

# HARBINGER<sup>TM</sup>

*Updates on regulatory changes affecting your business*

**June 2016**



**B D Jokhakar & Co.**

*Chartered Accountants*

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## COMPANY LAW

### **Amendment to Schedule III to the Companies Act, 2013**

The Central Government has made amendments to Schedule III to the Companies Act, 2013.

The amendments shall be effective from the date of publication of the notification in the Official Gazette.

*Notification dated April 6, 2016*

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### **Substitution of new forms in place of GNL 1 and GNL 4**

For the purpose of filing the documents or applications for which no e-form is prescribed under the various rules prescribed under the Act, the document or application can be filed through Form GNL 1 under Rule 12(2) of Companies (Registration Offices and Fees) Rules, 2014.

Similarly Rule 10(7) of Companies (Registration Offices and Fees) Rules, 2014, prescribes Form GNL 4 for furnishing any further information or documents called for removing defects / incompleteness of the documents filed.

The notification seeks to amend both these forms and accordingly new forms are substituted w.e.f 6th May, 2016.

*Notification dated May 6, 2016*

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### **Relaxation of additional fees and extension of last due date of filing various e-forms**

The MCA has extended the period for which the one time waiver of additional fees is applicable to all e-forms due for filing by companies between 25th May, 2016 to 31st May, 2016 and has extended the last date for filing these forms to 30th June, 2016.

*General circular no 06/2016 dated May 16, 2016*

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## INCOME TAX

### **The Income Declaration Scheme, 2016**

The Income Declaration Scheme, 2016 incorporated as Chapter IX of the Finance Act, 2016 hereby provides an opportunity to all persons to declare their undisclosed income which was not declared in earlier years.

Under the scheme the income such declared shall be taxable @ 30% + KKC @ 25% on taxes payable + Penalty @ 25% of the taxes payable. Thus such income shall be taxable at an effective rate of 45% under the scheme.

The scheme shall come into effect from the 1st June, 2016 and shall remain open upto 30th September, 2016 for the declaration of Income. The payment towards the taxes payable with penalty shall be made latest by 30th November, 2016.

Press release dated May 14, 2016

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## Clarification on the Income Declaration Scheme, 2016

The Central Board of Direct Taxes (CBDT) has issued a circular in the form of questions and answers in order to clarify the queries with regard to scope and the procedure to be followed.

Circular no. 17 of 2016 dated May 20, 2016

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## The Income Declaration Scheme Rules, 2016

The CBDT has made rules for carrying out the provisions of Chapter IX of the Finance Act, 2016 relating to Income Declaration Scheme, 2016. These rules shall be called the Income Declaration Scheme (Rules), 2016.

These shall come into effect from the 1st day of June, 2016.

Notification no S.O. 1831(E) dated May 19, 2016

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## No more 'self declaration'- Employees now required to give declaration in a new form

Presently the employees who wanted to claim tax deduction had to file a self declaration with the employer. And the employer was liable to deduct TDS on the estimated income.

Employees are now required to submit evidences/particulars of tax savings to employer in Form no. 12BB, notified by the CBDT.

The CBDT has also notified revised due dates for filing of TDS returns by Persons (other than government). The revised due dates are as under:

Quarter ended	Revised due date
30th June	31st July
30th September	31st October
31st December	31st January
31st March	31st May

These shall be effective from 1st day of June, 2016.

Notification no.SO 1587(E) [NO. 30/2016(F.NO.142/29/2015-TPL)] dated April 29,2016

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## Changes in the Finance Bill 2016 as passed by Lok Sabha

On 5th May, 2016 the Lok Sabha passed the original bill presented in Lok Sabha on 29 February, 2016.

Some of the changes are as follows:

- A new clause has been inserted to provide that unlisted shares of company would be treated as short-term capital asset if held for a period of 24 months or less

immediately preceding the date of its transfer.

