

# HARBINGER<sup>TM</sup>

*Updates on regulatory changes affecting your business*

**September 2017**



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**GOODS AND SERVICE TAX (GST)****Extension in time period for filing of outward supplies in FORM GSTR-1 for months of July and August 2017.**

In exercise of the powers conferred by the first proviso to sub-section (2) of section 38 read with section 168 of the Central Goods and Services Act, 2017) the Commissioner, on the recommendations of the Council, extends the time limit for furnishing the details specified in sub-section (2) of section 38 of the said Act for the month July and August 2017.

| Sr. No. | Months      | Last date of Filing GSTR-1            |
|---------|-------------|---------------------------------------|
| 1       | July 2017   | Upto 10 <sup>th</sup> September, 2017 |
| 2       | August 2017 | Upto 5 <sup>th</sup> October, 2017    |

*Notification No. 29/2017- Central Tax, dated 5th September, 2017.*

**Extension in time period for filing of inward supplies in FORM GSTR-2 for months of July and August 2017.**

In exercise of the powers conferred by the first proviso to sub-section (2) of section 38 read with section 168 of the Central Goods and Services Act, 2017) the Commissioner, on the

recommendations of the Council, extends the time limit for furnishing the details specified in sub-section (2) of section 38 of the said Act for the month July and August 2017.

| Sr. No. | Months      | Last date of Filing GSTR-2                           |
|---------|-------------|--|
| 1       | July 2017   | 11 <sup>th</sup> to 25 <sup>th</sup> September, 2017 |
| 2       | August 2017 | 6 <sup>th</sup> to 10 <sup>th</sup> October, 2017    |

*Notification No. 29/2017- Central Tax, dated 5th September, 2017.*

**Extension in time period for filing FORM GSTR-3 for months of July and August 2017.**

In exercise of the powers conferred by the sub-section (6) of section 39 read with section 168 of the Central Goods and Services Act, 2017 , the Commissioner, on the recommendations of the Council, hereby extends the time limit for furnishing the return under sub-section (1) of section 39 of the said Act for the months July and August 2017.

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| Sr. No. | Months      | Last date of Filing GSTR-3            |
|---------|-------------|---------------------------------------|
| 1       | July 2017   | Upto 30 <sup>th</sup> September, 2017 |
| 2       | August 2017 | Upto 15 <sup>th</sup> October, 2017   |

*Notification No. 29/2017- Central Tax, dated 5th September, 2017.*

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**Waiver of e Late Fees for Late Filing Form GSTR-3B, for the month of July 2017, but not the interest on late payment of Tax liability.**

In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017, the Central Government, on the recommendations of the Council, waives the late fee payable under section 47 of the said Act, for all registered persons who failed to furnish the return in FORM GSTR-3B for the month of July, 2017 by the due date, but not the interest on late payment of Tax liability. Interest will be applicable to all taxpayers who have not discharged their complete GST liability for July by August 25, 2017.

*Notification No.- 28/2017- Central Tax, dated 1<sup>st</sup> September, 2017.*

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**Extension of due date for filing FORM GSTR-5A for month of July, 2017.**

In exercise of the powers conferred by sub-section (6) of section 39 read with section 168 of the Central Goods and Services Tax Act, 2017 and section 20 of the Integrated Goods and Services Tax Act, 2017, the Commissioner, extends the time limit for furnishing the return for the month of July, 2017, by a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 and rule 64 of the Central Goods and Services Tax Rules, 2017, till **15th day of September, 2017.**

*Notification No. 25/2017- Central Tax, dated 28th August, 2017.*

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**Extension of due date for filing FORM GSTR-6 for months of July & August.**

In exercise of the powers conferred by sub-section (6) of section 39 read with section 168 of the Central Goods and Services Tax Act, 2017, the Commissioner, extends the time limit for furnishing the return by an Input Service Distributor under sub-section (4) of section 39 of the said Act read with rule 65 of the Central Goods and Services Tax Rules, 2017, for the months of July and August 2017. Prior to this notification, the time limit for filing

such details was on or before the 13th day of the month succeeding such calendar month.

| Sr. No. | Months      | Last date of Filing GSTR-6       |
|---------|-------------|----------------------------------|
| 1       | July 2017   | 8 <sup>th</sup> September, 2017  |
| 2       | August 2017 | 23 <sup>rd</sup> September, 2017 |

Notification No. 26/2017- Central Tax, dated 28th August, 2017.

