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Chartered Accountants

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Coverage:

- Income Tax Updates
- GST Updates
- Customs Updates
- MCA News,
- RBI Updates

Regulatory Updates

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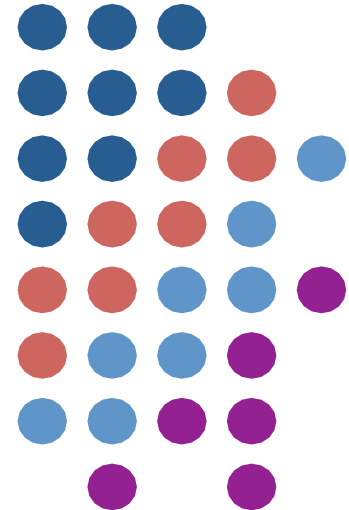
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at the time filing of returns. [The said interim order has been annexed in this mail.](#)

OECD's 2016 statistics reveal TP cases account for 50%+ of MAP (Mutual Agreement procedure) inventory

OECD's via [news dtd 27.11.2017](#) releases mutual agreement procedure (MAP) statistics for 2016 including data from over 65 jurisdictions, states that the 2016 statistics are for the first time reported under the new agreed reporting framework pursuant to members of the Inclusive Framework on BEPS committing to implementation of BEPS Action 14 minimum standard, states that 8000 cases approx. were in inventory of the reporting jurisdictions as of January 1, 2016 and almost 25% were closed during 2016, further almost 1500 cases started on/ after January 1, 2016 out of which 25% approx. were already closed in 2016. OECD also reveals that TP cases (relating to PE profit attribution or profit determination between AEs) account for slightly more than half of the MAP cases in inventory, with USA recording the highest number of TP cases end inventory of 701 followed by India at 569. Regarding timelines, OECD states that TP cases took more time (30 months approx.) on average for completion as compared to other cases (17 months), further, reveals that over 85% MAPs concluded in 2016 resolved the issue, almost 60% cases were resolved with an agreement fully resolving the taxation not in accordance with the tax treaty, almost 20% of them were granted a unilateral relief while almost 5% were resolved via domestic remedy.

CBDT constitutes Task Force for drafting new direct tax legislation

CBDT vide [Press release dtd 22.11.2017](#) sets-up Task Force to review the existing Income Tax Act and to draft a new direct tax law in consonance with economic needs of the country. Task Force is required to submit the report within 6 months to the Government. Arbind Modi is appointed as the convener of the 6 member Task Force which includes tax professionals Girish Ahuja, Rajiv Memani, Mukesh Patel, ICRIER representative Mansi Kedia and former revenue officer G. C. Srivastava. Chief Economic Advisor Arvind Subramanian will be a permanent special invitee in the Task Force. Task Force will draft an appropriate direct tax legislation keeping in view the direct tax system prevalent in various countries, the international best practices and the economic needs of the country.

Union Cabinet approves DTAA with Hong Kong

Union Cabinet via [Press Release dtd 10.11.2017](#) approves entering into an agreement between India and the Hong Kong Special Administrative Region ('HKSAR') of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income ('DTAA'). The agreement will stimulate flow of investment, technology and personnel from India to HKSAR and vice versa, prevent double taxation and provide for exchange of information between the two contracting parties. The agreement will further improve transparency in tax matters and will help curb tax evasion and tax avoidance.

Delhi HC upholds constitutional validity of ICDS, but strikes down certain provisions with its interim order

Delhi HC upholds constitutional validity of ICDS, rules that the same, in terms Section 145(2) of Income Tax Act is not violative of Article 19 of the Constitution. However, HC strikes down certain ICDS provisions. As per the said interim order, the requirement for compliance of the impugned ICDS would arise

Ahmedabad ITAT's trailblazing go-green initiative aims at 'paperless' court

Ahmedabad ITAT via [office order dtd 17.10.2017](#) initiates series of steps on an experimental basis with immediate effect, as part of its go-green initiative, invites suggestions and feedback from stakeholders, directs that no hard copies of the orders will be issued for the DRs, CIT(A)s and the DRPs henceforth, further directs that registry to not accept any paper book containing copies of judicial precedents reported in recognized journals and databases, similarly directs that registry to not accept any paper-books containing any of the documents, copies of which are statutorily required to be filed anyway along-with the appeal itself, e.g. assessment order, CIT(A)'s order, DRP order, form 35, form 35A, form 36, grounds of appeal etc. Ahmedabad ITAT also encourages use of paper on both the sides in every document and paper-book filed, to the extent possible and practicable to do so, further keeps a cap of 12.5 for font size and 1.5 lines for internal spacing, requires that soft copy of the cause lists / constitution of benches to be placed on ITAT's official website and twitter account, in addition to hard copies which shall be used only for limited internal communications. It further states that a guidance note regarding the operations of the paperless court and use of soft copies of the paper books, will be issued by December 15th, 2017.

