

The word 'NEWSLETTER' is rendered in a bold, white, sans-serif font with a slight 3D effect. It is centered within a cluster of overlapping, semi-transparent blue squares and rectangles of various sizes and shades, creating a dynamic, digital-style background for the text.

# NEWSLETTER

January 2018

## **IMPORTANT DUE DATES**

Sr. No.	Particulars	Due Date
1	TDS Payment	07.01.2018
2	Filing of GSTR-1 (Detail of Outward Supplies) for Nov-17 (Aggregate turnover exceeds Rs. 1.50 crores)	10.01.2018
3	PF payment	15.01.2018
4	Audit Report Filling Under Maharashtra Act as u/s 61	15.01.2018
4	Filing of GSTR-3B (Summary GST Returns) for Dec-17	20.01.2018
5	PT/ESIC payment	21.01.2018
6	Issue challan-cum-statement for tax deducted u/s 194-IA for Nov-2017	30.01.2018
7	TDS return for Oct17-Dec17	31.01.2018



❑ **Sec 6 - Pramod Kumar Sapra vs ITO**  
**[2017] 87 taxmann.com 98 (Del Trib.)**

Where stay of assessee, employee of RIL and deputed to Iraq, outside India was for more than threshold limit of 182 days, salary income of assessee for previous year could not be held to be taxable because he was not resident in India – ACCURAL VS RECEIVED

❑ **Sec. 69 - Raj Kumar Mittal vs DCIT**  
**[2017] 87 taxmann.com 344 (Agra Trib.)**

AO cannot make addition to assessee's income **merely based upon Departmental Valuation Officer (DVO's) report** in absence of any corroborative evidence or material found during the course of search proceedings u/s 153A or section 142A to point out under-valuation of property



**❑ Chamber of Tax Consultants vs Union of India**  
**[2017] 87 taxmann.com 92 (Del HC)**

(ICDS) notified by Central Government in exercise of power u/s 145(2) can not override binding judicial precedents or provisions of Act or Rules framed thereunder

ICDS	Contentions	Decision of Court
<p><b><u>Accounting Policies-ICDS 1</u></b></p> <p>Specially provides that expected and MTM Loss are not allowed</p>	<p>Sec 37(1) allows deduction of expenses for business purpose and not only encompasses actual flow of funds but also amounts payable in future with reasonable certainty</p>	<p>Non-acceptance of the <b>concept of prudence in ICDS I is per se contrary to the provisions of the Act</b> and therefore, cannot be countenanced</p>
<p><b><u>Valuation of Inventory-ICDS 2</u></b></p> <p>On dissolution of a firm, the business is <b>not discontinued</b>, stock-in-trade has to be valued at NRV</p>	<p>The ICDS does not take note of the decision of the apex court <b>in the case of Shakti Trading Co. v. CIT</b> where it was held that in case of dissolution of firm AO cannot substitute Mkt price instead of regular accounting method</p>	<p>Section 145A begins with a <i>non-obstante</i> clause and is independent of section 145 (2) under which the ICDS has been notified. It is an <b>exercise of excessive delegation of legislative</b> power which is impermissible in law            Sec 145A will prevail over ICDS II notified u/s 145(2)</p>

Particulars	Contentions	Decision of Court
<p><b><u>Construction Contracts-ICDS 3</u></b></p> <p><b>A)</b> Retention money would form part of contract revenue &amp; is to be treated as income on proportionate completion method &amp; assessed to tax accordingly</p> <p><b>B)</b> Para 12 of ICDS III read with para 5 of ICDS IX, dealing with borrowing costs, makes it clear that no incidental income can be reduced from borrowing cost</p>	<p>As per the decision of the cases viz Amarshiv Construction (P) Ltd, retention money was treated income at the Previous year when it was payable to the assessee</p> <p>This is contrary to the decision of the apex court in CIT v. Bokaro Steel Ltd. where it was held that if the assessee receives any amount <b>which is inextricably linked with the process of setting up of plant and machinery, such receipts would go to reduce the cost of its assets.</b></p>	<p>The court held Retention money when would it accrue depends upon the facts of each case and the conditions attached applying the settled principles of accrual of income</p> <p>ICDS III is interpreted and applied in a manner contrary to the law settled by the various decisions of the Supreme Court and the High Courts, <b>it cannot be sustained</b></p>