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## **INCOME TAX**

**CBDT has extended the due date for filing Income Tax Returns and audit reports from 30th September 2017 to 31st October 2017.**

In the backdrop of GST, representation has been filed by various stakeholders requesting for extending the 'Due Dates' for filing various reports of audit as well as Income Tax Returns under the Income Tax Act from 30th September, 2017 so as to allow sufficient time to the assesses and tax professionals, and thus, facilitate their ease of compliance with statutory responsibility under various Fiscal Laws.

On consideration of the matter CBDT, in excise of power, extends the Due Date prescribed for filing the return of Income as well as various reports of

audit prescribed under the Income Tax Act from 30<sup>th</sup> September, 2017 to 31<sup>st</sup> October, 2017.

*F. No. 225/270/2017/ITA.II Government of India CBDT, Dated 31st August, 2017*

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**CBDT extends the time for Linking PAN with Aadhaar from 31st August 2017 to 31st December 2017**

All the taxpayers having Aadhar number or enrolment number are required to link it with PAN for filing the Tax Return. The said provision was relaxed by the Central Board of Direct Tax vide its order 31.07.2017, further time till 31.08.2017 was allowed to the tax payers to link Aadhar with PAN.

On consideration of the matter, in excise of power, CBDT further extends the time for linking Aadhar with PAN till 31.12.2017.

*F. No. 225/270/2017/ITA.II Government of India CBDT, Dated 31st August, 2017*

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## **ECONOMICS**

**Market valuation races ahead of growth.**

The lower-than-expected growth of the economy during the April-June quarter

has widened the differential with equity valuations to an all-time high.

There is a close correlation between economic growth and corporate earnings. The continued slowdown in the economy is likely to pull down corporate earnings, making it tough for bulls to maintain the current high valuations," says Dhananjay Sinha, head of research, Emkay Global Financial Services.

*Business Standard dated 5th September 2017*

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## **No information on black money removed by bank notes ban: said RBI to Parl Panel**

The RBI has told a parliamentary panel that it has "no information" on how much black money has been extinguished as a result of demonetization of Rs 500/1,000 notes or about unaccounted cash legitimized through exchange of currency post note ban.

The RBI has been facing flak from the opposition parties for demonetization and delay in disclosing figures on the junked notes, even as the government has maintained that the November 8, 2016 decision to ban Rs 500/1,000 notes in circulation at that time has helped in curbing black money, among other benefits.

Replying to queries from the panel, the RBI said the verification for authenticity and numerical accuracy are still on, while some of the specified bank notes (old Rs 500/1,000 notes) which were accepted by banks and post offices are still lying in currency chests.

*Business Standard Dated 5th September 2017*

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**SUMMARY OF IMPORTANT TAX JUDGEMENTS**

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

| Sr. No | Tribunal/Court    | Section/<br>Area | Nature  | Case Law                       |
|--------|-------------------|------------------|---|--------------------------------|
| 1.     | Delhi High Court  | Section 14A      | What constitutes proper recording of satisfaction by the AO, scope of disallowance of interest expenses under Rule 8D(2)(i), admin expenses under Rule 8D(2)(iii), need for nexus between borrowed funds and tax-free investments and power of the ITAT to remand to the AO   | H.T. Media Ltd. VS CIT         |
| 2.     | Supreme Court     | Section 68       | An accommodation entry provider wanting to avail the benefit of the 'peak credit' has to make a clean breast of all the facts within his knowledge concerning the credit entries in the accounts. He has to explain with sufficient detail the source of all the deposits in his accounts.                                    | CIT VS D.K.Garg                |
| 3.     | Bombay High Court | Section 115JB    | The AO is not entitled to add to the "book profits" the amounts arising from sale of land which are directly credited to the Capital Reserve Account in the balance sheet rather than routing it through Profit and Loss Account in the manner provided as per Part II and Part III of Schedule VI to the Companies Act, 1956 | CIT VS Bhagwan Industries Ltd. |
| 4.     | Bombay High Court | Section 145A     | Irrespective of the method of accounting followed, the unutilized Cenvat credit does not constitute income and cannot be directly added to the closing stock. The assessee is entitled to follow the exclusive method and value the   | CIT VS Diamond Dye Chem Ltd.   |



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|    |                    |                |   |  |
|----|--------------------|----------------|---|--|
|    |                    |                | closing stock by excluding the modvat credit  |  |
| 5. | ITAT Mumbai        | Section 145(2) | Law on theory of 'preponderance of probability' and to what extent it can be used to make adverse inferences and estimates of undisclosed income, the necessity of tangible material, the rejection of books of account and the scope of a best judgement assessment u/s 145(2) explained | GTC Industries Ltd. VS ACIT                      |
| 6. | Gujarat High Court | Section 254(2) | For purposes of filing a rectification application, the period of limitation of six months commences from the date of receipt of the order sought to be rectified by the assessee and not from the date of passing of the order   | Liladhar T Khushlani vs. Commissioner of Customs |