SC affirms Delhi HC ruling in Modipon Ltd case affirming that balance in Personal Ledger Account (PLA) is allowable as deduction u/s 43B of the Act

SC dismisses assessee's appeal ruling that depreciation claim is mandatory while computing Sec. 80IA deduction

SC rules in favour of revenue by dismissing assessee's appeal challenging Bombay HC Full bench decision in case of Plastiblends India Ltd for AY 1997-98. Bombay HC had held that assessee had no choice regarding claiming depreciation while computing deduction u/s 80IA. HC had distinguished assessee's reliance on Apex Court ruling in Mahindra Mills (holding that depreciation claim is optional) observing that it was in context of Chapter IV (Computation of income) and not Chapter VI-A. HC further held that Sec. 80-IA is a complete code in itself and by not claiming current depreciation assessee seeks to inflate profit linked incentive which is not permissible. Before SC, revenue also argued that in view of insertion of explanation 5 to Sec. 32 by Finance Act, 2001, depreciation is made mandatory and explanation is retrospective in nature.

The ruling copy of SC interim order is awaited.

Delhi HC holds taxpayer guilty for false depreciation claim, rejects 'clerical error' plea

Ambience Hospitality Pvt Ltd [TS-557-HC-2017(DEL)]

Conclusion: Delhi HC confirms the judgement and order of sentence passed by Additional Chief Metropolitan Magistrate ('ACMM') by holding assessee-company guilty u/s. 276C/277 of the Income Tax Act for false depreciation claim on land. During relevant AY 2007-08, assessee had shown land along with building under the head 'property' in the balance sheet and falsely claimed depreciation on land, accordingly AO (apart from levying penalty) filed a complaint before ACMM whereby assessee was found guilty for the punishable offence and was sentenced to pay certain fine. HC rejects assessee's stand that charging depreciation on land was a mere clerical mistake and the same was suo moto rectified by assessee in the balance sheet of subsequent year, before it could be detected by the AO, observes that only after the order sheet entry (whereby AO sought explanation on depreciation claim on land), that the correction was made by assessee in the subsequent year. Delhi HC further rejects assessee's stand that there was no element of mens rea also observes that no sincere efforts were put in by assessee after detection of the alleged mistake by filing the revised return immediately thereafter, notes that the mistake was detected in August, 2008. However, no action was taken by assessee until December, 2009. Taking note of the manifest procedure that before filing of the return of income, the same is scrutinized firstly by the auditors and secondly by the directors, HC remarks that "it cannot be considered as a mere accounting mistake."

TS-548-SC-2017-MODIPON

Conclusion: SC affirms Delhi HC ruling in Modipon Ltd case affirming that balance in Personal Ledger Account (PLA) is allowable deduction u/s 43B of the Act. HC had rejected revenue's contention that deduction for excise duty paid can be allowed u/s 43B only on removal of the goods from the factory and not at the time of payment in advance which is credited to PLA (Personal Ledger Account).

Allahabad High Court confirms Sec. 68 addition and upholds that private company cannot feign ignorance of its investors' identity

Prem Castings (P) Ltd. [TS-580-HC-2017(ALL)]

Conclusion: Allahabad HC upholds ITAT order making addition u/s 68 in the hands of assessee-company during AY 2007-08 with respect to share capital subscribed by investors, rules that, assessee failed to establish identity and genuineness of the alleged investors. The assessee is private limited company and alleged investors were close friends and business associates of its directors and shareholders. HC holds that "the burden rested squarely on the assessee to disclose true and correct details of the persons it claimed had made the substantial investments of Rs. 3.46 crores. Assessee cannot hide behind the shell of a corporate entity to feign ignorance of the real person who may have subscribed to its share capital. Tribunal findings that investors either did not exist or effectively denied the fact of making investment, further PAN details of investors also could not establish their identity, thus holds that the finding of the Tribunal that the assessee failed to discharge its burden is based on evidence and application of the correct principle/rule of evidence, holds that once identity of investors cannot be established there can be no question of establishing genuineness of transaction or credit worthiness of the parties, also rejects assessee's contention about non-grant of opportunity to cross-examine bank managers or other witnesses as largely inconsequential, dismissing assessee's contention that cash credit entries shown as share capital cannot be added u/s 68, HC remarks that, "Once it is found that the entries itself are bogus and the investors as disclosed are non-existent, the reflection of the amount in the books of account of the assessee is only a tax evasion device or a mere pretence."