Particulars	Contentions	Decision of Court
<p><b><u>Revenue Recognition-ICDS 4</u></b></p> <p>1) The claim of escalation price and export incentives shall be postponed to the extent of <b>uncertainty involved</b></p> <p>2) in respect of service transactions revenue shall be matched with service transaction cost and income be recognized on the proportion of work completed</p>	<p>As per apex court in CIT v. Excel Industries Ltd, the recognition of export incentives is to be recognized as income only when the claim is accepted by the Government.</p> <p>In case of Paras Buildtech India (P.) Ltd. v. CIT, it was held that the assessee can either follow proportionate completion method or contract completion method and also as per AS-9</p>	<p>ICDS -IV seeking recognition of income from export incentives is inconsistent with the law explained by the Supreme Court</p> <p>Para 6 of ICDS VI permits only one method, i.e <b>proportionate completion method which is contrary to the various decisions of the Court. Thus, it is ultra vires the Act and has to be struck down</b></p>



Particulars	Contentions	Decision of Court
<p><b><u>Foreign Exchange -ICDS – 6</u></b></p> <p>Loans taken for capital purposes is to be valued at closing rate and difference is to be booked as Gain/Loss</p> <p>Any marked-to-market loss /gain in foreign currency derivatives for trading or speculation purposes is not to be allowed as an expenditure/deduction</p>	<p>Apex court in <i>Sutlej Cotton Mills Ltd. v. CIT</i> explained that exchange loss or gain in relation to capital item would be capital in nature</p> <p>Supreme Court in <i>Sutlej Cotton Mills Ltd. v. CIT</i> , insofar as it relates to marked to market loss arising out of <b>forward exchange contracts held for trading or speculation purposes is allowable.</b></p>	<p>It was held that the ICDS VI seeking effect of change in foreign exchange to be <b>treated as income would be contrary to the apex court's decision and hence, would have to be struck down as ultra vires the Act</b></p>

Particulars	Contentions	Decision of Court
<p><b><u>Government Grants-ICDS – 7</u></b></p> <p>Government grants will have to be recognized as income and cannot be postponed beyond the date of actual receipt regardless of whether the income has accrued or not, it has to be taxed.</p>	<p>There could be a situation where some conditions are attached to government grant. <b>Non-fulfilment of such condition may lead to return of such grant.</b></p>	<p>It cannot be said that there is accrual of income merely because the amount has been received. ICDS VII, however, requires the amount to be taxed in the year of receipt, which is contrary to and in conflict with accrual system of accounting. <b>Hence, it has to be held as ultra vires and struck down.</b></p>
<p><b><u>Securities-ICDS 8</u></b></p> <p><b>Part A</b> of ICDS deals with entities other than scheduled bank and public financial institutions while <b>part B</b> deals with scheduled banks and public financial institutions. Part B seeks valuation of securities in accordance with RBI guidelines.</p>	<p>The valuation of securities as per Accounting Standard is different from ICDS and the entities have to maintain separate records for income-tax purposes for every year since the closing value of the securities would be valued separately for income-tax purposes and for accounting purposes.</p>	<p>Para 10 says that the actual cost of securities held shall be done category-wise and not for each individual security.</p> <p><b>Thus, the Part A of ICDS-VIII is ultra vires the Act.</b></p>

❑ **Sec 69C - ITO vs. Ashok Viradia**  
**[2017] 87 taxmann.com 156 (Mum Trib.)**