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## Discussion on Judgments - Income Tax



1. **What constitutes proper recording of satisfaction by the AO, scope of disallowance of interest expenses under Rule 8D(2)(i), admin expenses under Rule 8D(2)(iii), need for nexus between borrowed funds and tax-free investments and power of the ITAT to remand to the AO.**

The High Court had to consider the following questions of law:

- a. Whether the ITAT erred in remitting the matter concerning the deletion of disallowance of interest under clause (ii) of Rule 8 D (2) of the Income Tax Rules, 1962 to the Assessing Officer for a fresh determination in light of the decision of this Court in CIT v. Taikisha Engineering India Ltd. (2015) 370 ITR 338 (Del)?
- b. "Whether the Assessing Officer recorded a proper satisfaction in terms of Section 14A (2) and Rule 8 (D) of the Income Tax Rules, 1962 and, in calculating the disallowance at 0.5% of average value of investments as per clause (iii) of Rule 8 D (2) of the Income Tax Rules, 1962?"

**The High Court held that:**

Expenses allowed can only be in respect of earning of taxable income. This is the purport of section 14A. In section 14A, the first phrase is 'for the purposes of computing the total income under this Chapter' which makes it clear that various heads of income as prescribed in the Chapter IV would fall within section 14A. The next phrase is, 'in relation to income which does not form part of total income under the Act'. It means that if an income does not form part of total income, then the related expenditure is outside the ambit of the applicability of section 14A."

2. **An accommodation entry provider wanting to avail the benefit of the 'peak credit' has to make a clean breast of all the facts within his knowledge concerning the credit entries in the accounts. He has to explain with sufficient detail the source of all the deposits in his accounts.**

Assessee is an accommodation entry provider. He makes no bones of the fact that he either owned or floated 'paper companies' only for that purpose. He also does not dispute the fact that he has not been able to explain the source of all the deposits in his accounts or the ultimate destination of all the outgo from his accounts. The Assessee's plea that he should be taxed only on a composite 'peak credit' is based entirely on principles of accountancy. He

questions the logic behind allowing peak credits for some of the credit entries by way of cheques and denying it for the other entries in cash. He also questions the practice of working out separate peak credits for cheque and cash transactions.

The High Court held that,

- As the amount of cash credits stood in the names of different persons which the Assessee had all along been claiming to be genuine deposits, withdrawals/payments to different persons during the previous years, the Assessee was, therefore, not entitled to claim the benefit of peak credit.
- The principle of peak credit is not applicable in case where the deposits remained unexplained under Section 68 of the Act. It cannot apply in a case of different depositors where there has been no transaction of deposits and repayment between a particular depositor and the assessee.

On the facts of that case it was held that peak credit could be applied only in the case of squared up accounts. In other words, where an Assessee was unable to explain the sources of deposits and the corresponding payments then he would not get the benefit of 'peak credit'.

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3. **The AO is not entitled to add to the "book profits" the amounts arising from sale of land which are directly credited to the Capital Reserve Account in the balance sheet rather than routing it through Profit and Loss Account in the manner provided as per Part II and Part III of Schedule VI to the Companies Act, 1956**

The Assessee had directly credited the profit of Rs.2,84,84,000/ arising from sale of land to Capital Reserve Account in the balance sheet rather than routing it through Profit and Loss Account in the manner provided as per Part II and Part III of Schedule VI to the Companies Act, 1956. the Assessing Officer added the whole amount of Rs.2,84,84,000/in the book profit. The Commissioner of Income Tax (Appeals) deleted the addition.

In Lights of the cases of *Abdhut Trading Co. Pvt. Ltd.* (supra) and in the case of *Akshay Textiles Trading and Agencies Pvt. Ltd.*, court held that:

- There is no infirmity in the order of Id. CIT(A) for deleting the addition under Section 115JB.
  - The Tribunal has not committed any error.
  - The Appeal as such is dismissed.
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4. Irrespective of the method of accounting followed, the unutilized Cenvat credit does not constitute income and cannot be directly added to the closing stock. The assessee is entitled to follow the exclusive method and value the closing stock by excluding the modvat credit.