The case laws incorporated in this section has been annexed to this mail.



Extension of due dates for several GST returns

Sl No.	Return Form	Extension date	
		Quarter	Due date
1	GSTR – 1 with registered persons having aggregate turnover more than 1.5crore	July-Oct, 2017	31 st Dec, 2017
		Nov, 2017	10 th Jan, 2018
		Dec, 2017	10 th Feb, 2018
		Jan, 2018	10 th March, 2018
		Feb, 2018	10 th April, 2018
		March, 2018	10 th May, 2018
		March, 2018	10 th May, 2018
2	GSTR – 4 for July – September quarter	24 th December, 2017	
3	GSTR – 5 for the m/o July, August, September and October, 2017	11 th December, 2017	
4	GSTR – 5A for the m/o July, August, September and October, 2017	15 th December, 2017	
5	GSTR-6 for the m/o July, 2017	31 st December, 2017	
6	GST ITC-04 for July to September, 2017 quarter	31 st December, 2017	

CBEC notifies Twelfth amendment to CGST Rules, 2017

Certain amendments have been carried out by the Government in respect of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal which shall now include manual filing and processing thereof.

Further, manual processing of refund applications is now allowed which can be done by through Form RFD-01 and insertion of rules for appointment of appellate authority has been made. [Notification no. 55- Central tax dated 15.11.2017](#)

Due dates for filing Form GSTR 3B announced for the first three months of 2018

Due dates for GSTR 3B has now been specified for the months of January, February and March, 2018 as 20th February, 20th March and 20th April, 2018 respectively via Notification No.56/2017 – Central Tax. [Notification no.56-central tax dtd 15.11.2017](#) dated 15.11.2017

Quarterly furnishing of Form GSTR – 1 for specified category of taxpayers notified

CBEC vide [Notification no. 57-central tax dtd 15.11.2017](#) mentioned that the registered persons having aggregate turnover of up to 1.5 crores in the preceding financial year shall furnish details of outward supplies in GSTR – 1 by way of quarterly returns for the second, third and fourth quarter of financial year 2017-18 as specified below:

Sl No.	Quarter for which the details in FORM GSTR-1 are furnished	Time period for furnishing the details in FORM GSTR-1
1	July - September, 2017	31st December, 2017
2	October - December, 2017	15th February, 2018
3	January - March, 2018	30th April, 2018

Maximum late fee for delayed filing of GSTR 3B for October, 2017 reduced

CBEC vide [Notification no.64-central tax dtd 15.11.2017](#), has restricted the maximum late fees payable for delay in furnishing GSTR 3B for October month to Rs.50 per day in normal case and Rs.20 per day in case central tax payable in the return is “Nil”.

Exemption to e-commerce operators for obtaining registration

As per CBEC [Notification no.65-central tax dtd 15.11.2017](#), E-commerce operators have been exempted from obtaining registration under the Act subject to the condition that aggregate turnover on all India basis does not exceed Rs.20 lacs in normal cases and Rs.10 lacs in “*Special category states*” other than Jammu and Kashmir.

Exemption to tax payers from payment of tax on advances received

CBEC vide [Notification no.66-central tax dtd 15.11.2017](#), has exempted taxpayers exempt from payment of tax at the time of receipt of advance against supply of goods. The exemption is available for registered person other than those opting for composition scheme.

CBEC clarifies applicability of GST and availability of ITC in respect of certain services

Addressing to several issues brought to notice of board regarding applicability of GST and availability of ITC for certain services as mentioned under, a clarification has been provided by CBEC on the same which includes

- GST rate on loading, unloading, packing, storage or warehousing of agricultural produce is “Nil”. Only agricultural products have been covered.
- GST is applicable on inter-state transfer of aircraft engines, parts and accessories for own use by airlines.
- Services provided to the Government under any insurance scheme for which total premium is paid by Government are exempt from tax. [Circular No.16/16/2017 dtd 15.11.2017](#)

Facility of manual filing and processing of refund made applicable

In order to speed up GST refund processing, the Government has introduced manual filing and processing of GST refund claims pertaining to zero rated supplies. [Circular No. 17-cgst dtd 15.11.2017](#)

Clarification for refund of unutilized input tax credit of GST paid on inputs in respect of exporters of fabrics