- The Finance bill 2016 passed by the Lok Sabha extends the definition of 'eligible start-up' to include 'LLP' for the purpose of a new section 80IAC. The new section would provide 100% deduction for 3 assessment years to an 'eligible start-up'.
- The Finance Bill, 2016 had proposed an additional tax of 10% if dividend received by a taxpayer exceeds Rs. 10 lacs. The Bill passed provided that aggregate amount of dividend (i.e. dividend paid or declared or distributed by one or more domestic companies) shall be considered for the limit of Rs.10 lacs.
- The Finance bill 2016 proposed that TCS @ 1% of the value of motor car shall be collected by the seller if the value exceeds Rs. 10 lacs. Such tax was proposed to be collected from the buyer under section 206C at the time of debiting the amount receivable or at the time of receipt, whichever is earlier. The Bill passed provides that tax shall be collected only at the time of receipt of consideration.

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## MVAT

### [Amendment to the Maharashtra Value Added Tax \(MVAT\) Rules, 2005](#)

The Government of Maharashtra has made further rules so as to amend the MVAT Rules, 2005.

These shall be called the Maharashtra Value Added Tax (Third Amendment) Rules, 2016.

They are effective from the 26th day of April, 2016.

Notification no. VAT.1516/CR-64/Taxation-1 dated April 29, 2016

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## RESERVE BANK OF INDIA



### [Guidelines for the establishment of BO/LO/PO in India](#)

The Reserve bank of India has issued the procedural guidelines for the establishment of a Branch Office (BO), Liason Office (LO) and a Project Office (PO) in India by foreign entities.

Notification no RBI/2015-16/397 dated  
May 12, 2016

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## **SERVICE TAX**

### **Amendment to Entry 48 of the Mega exemption notification**

Entry 48 of the Mega exemption notification exempts from service tax services provided by the Government or a local authority to a business entity with a turnover up to rupees ten lakh in the preceding financial year.

The Central Government has added explanation to the said entry clarifying that the said entry shall not apply to the following services:

1. Services by the Department of Posts by way of speed post, express parcel post, and life insurance and agency services provided to a person other than Government.
2. Services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport.
3. Transport of goods or passengers.
4. Services by way of renting of immovable property.

Notification no 26/2016- service tax dated  
May 20, 2016

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### **Levy of Krishi Kalyan Cess (KKC)**

The Central Government hereby notifies that the Krishi Kalyan Cess (KKC) is not leviable on such taxable services which are either:

- exempt from tax on account of a notification or a special order u/s 93(1) or 93(2) of the Finance Act, 1994 or
- Not leviable to service tax u/s 66B of Finance Act, 1994 (Negative list of services)

Also, in case of services on which abatement is applicable, KKC shall be levied only on that percentage of taxable value on which service tax is levied.

This shall be effective from the 1st day of June, 2016.

Notification no. 28/2016- Service tax dated  
May 26, 2016

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### **Rebate of Krishi Kalyan Cess (KKC) paid on input services used in providing exported service**

The Central Government has hereby notified that a rebate shall be granted in respect of the KKC paid on all input services used in providing exported service as per rules 6A of the Service Tax Rules, 1994.

This shall come into effect from the 1st day of June, 2016.

Notification no 29/2016- service tax dated May 26, 2016

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## **FEMA**

### **Foreign Exchange Management (Manner of receipt and payment) Regulations, 2016**

The Reserve Bank of India has made regulations in respect of manner of

These regulations shall be called the Foreign Exchange Management (Manner of receipt and payment) Regulations, 2016.

These regulations are effective from the 3<sup>rd</sup> day of May, 2016.

Notification no. FEMA 14(R)/2016-RB dated May 2, 2016

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## SUMMARY OF IMPORTANT TAX JUDGMENTS:

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

Sr. No	Tribunal/ Court	Section/Ar ea	Nature	Case Law
1	Tribunal	Section 37(1)	Forex loss incurred on loan is deductible if its underlying objective is to save interest cost	Cooper Corporation (P.) Ltd. Vs DCIT
2	High Court	Permanent establishment	Indian Subsidiary wont form PE of foreign parent company even if latter has right to audit subsidiary	Adobe Systems Incorporated Vs Assistant Director of Income-tax
3	Tribunal	Section 54	Section 54 relief is available even if expenditure is incurred for making new house habitable	Rustom Homi Vakil Vs Assistant Commissioner of Income-tax
4	Tribunal	Section 11, 40(a)(ia) and 43B	No disallowance under sections 40(a)(ia) and 43B if assessee trust was enjoying exemption under section 11	Income-tax Officer, Ward-1, Amalapuram Vs Mother Theresa Educational Society
5	Tribunal	Section 2(14)	An agricultural land could not be treated as non- agricultural land just because it was situated near a highway	Income Tax Officer, Ward-2(3) Kozhikode Vs. Kalathingal Faizal Rahiman
7	Tribunal	Revenue Loss	Land is stock in trade for builders; money forfeited on cancellation of agreement to purchase land is revenue loss	Vijayashanthi Builders Ltd. Vs Joint Commissioner of Income-tax



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8	Supreme Court	Section 263	Big B in Tax trouble; apex court nods to reopening of his tax case of 2001	Commissioner of Income-tax, Mumbai Vs Amitabh Bachchan
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## DISCUSSION ON JUDGEMENTS - INCOME TAX



### **1. Forex loss incurred on loan is deductible if its underlying objective is to save interest cost**

*Cooper Corporation (P.) Ltd. V DCIT*

The assessee had taken various term loans in Indian Rupee from banks for acquisition of assets and for expansion of projects. It had converted these loans into foreign currency loans so as to take benefit of lower interest rate. However, it incurred loss due to fluctuation in rate and claimed it as a business loss.

The assessing officer disallowed the loss stating that the loan was acquired for capital asset and the same cannot be allowed as a revenue expenditure.

The Commissioner (Appeals) granted partial relief on account of foreign currency loss connected to the revenue items like the bill discounting, debtor etc.

Aggrieved on this, the assessee filed an instant appeal before the tribunal.

The Tribunal held that -

- The fluctuation loss had no connection with the acquisition of assets. The action of the assessee had an object of saving the interest cost, hedging its revenue receipts etc , which were undoubtedly on revenue account. Thus the loss generated had the character of revenue expenditure.
- The loss claimed was in accordance with the GAAP and the mandatory accounting standards notified by the ICAI and in conformity with the CBDT's notification.
- Hence, loss being on revenue account was an allowable expense u/s 37(1)

### **2. Indian Subsidiary wont form PE of foreign parent company even if latter has right to audit subsidiary**

*Adobe Systems Incorporated V Assistant Director of Income-tax*

Adobe Systems Incorporated ("assessee") is a company incorporated outside India having a wholly owned subsidiary in India (Adobe India).

The subsidiary provided software related R&D to the assessee and was paid on cost plus basis in terms of an agreement between them.

The assessee claimed that this income received from the subsidiary was not assessable in India as the assessee did not

have any business operations in India and thus did not file a Return in India.

The AO issued a notice u/s 148 on the observation that as per the agreement between the two, it was obliged to audit the facilities of subsidiary to maintain the requisite standards. Therefore it had a service PE in India in terms of Article 5(2)(I) of Indo-US DTAA and was liable to file a return in India.

The assessee filed a writ petition before the High Court.

High court held as under:

- The agreement between the two entails that the assessee would provide specifications, assistance and supervision for the R&D services procured by the assessee.
- Assessee was authorized to audit the Indian subsidiary (Adobe India), to ensure subsidiary adheres to the standards required by the Assessee. The same cannot possibly lead to the inference that the Assessee had been rendering services to Adobe India.
- The stipulation to provide specification and assistance was only for the purpose of ensuring that the assessee procures the service it had contracted from Adobe India.
- Such clauses in the agreement cannot lead to an inference that the Assessee has a PE in India for rendering services, that is, a

Service PE in terms of Article 5(2)(I) of the Indo-US DTAA.

- Hence the notice issued u/s 148 was liable to be quashed.

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### **3. Section 54 relief is available even if expenditure is incurred for making new house habitable**

*Rustom Homi Vakil V Assistant Commissioner of Income-tax*

Assessee had capital gains due to the sale of tenancy rights in a residential house property. He invested the sale proceeds to purchase another house which was in a state of disrepair.

The assessee incurred certain expenses on repairs and painting work etc, so as to make the house fit for residence and claimed the deduction of the expense u/s 54.

