hundred crore rupees.
10. Section 160, 162 and 180 with respect to rotational directors,

appointment of directors to be voted on individually, powers of board to be exercised after passing special resolution respectively are not applicable to Private Limited Company.

11. Interested director can participate in the meeting if he discloses his interest.
12. Now a member of a private limited company can also vote on resolution to approve any contract or arrangement even if such member is a related party.
13. Section 196(4) relating to general meeting approval or central government approval in case appointment of a managing director, whole-time director, manager is at variance to the conditions specified in Schedule-V of the act and Section 196(5) with reference to acts done being invalid if not approved in general meeting will not be applicable to private limited company.

Notification dated 5th June 2015

RESERVE BANK OF INDIA



Withdrawal of all old series of Bank notes issued prior to 2005

It has been decided to extend the date for exchanging the pre-2005 banknotes to December 31, 2015.

RBI/2014-15/650 DCM(Plg) No. G-15/5486/10.27.00/2014-15

Overseas Foreign Currency Borrowings by Authorised Dealer Bank

As per the Notification No. FEMA 3/RB-2000 dated May 3, 2000, AD Category - I banks may borrow funds from their Head Office or overseas branches or correspondents outside India or any other entity as permitted by Reserve Bank, up to a limit of hundred per cent of their unimpaired Tier I capital as at the close of the previous quarter or USD 10 million (or its equivalent), whichever is higher, subject to such conditions as the Reserve Bank may direct. Also in A.P. (DIR Series) Circular No. 61 dated October 10, 2013, in terms of which

permission was granted to AD Cat-I banks to borrow from international / multilateral financial institutions for a limited period up to November 30, 2013.

RBI/2014-15/649 A.P. (DIR Series)
Circular No.112

The Depositor Education and Awareness Fund Scheme, 2014 - Section 26A of Banking Regulation Act, 1949- Operational Guidelines

The circular DBOD.No.DEAF Cell.BC.114/30.01.002/2013-14 dated May 27, 2014 has instructions regarding returns to be submitted to RBI in connection with the captioned Scheme.

Since there is a considerable overlap between Form I and Form II, it has been decided to club Form I and Form II together in a new form, "Form I & II".

RBI/2014-15/645 DBR.No.DEAF
Cell.BC.105/30.01.002/2014-15

BEF statement - Submission under XBRL

As per A.P (DIR Series) Circular No.106 dated June 19, 2003 and A.P. (DIR Series) Circular No.09 dated August 18, 2003, in terms of which AD Category - I banks were required to submit BEF statement, to respective regional offices of Reserve Bank of India, in the prescribed format, on half yearly basis.

It has been decided to move from manual reporting of above mentioned statement to eXtensible Business

Reporting Language (XBRL) system from half year ended June 2015. With effect from the half year ending June 2015, BEF submission would be online and Bank-wise instead of the present system of branch-wise submission, to the respective Regional Offices of the RBI.

RBI/2014-15/643 A.P.(DIR Series) Circular
No. 110

ECONOMICS

Compliance Window under Black Money Act

The Finance Minister, in the budget speech this year, had announced that a comprehensive new law to deal with black money stashed away abroad would be enacted. The Bill to enact the proposed new law was passed by the Parliament in its Budget Session. The Bill received Presidential assent and became law on 26th May, 2015. The Act provides for separate taxation of undisclosed foreign income and assets. Stringent penalties and prosecution, including rigorous imprisonment upto ten years and penalty equal to three times of the tax have been prescribed for violation. The Act also provides a compliance window for a limited period to persons who have undisclosed foreign assets which they have not disclosed for the purposes of Income-tax so far.

The Central Government has notified 30th day of September, 2015, as the date on or before which a person may make a declaration in respect of an undisclosed asset located outside India

under the compliance provisions of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 ('Black Money Act').

The last date by which a person must pay the tax and penalty in respect of the undisclosed foreign assets so declared shall be the 31st day of December, 2015. Detailed features of the compliance window are notified separately.

Notification dated 1st July 2015

OECD Urges Greater Use of Green Taxes

The report, entitled Taxing Energy Use 2015, OECD and Selected Partner Economies, said that there is strong evidence that taxes are one of the most cost-effective ways to curb the negative side effects of energy use.

OECD Secretary-General Angel Gurrá said: "Tax policy is not being used effectively to reduce the adverse health impacts and emissions of greenhouse gases resulting from energy use." He added that there is still considerable scope to use taxation to improve the environment and contain climate change.