Manufacturer of fabrics will be eligible for refund of unutilized input tax credit of GST paid on inputs other than input tax credit of GST paid on capital goods in respect of fabrics manufactured and exported by him. [Circular No.18- cgst dtd 16.11.2017](#)

Milling of paddy shall be taxable

Milling of paddy is not an intermediate production process in relation to cultivation of plants. It is a process carried out after the process of cultivation is over and paddy has been harvested. Further, processing of paddy into rice is

not usually carried out by cultivators but by rice millers. Milling of paddy into rice also changes its essential characteristics. Therefore, milling of paddy into rice cannot be considered as an intermediate production process in relation to cultivation of plants for food, fiber or other similar products or agricultural produce. Hence the same shall be taxable. [Circular No.19-cgst -dtd 20.11.2017](#)



Date of implementation of e-sealing for containers extended

CBEC has vide [Circular No.44-customs-dtd 18.11.2017](#) extended the date of implementation of e-filing procedure.

- i. All exporters who have acquired RFID seals and are stuffing containers at approved premises for export through Ports/ICDs are free to adopt **voluntarily** the new e-sealing procedure till 15.12.2017
- ii. E-sealing shall become **mandatory** from 15.12.2017 for exporters
 - a) Who are permitted self-sealing procedure under erstwhile excise procedure or GST regime.
 - b) AEO exporters and,
 - c) Exporters availing supervised stuffing at their premises. for prescribed locations
- iii. E-sealing procedure would be mandatory w.e.f 01.01.2018 for all ports/ICDs.

Applicability of IGST on goods sold while being transferred in a warehouse

CBEC has clarified that when goods remain deposited in a customs bonded warehouse and are transferred by the importer to another person, the transaction will be subject to payment of IGST. It may be noted that so long as such goods remain deposited in the warehouse the customs duty to be collected shall remain deferred. Further, it is only when such goods are ex-bonded under section 68, shall the deferred duty be collected, at the value as had been determined under section 14 of the Customs Act, 1962 in addition to IGST leviable. [Circular No.46-customs-dtd 24.11.2017](#)



Amendment Rules 2017 wherein the annexure –III of rule 4 has been substituted.

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MCA notifies effective date for applicability of section 247 relating to valuation by registered valuers

The Ministry of Corporate Affairs has issued notification for commencement of Section 247 of the Companies Act, 2013 [Valuation by Registered Valuers] with effect from 18th October, 2017. The Companies (Registered Valuers and Valuation) Rules, 2017 (Rules), which have been finalized after public consultation and detailed deliberations with stakeholders have also been issued simultaneously.

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Companies (cost records and audit) Rules, 2014 amended

The Companies (Cost records and Audit) Rules, 2014 has been amended and the new rules shall be called as the Companies (cost records and audit) Amendment Rules, 2017. The new rules came in effect from 07/12/2017.

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Government constitutes Insolvency law committee

Since the commencement of Insolvency and Bankruptcy code, 2016, more than 300 cases have been admitted for resolution by National Company Law Tribunal. Addressing to the references/ suggestions received from various stakeholders, a committee named Insolvency Law Committee has been constituted. The committee shall take stock of functioning and implementation of code, identify the issues that may impact the efficiency of corporate insolvency resolution and liquidation framework, make suitable recommendations, enhance efficiency of the process prescribed and for effective implementation of the Code.

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MCA notifies Companies (Filing of documents and forms in XBRL) Amendment Rules, 2017

MCA has notified the Companies (Filing of documents and forms in Extensible Business Reporting Language) Second

RBI clarifies that linking Aadhaar to bank accounts is mandatory

Amidst of the rumors regarding linking of Aadhaar card to bank accounts, RBI clarified that, in applicable cases, linkage of Aadhaar number to bank account is mandatory under the Prevention of Money-laundering (Maintenance of Records) Second Amendment Rules, 2017 published in the Official Gazette on June 1, 2017.

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RBI revamps FDI regulations

RBI issued Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017 for regulating investment in India by a Person Resident Outside India. The key amendments include provisions relating to limits prescribed based on total paid up equity capital on fully diluted basis, downstream investments, transfer of shares, onus on reporting transfer in FC-TRS etc. These regulations are made effective from 08.11.2017 with few proviso which will come into effect from a date to be notified.

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Government to set up panel to decide on bitcoin policy

Government is planning to set up a panel to decide on bitcoin policy, as per reports issued by agencies. The reports came after the cryptocurrency recently surpassed \$19,000 last week and the Reserve Bank of India (RBI) warned the public of the risks related to virtual currencies (VCs).

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