The Assessing Officers disallowed the expense on the ground that only the cost of acquisition is to be taken for granting relief u/s 54 and not cost incurred towards improvement.

Aggrieved with the order of the AO the assessee filed an instant appeal before the tribunal.

The Tribunal held as under:

- Sec 54 provides exemption with respect to LTCG in respect of a residential house property within the prescribed time limit.

- The word 'house' has been defined in Black's Law dictionary as 'a home, dwelling or residence'. Thus, the property should be capable of being 'habitable'.
- Sec 54 does not state any condition that if the new residential house is purchased by the taxpayer, then benefit associated with construction of the said new residential house cannot be extended simultaneously rather both purchase and construction of the same new residential house can co-exist.
- In the instant case the house property was purchased in a state of disrepair and immediately after that he took repair work for making it habitable. This tantamount to construction within the meaning of sec 54.
- Hence, exemption under section 54 couldn't be denied on the ground that the assessee had purchased the new residential house and, therefore, benefit as available to construction of the new residential house cannot be extended to the assessee simultaneously.

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#### **4. No disallowance under sections 40(a)(ia) and 43B if assessee trust was enjoying exemption under section 11**

*Income-tax Officer, Ward-1, Amalapuram V  
Mother Theresa Educational Society*

Whether disallowance under section 40(a)(ia) and 43B could be made in case of a trust enjoying exemption u/s 11 of the Income Tax Act?

The Tribunal held as under:

- Sections 11, 12 and 13 deal with income from property held for charitable or religious purposes and the mode of computation of income subject to certain conditions.
- The provisions of sections 40(a)(ia) and 43B are relevant, if income is computed under the head profits and gains of business or profession.
- The assessee-trust was eligible for exemption under section 11 by virtue of registration under section 12A.
- Under Sec 11 income is computed based on real income concept and not notional income under other provisions of the Act.
- Sec 11(1) (a) provides for application of income for charitable purpose. The question of application arises only when income is available for application. Disallowance of any expenses under the provisions of Sec 40(a)(ia) and 43B leads to a situation where assessee's income available for application is enhanced without being any real income for application.

- The Legislature in its wisdom has kept separate provisions which are independent of any other provisions of the Act for computation of income of trusts claiming exemption under section 11. Therefore, the provisions of sections 40(a) (ia) and 43B could not be applied when income of the trust was exempted under Section 11 of the Act.

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## **5. An agricultural land could not be treated as non- agricultural land just because it was situated near a highway**

*Income Tax Officer, Ward-2(3) Kozhikode V. Kalathingal Faizal Rahiman*

The assessee sold a land and claimed the same to be an agricultural land not being a capital asset within the meaning of section 2(14) of the Income-tax Act.

The AO opined that the assessee was liable to pay tax on capital gain arising on sale of such a land as it was situated near a highway.

CIT (A) reversed the order of the AO. Aggrieved by the order of the CIT (A), revenue filed the instant appeal before the tribunal.

The Tribunal held as under in favour of the assessee:

- The term 'agricultural land' is not defined under the Act. In the case of *CWT v. Officer-in-Charge (Court of Wards) [1976] 105 ITR 133 (SC)*, the SC held that the agricultural

land must be a land which could be said to be either actually used or ordinarily used or meant to be used for agricultural purpose.

- The assessee had obtained a certificate of the village officer certifying clearly and unambiguously that the land was used for coconut plantation and for growing other agricultural crops. This left no doubt that the land was used for agricultural purposes.
- The nearness of the land to highway could not alter the character of the land.
- Thus, the land in question could not be treated as capital asset under section 2(14) of the Act. Accordingly, capital gain arising from sale of such land couldn't be assessed to tax.

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## **6. Provisions relating to gift apply only to an individual or HUF and not to an AOP**

*Mridu Hari Dalmia Parivar Trust V Assessing Officer, Circle 31(1), New Delhi*

The assessee was a beneficiary trust in the status of an OP. Thus it did not include in its total income the gift of Rs. 1.60 Cr received from its beneficiary.

