

HARBINGERTM

Updates on regulatory changes affecting your business

September 2016



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COMPANY LAW

Clarification regarding applicability of provisions of Chapter III (Financial Statements) of Companies Act, 2013

The matters relating to issue of rupee denominated bonds to overseas investors is regulated by the RBI as party of External Commercial Borrowing (ECB) framework. It is clarified that unless provided in circular/direction/regulation issued by RBI, provisions of Chapter III and Rule 18 of Companies (Share Capital and Debentures) Rules, 2014 would not apply to rupee dominated bonds made exclusively to persons resident in India.

General Circular No. 09/2016 dated August 3, 2016

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INCOME TAX

Approval of Eligible Projects under Section 35AC

Section 35AC allows deduction in computing business income of an assessee for payment made by him to a public sector company or local authority or association or institution approved by the National Committee for an eligible project or scheme.

Deduction under the Income Tax Act is available only up to the previous year ending 31 March, 2017. Requests received after 31 December, 2016 for extension beyond the specified date will not be considered.

Press Release dated August 19, 2016

Double Taxation Avoidance Agreement (DTAA) with Mauritius

The DTAA between India and Mauritius amending the agreement signed on August 24, 1982 was signed on May 10, 2016.

The Protocol entered on July 19, 2016, being the date of the notifications of the completion of the procedures required by the law for entry into force of the Protocol.

The Central Government notifies all provisions of the Protocol and will be given effect in India.

Notification dated August 10, 2016

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GOODS AND SERVICES TAX (GST)

Roadmap to GST

1. Establishing a proper legal framework
 - Passing of Constitution Amendment Bill from Parliament by first week of August
 - 50% states must ratify (as on 7 September, 17 states have ratified)
 - President must approve Constitution Amendment and notify in the Official Gazette

- Cabinet must approve for Formation of GST Council
- GST Council must recommend model GST law
- Cabinet must approve CGST and IGST laws by Centre and SGST laws by all states and pass in Winter Session of 2016
- Notification of GST Rules
- forms for filing return
- Small taxpayers who have opted for composition scheme will have to file return on a quarterly basis
- Filing of returns will be completely online

Target implementation date - April 1, 2017

2. Preparing IT infrastructure

- 60,000 officials of Central and State Government must be trained on GST laws and IT framework
- Training of GST law is to be done in 4 stages
 - Phase 1 - Source Trainer's Workshop (25 officers) - completed
 - Phase 2 - Master Trainer Sessions (350 officers) - till August 2016
 - Phase 3 - Trainer Sessions (1000 officers) - till October 2016
 - Phase 4 - Last training sessions (60,000 officers) - December 2016

<http://pibphoto.nic.in/documents/rlink/2016/aug/p20168402.pdf>
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ECONOMICS

Growth in e-filing of Income Tax Returns for FY 16-17

E-verification of IT returns has been used by 75.3 lakh taxpayers till August 5, 2016 as compared to 32.95 lakh taxpayers last year till September 7, 2015.

As on August 5, 2016 over 226.98 lakh e-returns have been filed for FY 16-17 as compared to 70.97 lakh for the same period in FY 15-16.

<http://pib.nic.in/newsite/PrintRelease.aspx?relid=148526>

Frequently Asked Questions on Goods and Services Tax (GST)

The Ministry of Finance has released frequently asked questions relating to GST.

All questions are available on -

3. Returns

- Common return would serve the purpose of both Central and State Government
- Tax payers will use only 4

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<http://pib.nic.in/newsite/PrintRelease.aspx?relid=148240>
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SUMMARY OF IMPORTANT INCOME TAX JUDGMENTS:

Sr. No	Tribunal/ Court	Section/ Area	Nature	Case Law
1	Karnataka High Court	Section 14A	Section 14A is applicable even where the motive of the assessee is to obtain controlling interest and not earn dividends.	United Breweries Ltd. vs. DCIT
2	Supreme Court	Section 28	Income from letting of property on rent by an assessee engaged in business of letting is assessed as business profit.	Rayala Corporation Pvt. Ltd. vs. ACIT
3	Bombay High Court	Section 37(1)	Foreign exchange loss is not a "notional" or "speculation" loss and is allowable as a deduction.	CIT vs. Vinergy International Pvt. Ltd.
4	ITAT Jaipur	Section 50C	Valuation is an estimate and some difference is bound to exist.	Sita Bai Khetan vs. ITO
5	ITAT Mumbai	Section 54F	If the assessee has made full payment to the builder for purchase/construction of a new residential house but is not able to get it registered in his name within the prescribed time the assessee cannot be denied the deduction.	Rajeev B. Shah vs. ITO
6	Bombay High Court	Section 147	Reopening notice issued to trust which received contributions of Rs. 6.58 crore on the ground that it has not obtained a PAN or filed return is not valid.	General Electoral Trust vs. ITO

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DISCUSSION ON INCOME TAX JUDGEMENTS



1. Section 14A is applicable even where the assessee's motive is to acquire controlling interest in a company.

United Breweries Ltd. vs. DCIT

The Tribunal held that Section 14A will be applicable. The Tribunal asked the Assessing Officer (AO) to gather the facts of the case and how much interest bearing borrowings were utilised to acquire the shares.

The High Court held that - As per the Section, the enquiry has to be undertaken by the Assessing Officer which has been ordered by the Tribunal. At the stage of enquiry under Section 14A, it is open for the Assessing Officer to consider the validity of the interest on borrowings and to what extent.

2. Income from letting of property on rent by assessee engaged in

business of letting is assessable as business profits and not as income from house property.

Rayala Corporation Pvt. Ltd. vs. ACIT

The assessee had house property which was rented and the assessee was receiving rent from such property. The assessee claimed that since it is in the business of renting properties and receiving rent and it should be taxable as business income. The Revenue claimed that income arising from house property it shall be taxable under house property.

Supreme Court held that - the assessee is a company and as per its Memorandum of Association its business is to deal in real estate and earn rental income by letting out properties. As it is the business of the company to lease properties and earn rent and therefore, the income should be treated as business income.

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 or 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. Valuation difference may exist. If there is a difference between stamp duty value and sale consideration less than 10%, higher value shall not be taxable

Sita Bai Khetan vs. ITO

In many case laws, the Tribunals have disregarded the margin between value as per the assessee and valuation officer if it is less than 10%.

In this case, the difference between the value as per Stamp Valuation Authority and that declared by the assessee is less than 10%. Therefore, the Assessing Officer shall adopt the value given by the assessee.

5. Section 54F relief will not be disallowed if taxpayer is unable to obtain registration of flat.

Rajeev B. Shah vs. ITO

The assessee sold a plot of land claimed deduction by investing in a flat. The Assessing Officer

disallowed the claim as the assessee hadn't registered the document for claim for purchase of property. The AO stated the genuineness of the investment is not proved. The claim was disallowed.

The Tribunal held that - The AO rejected the claim of deduction only on the ground that the property is incomplete and registration document was not filed by the assessee to claim deduction. The Counsel explained that this happened due to the fact that the builder was avoiding the customers due to disputes and the project was stalled as there was no further progress in construction. Due to the fault of the builder the assessee cannot be denied deduction.

6. Notice issued to trust which received contribution of Rs. 6.58 crore on the ground that it has not obtained PAN or filed return is not valid.

General Electoral Trust vs. ITO

The trust did not earn any income and the amount received as contribution was to be distributed to political parties/candidates. If the amount is not distributed within a period of six years from date of receiving contribution, the undistributed amount is required to be returned to the contributor. Obligation to file return will exist when taxable income arises in hands of the person. Therefore the notice is without jurisdiction.

Non filing of return of income does not give jurisdiction to Assessing Officer to re-open assessment unless the total income assessable under the Act exceeding maximum amount not chargeable to tax. Obligation to file return is only when total income of a person exceeds the maximum amount not chargeable to tax. Therefore, non filing of return does not give jurisdiction to reopen assessment.

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

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DUE DATES CHART FOR THE MONTH SEPTEMBER 2016 (VARIOUS ACTS):

September 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, Advance tax payment for all assessees	16	17
18	19	20	21 MVAT Payment, ESIC Payment, Payment and filing of quarterly/ monthly MVAT Return	22	23	24
25	26	27	28	29	30 Profession Tax Payment, Income Tax Return for others covered under audit other than companies under transfer pricing	

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