The assessee got credit in the excise duty already paid on the raw materials purchased by it and utilized in the manufacturing of excisable goods. The assessee was adopting the exclusive method i.e. valuing the raw materials on the purchase price minus the Modvat credit. The same would be permissible.

In the light of case of Commissioner of Income Tax VS. Indo Nippon Chemicals Co. Ltd. High Court has observed that:

- The income was not generated to the extent of Modvat credit or unconsumed raw material.
- Merely because the Modvat credit was irreversible credit offered to manufacturers upon purchase of duty paid raw materials, which would not amount to income which was liable to be taxed under the Act.
- Whichever method of accounting is adopted, the net result would be the same.
- The amount of the unutilized Cenvat credit could not have been directly added to the closing stock.

5. Law on theory of 'preponderance of probability' and to what extent it can be used to make adverse inferences and estimates of undisclosed income, the necessity of tangible material, the rejection of books of account and the scope of a best judgement assessment u/s 145(2) explained

The assessee is engaged in the business of manufacturing of cigarettes. The assessee is a company in which public are substantially interested. It filed its return of income for the relevant year of assessment on 28/06/1985, reflecting therein income of Rs. 3,84,14,220. The Assessing Officer made an addition of Rs. 26,20,51,000 in the total income of the assessee under the head "Premium on sale of cigarettes" after investigating matter having facts as follows:

- a) The assessee collected clandestine and unaccounted premium on the lower price brands of the cigarettes;
- b) The premium so collected was deposited in secret bank accounts;
- c) The assessee-company spent large amount for advertising its products. The amount so spent was alleged to be used out of deposits in the secret bank account;
- d) Such amounts withdrawn from these bank accounts alleged to be re-introduced in the assessee's account by means of havala entries and reflected as commission and trading income which according to the revenue represents bogus entries.

From the materials and evidences as discussed above, following inference can be deduced:-

- All the wholesale buyers who collected the premium amount had sent the entire collection of premium to these bank accounts which was wholly and exclusively under the control of the GTC Industries Ltd. is not proved conclusively.
- Nowhere in the Survey/searches conducted by the Income Tax Department, not a single material has been unearthed or any statement has been given that GTC company had control over the premium amount generated all over the country.
- Merely because the advertisement expenses have been incurred from Benami bank accounts, can it be held that the said bank accounts belong to the assessee and therefore, can lead to an inference that entire premium collected all over the country is the undisclosed income of the assessee.

Thus, on this count Court is unable to uphold the kind of estimation or addition which has been made by the AO and sustained by the Ld. CIT (A) and accordingly, direct the AO to delete the entire addition. In the result assessee's appeal is allowed.

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6. **For the purposes of filing a rectification application, the period of limitation of six months commences from the date of receipt of the order sought to be rectified by the assessee and not from the date of passing of the order.**

The High Court had to consider the question whether for the purpose of filing the rectification application, period of limitation of six months would commence from the date of the order, which is sought to be rectified or from the date of receipt of the order sought to be reviewed /rectified by the concerned assessee?

The High Court held that:

The period of limitation to file the rectification application is to be computed from the date of receipt of order by the party and not at any time within six months from the date of the order.

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

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## DUE DATE CHART FOR THE MONTH OF SEPTEMBER 2017

| <b>SEPTEMBER 2017</b>                                       |  |     |   |                                   |   |  |
|---|--|-----|---|-----------------------------------|---|--|
| Sun   | Mon  | Tue | Wed                                     | Thu                               | Fri   | Sat  |
|   |  |     |   |                                   | 1   | 2  |
| 3   | 4  | 5   | 6                                       | 7<br>Monthly<br>TDS<br>payment    | 8<br>Last Date<br>of Filing<br>GSTR-6,<br>for July                                | 9  |
| 10<br>Last Date<br>of Filing<br>GSTR-1,<br>for July<br>2017 | 11   | 12  | 13                                      | 14                                | 15<br>Last Date<br>of Filing<br>GSTR-<br>5A<br><br>Providen<br>t fund<br>payment. | 16   |
| 17  | 18   | 19  | 20<br>Last Date of<br>Filing<br>GSTR-3B | 21<br>ESIC<br>Payment,<br>Payment | 22  | 23<br>Last Date of<br>Filing<br>GSTR-6,<br>for August.                                       |
| 24  | 25<br>Last date<br>of filing<br>GSTR-2,<br>for July<br>2017. | 26  | 27                                      | 28                                | 29  | 30<br>Profession<br>Tax<br>Payment.<br><br>Last date of<br>Filing<br>GSTR-3 for<br>July 2017 |

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.

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