The report compared taxes on energy use in 41 countries worldwide, which together use 80 percent of global energy. It found that the weighted average effective tax rate on all energy use across the 41 countries is EUR14.8 (USD16.5) per ton of CO₂ from energy use, well below estimates of the social cost of carbon, at around EUR30 per ton. When the cost of other negative

side effects from energy use are also considered, this strengthens the conclusion that average tax rates are very low relative to the harmful effects of fuel use, it said.

Coal, which contributes significantly to climate change and local air pollution, is the lowest and least frequently taxed fuel, according to the report, 85 percent of coal used for heating and processing purposes in the 41 countries is untaxed, and the average tax rate on coal is less than EUR2 per ton of CO₂. By comparison, oil products are taxed at EUR49 per ton of CO₂ on average, with the vast majority of oil products subject to energy taxes.

Tax news: Washington 30.06.2015

Greece's debt crisis, missed the IMF payment deadlines

Greece has missed the deadline for a €1.5bn (£1.1bn) payment to the International Monetary Fund (IMF), hours after eurozone ministers refused to extend its bailout. "We have informed our Executive Board that Greece is now in arrears and can only receive IMF financing once the arrears are cleared," said IMF spokesman Gerry Rice. Mr Rice confirmed the IMF had received a request from Greece to extend the payment deadline, which he said would go to the board "in due course".

With the eurozone bailout expired, Greece no longer has access to billions of euros in funds and could not meet its IMF repayment.

The European Central Bank (ECB) has also frozen its liquidity lifeline to Greek banks. Meanwhile, ratings agencies have further downgraded the country's debt.

BBC News 01.07.2015

IMF Welcomes Tax Reform Progress in Pakistan

The International Monetary Fund (IMF) has welcomed the fiscal adjustment plans outlined in Pakistan's 2015/16 Budget.

In a statement released following its seventh review under the Extended Fund Facility (EFF) arrangement for Pakistan, the IMF expressed support for the authorities' plans to broaden the tax base, including by eliminating tax exemptions and concessions.

In a report released in April, the Fund noted that the Pakistani Government's use of Statutory Regulatory Orders (SROs), which grant tax exemptions and concessions, has riddled the tax system with loopholes. It said that at the beginning of this fiscal year the Government eliminated a significant number of SROs and is expected to improve tax collection from that source by about 0.3 percent of gross domestic product (GDP) this year.

However, the IMF said there remains significant scope to increase tax compliance and enforcement. The completion of the seventh review under the EFF enables the immediate disbursement of about USD506.4m,

bringing total disbursements under the arrangement to about USD4.05bn

Tax news: 30.06.2015

SERVICE TAX

Clarification on the rate of service tax on restaurant service

Ministry of Finance vide Circular no. 184/3/2015 dated 3rd June 2015 has clarified that service tax will be charged @ 5.6% of the value of total services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year. It is further clarified that exemption from service tax still continues to services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year.

Circular no. 184/3/2015 dated 3rd June 2015

INTERNATIONAL TAX

Mauritius joins Multilateral Convention for Mutual Administrative Assistance in Tax Matters

"This instrument will further strengthen the position of Mauritius as a transparent international financial centre of good repute," a Mauritius government statement said.

The instrument was developed jointly by the OECD and the Council of Europe to fight international tax avoidance and evasion.

International tax review 24.06.2015

INCOME TAX

Extension of income tax return filing due date

The Central Board of Direct Taxes, in exercise of powers conferred under section 119 of the Income-tax Act, 1961, hereby extends the 'due-date' for filing Returns of Income, in terms of clause (c) of Explanation 2 to sub-section (1) of section 139 of the Income-tax Act, 1961, for Assessment Year 2015-16 from 31st July, 2015 to 31st August, 2015 in respect of income tax assessee concerned.

The Income-tax (Ninth Amendment), Rules, 2015

In the Income-tax Rules, 1962, after rule 51, the following rule shall be inserted, namely:-

“51A. Nature of business relationship. – For the purposes of sub-clause (viii) of Explanation below sub-section (2) of section 288, the term “business relationship” shall be construed as any transaction entered into for a commercial purpose, other than, – (i) commercial transactions which are in the nature of professional services permitted to be rendered by an auditor or audit firm under the Act and the

Chartered Accountants Act, 1949 (38 of 1949) and the rules or the regulations made under those Acts; (ii) commercial transactions which are in the ordinary course of business of the company at arm's length price – like sale of products or services to the auditor, as customer, in the ordinary course of business, by companies engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses.”