The AO included such gift amount in the total income of the assessee with the contention that Sec 56(2) (vi) provides for exemption only to an Individual or a

HUF. Hence in the instant case assessee being an AOP was not eligible for the exemption.

The CIT (A) confirmed the order of the AO. Aggrieved with the order of CIT (A) the assessee filed an appeal before the tribunal.

The Tribunal held in favour of the assessee as under:

- Section 56(2)(vi) is charging section which charges the amount of gift to tax in case of a individual or a HUF subject to certain conditions. Hence the viewpoint of the AO that it was an exemption section was incorrect.
- As per the section the gift will be taxable only if it is received by an individual or a HUF.
- As per the definition given in section 2(31), an AOP is a person different from an individual or a HUF. Even if it contains some individuals the status of such individuals remains that of an AOP.
- Since the assessee in question was an AOP and not an individual or an HUF the gift received by it was not includible in its total income. Hence the addition made by the AO was deleted.

**7. Land is stock in trade for builders; money forfeited on cancellation of agreement to purchase land is revenue loss**

*Vijayashanthi Builders Ltd.  
V. Joint Commissioner of Income-tax*

The assessee was engaged in the business of construction of residential complexes. It had purchased a plot of land which was later cancelled and the advance money was forfeited by the vendor. This was claimed as a revenue loss by the assessee.

The AO treated the same as capital loss on the ground that the land in question was treated as a capital transaction by the vendor of land.

The CIT (A) confirmed the order of the AO. Aggrieved with the order of CIT (A) the assessee filed an appeal before the tribunal.

The Tribunal held in favour of the assessee as under:

The assessee was engaged in the business of construction of residential complexes. It had advanced money for acquisition of land which was to be used for regular business. Hence the loss suffered was a regular loss for it.

Though the land was treated as capital asset by the vendor, yet the land came to the possession of the assessee, it became a stock in trade since the assessee was engaged in the business of construction of flats.

The treatment in the hands of the vendor could not be a determining factor to allow the claim of the assessee either as revenue or a capital loss.

The assessee had admittedly acquired a stock in trade for construction. Therefore the loss suffered in the course of acquisition of stock in trade had to be necessarily acquired as revenue loss.

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### **8. Big B in Tax trouble; apex court nods to reopening of his tax case of 2001**

*Commissioner of Income-tax, Mumbai  
V Amitabh Bachchan*

The CIT passed revisionary order u/s 263 against the assessee on the ground that requisite enquiries were not made by the AO before the finalisation of assessment was made.

The show cause notice was served on assessee detailing issues on which the order was proposed to be revised and thereafter revisional order was passed u/s 263.

The assessee challenged the order on the ground that additions were made on the basis of issues which were not mentioned in the show cause notice.

The Tribunal and the HC held in the favour of the assessee. Aggrieved by the

order the revenue filed an instant appeal before the Supreme Court.

The Supreme Court held in favour of the revenue as under:

- CIT could exercise the revisionary power u/s 263 if he finds that the order passed by the AO is erroneous and prejudicial to the interest of revenue. On satisfaction of this, jurisdiction to exercise power is available subject to observance of the principles of natural justice. This is implicit in the requirement of this section that the assessee is given an opportunity of being heard.
- Hence it is nowhere mentioned that a show cause notice be served on the assessee. Hence, revisionary order can't be set aside on the ground that he had made additions on the basis of issues which were not in the show cause notice.

**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 JUNE 2016 (VARIOUS ACTS):**

<b>June 2016</b>						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4
5 Service Tax Payment by Companies for May 2016. (If not paid electronically)	6 Service Tax Payments by Companies for May 2016. (if paid electronically)  Excise Duty Payment	7 Income Tax - TDS payment for May 2016	8	9	10 Monthly Excise Return (ER-1)/ ER-2 monthly return by 100% EOU, Quarterly Excise Return by EOU, SSI Units and paying 2% in Form ER-8	11
12	13	14	15 Provident fund payment for May 2016.  Advance tax payment due date.	16	17	18
19	20 MVAT Payment for May 2016	21 ESIC Payment for May 2016  Filing of quarterly/monthly MVAT Return	22	23	24	25
26	27	28	29	30 Profession Tax Payment		



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