Clarifications on Rollback Provisions of Advance Pricing Agreement (APA) Scheme

Rollback provisions in the APA Scheme were introduced through subsection (9A) inserted in section 92CC by the Finance (No. 2) Act, 2014 and the relevant rules, namely, Rules 10MA and 10RA, have been notified recently vide S.O. 758(E) dated 14th March, 2015 and S.O. 915(E) dated 1st April, 2015. Subsequent to the notification of the rules, requests for clarification regarding certain issues have been received in the Central Board of Direct Taxes. In order to clarify such issues, the Board has decided to adopt a Question and Answer format and the clarifications.

SUMMARY OF IMPORTANT TAX JUDGMENTS:

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	Delhi High Court	Sec 54	Even provisional letter of flat allotment is capital asset.	<i>Commissioner of Income Tax Vs ITO</i>
2	Delhi High Court	Sec 68	Once identity and creditworthiness of parties and genuineness of transaction proved, section 68 cannot be involved.	<i>CIT vs. Shokeen Properties Pvt. Ltd</i>
3	ITAT Hyderabad	Sec 147	Reopening of Assessment u/s 147 cannot be allowed if there is subsequent change in law	<i>ACIT v Sahara States</i>
4	ITAT Pune	Sec 201	Order passed under section 201 should comply by time limit prescribed under provision to section 201(3)	<i>M/s. Vamona Developers Pvt. Ltd. V. DCIT</i>

DISCUSSION ON JUDGEMENTS - INCOME TAX



1. Even provisional letter of flat allotment is capital asset

Commissioner of Income Tax Vs ITO

i) The assessee reported sales of two capital assets in the form of half shares in a residential property in Marine Drive, Mumbai and half share in a Kashmere Gate, property. The assessee claimed that a sum of Rs. 73, 27,000/- was used to acquire another property within a period stipulated in Section 54. It also claimed, inter alia, that a sum of Rs 25, 14,700/- was spent towards cost of improvement. The Assessing Officer rejected the assessee's contention and held that in the absence of an agreement to sell, the rights acquired by the provisional booking of the property did not meet with the requirements spelt out under Section 54, i.e. acquisition of new capital asset. The AO also held that the improved cost was not deductible.

ii) This Court, in the decision reported as Sh. Gulshan Malik vs. Commissioner of Income Tax (ITA No.55/2014, decided on 14.03.2014) had the occasion to, inter alia,

consider what amounted to acquisition of a capital asset – though in the context of a claim that capital gains had accrued due to the sale of the property. The facts in that case were that the assessee had booked a flat, and was recipient of a provisional allotment letter.

The Court held importantly that even booking rights or rights to purchase the apartment or to obtain its letter was also capital asset.

2. Once identity and creditworthiness of parties and genuineness of transaction proved, section 68 cannot be invoked

CIT vs. Shokeen Properties Pvt. Ltd

i) Assessee was engaged in the sale & purchase of property. During assessment proceedings show cause notice was issued to issue pertaining to two huge amount reflected in his bank statement. The assessee explained that these amounts were consideration received either fully or in part and in some cases paid back during the concerned period and that everything was backed by documentary evidence. In the course of the assessment proceedings, the concerned material in the form of extracts of ledger, other books of accounts, bank account statements and confirmation by the parties concerned and the conveyance/sale deeds or copies thereof were produced. AO brought to tax the entire amount stating that the credits had not been properly explained. On appeal CIT (A) deleted additions after examining the various documents in support of submission and various case laws relied upon by the assessee. ITAT also dismissed appeal filed by revenue and sustained the order of CIT (A).

ii) All the relevant materials in the form of confirmation with respect to each transaction pertaining to the assessee's business activities as well as the sale/purchase deeds was disclosed and given the fact that the amounts were reflected in the bank accounts, there was no question of dubious credit entries.

iii) There are various case laws which conclude the facts that once the assessee discharged its primary onus by placing material and document on record before AO then it is assumed that the unexplained amount reflected in books of assessee stands explained. In order to make addition AO must enquire further and brought out contrary material to make addition u/s 68. He cannot take stand of time limit prescribed under act of complete the assessment in hasty manner. If any contrary or dubious fact brought out after completion of assessment as a result of his enquiry then he can proceed further under section 147.

3. Reopening of Assessment u/s 147 cannot be allowed if there is subsequent change in law

ACIT v Sahara States

i) The joint venture agreement was made with an intention to carry on the project. Assessee-AOP took over the project, developed and claimed deduction u/s. 80IB (10). In the original assessment completed u/s. 143(3) for AYs. 2003-04, 2004-05 and 2005-06, AOs examined the eligibility of the assessee and allowed the claim of deduction after due verification of all agreements, documents and also filed

verification by the Inspector in respective assessment years. Subsequently, while completing the assessment for AY. 2006-07, the AO insisted on furnishing 'Project Completion Certificate'. Since assessee could not furnish the same, AO took the view that assessee was not eligible for deduction u/s. 80IB (10). Consequently, the assessments completed in earlier years were re-opened u/s. 147 mainly on the reason that assessee has failed to furnish the 'Project Completion Certificate.

ii) According to the Assessee, change of opinion by the officer is no valid reason to reopen the assessment u/s.147. Assessee contention was that the project was completed, but the necessary certificate was not given by the authorities. AO at the time of assessment u/s. 143(3) in respective assessment years not only examined in detail the eligibility of the assessee with reference to various permissions, projects, and expenditures but also deputed his Inspector to verify the measurements of the various housing units being constructed. Since the AO examined in detail and found satisfied with the fulfilling of conditions for claiming deduction U/s 80IB (10) and allowed the same.

iii) The Hon'ble Tribunal held that the chronological events were not in dispute. The contention of the Revenue cannot be accepted as the project was not even approved by the local authorities not even by 01-10-1998. Therefore, the project has started after 01-10-1998 and therefore, the contention of the AO that the project started before that date is not factually correct. Furnishing of 'Project Completion Certificate' was not even stipulated in

AYs. 2003-04 and 2004-05, therefore, that cannot be the basis for reopening the assessments.

iv) Assessee cannot be compelled to comply with the condition or fulfill the condition which was not stipulated at the time of sanction of the project. Assessee has completed its project by 31-03-2008 and has requested the local authorities for approving the final project. If the local authorities did not issue the 'Project Completion Certificate' as requested by assessee, it was not possible to furnish the said certificate to the Revenue authorities. All the evidences on record do indicate that assessee has completed the project, therefore, just because assessee could not furnish the 'Project Completion Certificate', the deduction cannot be denied on that basis.

4. Order passed under section 201 should comply by time limit prescribed under provision to section 201(3)

M/s. Vamona Developers Pvt. Ltd. V. DCIT

i) Appeals filed by the assessee were withdrawn. The Revenue filed the appeal. Facts of the case were that the assessee company was engaged in the business of running a mall. A TDS survey was conducted on 15-11-2012 during which it was observed that the assessee company had deducted tax on professional fees u/s.194J at lower rate than as required by the section.

ii) The appellant filed quarterly statement for F.Y. 2007-08 on 12-06-2008. As per proviso to Sec.201 (3) order u/s.201 (1)/201(1A) was required to be passed on

or before 31-03-2011. In this case order u/s. 201(1)/201(1A) has been passed on 30-03-2012, the same is clearly barred by limitation

iii) The Hon'ble tribunal held that as per proviso to section 201(3) of the I.T. Act, the AO was required to pass the order u/s.201(1)/201(1A) on or before 31- 03-2011. The finding given by the Ld.CIT (A) that the order passed u/s.201 (1)/201(1A) on 30-03-2012 by the AO was barred by limitation. Since the order passed on 30-03-2012 is clearly barred by limitation, therefore, Hon'ble Tribunal upheld the orders of CIT (A) annulling the order passed by the AO. Accordingly, grounds raised by the Revenue were dismissed.

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

Due Dates Chart for the Month July 2015 (Various Acts):

Date	Particulars
5 th	Service Tax Payment by Companies for June
6 th	Payment of Excise Duty for the previous month (other than SSI units)
7 th	Income Tax - TDS payment for June
10 th	Monthly Excise return by all assesseees (except SSIs & EOUs) coming under CEA in Form ER-1
10 th	Monthly Excise Return by specified class of assesseees regarding principal units in Form ER-6
10 th	Quarterly Excise return by EOU assesseees coming under CEA in Form ER 2
10 th	Quarterly Excise return by SSI units availing small scale exemption under CEA in Form ER 3
15 th	Filing quarterly return (Annexure 13B) by the registered dealers.
15 th	TDS/TCS quarterly Statements (Other than Government deductor) for the period April - June
20 th	Payment of contribution under Employee EPF & MP Act, 1952 (including 5 days of grace)
21 st	Payment of contribution under Employees State Insurance Act, 1948
21 st	Payment and filing of Monthly MVAT return under MVAT Act, 2002 for dealers liable to pay tax monthly.
21 st	Quarterly return of MVAT for period April to June under MVAT Act, 2002
30 th	Issue of TDS certificate (Form 16A) by non government deductor for Q1
30 th	Payment of Profession Tax for the employees

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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.