Where addition was made to assessee's income u/s 69C in respect of accommodation entry received from 'R', since assessee failed to prove genuineness of purchase transaction, entire amount of purchase was to be added to assessee's income and **not only profit element** thereon

❑ **Sec 54G - Everest Industries Ltd. vs ACIT**  
**[2017] 87 taxmann.com 252 (Mum Trib.)**

When there is time lag between shifting of **industrial undertaking from urban to rural areas** and sale of assets and receipt of capital gains, in such a case, in order to allow deduction u/s 54G, prescribed time period has to be reckoned from **date of sale of assets** and not from date of shifting of industrial undertaking

❑ **Sec. 28(i) r.w.s. 22 - Oberoi Investments (P.) Ltd. vs ACIT**  
**[2017] 87 taxmann.com 33 (Kol Trib.)**

Where in terms of **memorandum of association**, main object of assessee company was to acquire properties and to further let out such properties, income earned from such letting out was to be brought to tax as 'business income' and not as 'income from house property'

❑ **Section 50B - L&T Finance Ltd. vs DCIT**  
**[2017] 87 taxmann.com 93 (Mum Trib.)**

Mere transfer of business leads (being individual asset) to sister concern does not constitute transfer of business activity or business undertaking as a whole and hence would not fall within ambit of slump sale

❑ **Sec 201(1A) - Bank of Baroda vs DCIT**  
**[2017] 88 taxmann.com 103 (Ahd Trib.)**

Where assessee-bank had deducted TDS u/s 194A but same was deposited after a delay, interest u/s 201(1A) should be levied only from the date on which tax was deducted and till date on which such tax was deposited

Eg.

Date of deduction – 10.09.2014

Date of tax deposit – 08.10.2014

AS per AO /CIT(A) – Interest for 2 months

As per ITAT – Interest for 1 month since delay in days < 1 month (excl. date of deduction - 10.09.2014)

❑ **Claris Life Sciences Ltd vs. CIT**  
**[2017] 86 taxmann.com 56 (Ahd Trib.)**

Where an assessee does not pay self assessment tax under section 140A at time of filing original return of income, he is liable to pay penalty under section 221(1) even though he subsequently revises his return of income and pays self assessment tax at time of filing said revised return of income

❑ **Sun Pharmaceuticals Industries Ltd.vs. CIT (Vadodra)**  
**[2017] 87 taxmann.com 215 (Gujarat HC)**

For computation of book profits under section 115JB, entire profit of eligible business under section 10B has to be reduced and not only that profit which is computed for purpose of deduction in terms of sub-section (1) read with sub-section (4) of section 10B

❑ **OTC Exchange of India vs. ACIT**  
**[2017] 85 taxmann.com 329 (Mumbai - Trib.)**

Where assessee recognized stock-exchange with a view to create scripless, screen based multi-tiered fully automated securities market created WOS and made investment in it, disallowance under section 13(1)(d)(iii) could not be made since investment made was as per requirement of section 11(5)/



❑ **Sec 13(1)(c)- Kunhitharuvai Memorial Charitable Trust vs. Deputy Commissioner of Income-tax (Cochin - Trib.)**  
**[2017] 86 taxmann.com 232**

Where amount paid by assessee trust to its trustee was found to be a **repayment of loan** and not diversion of income, said transaction could not be hit by provisions of section 13(1)(c) and thus assessee was eligible for exemption u/s 11

❑ **Sec 2(15)- Patanjali Yogpeeth (NYAS) vs. Commissioner of Income Tax**  
**[2017] 87 taxmann.com 54 (HC Delhi)**

Propagation of yoga by way of conducting **yoga classes** on a regular basis and in a systemized manner falls under the category of '**Imparting of education**' as provided u/s 2(15) since it falls under the term “medical relief”

# International Taxation





❑ **Hapag-Lloyd AG vs DCIT**

**[2017] 87 taxmann.com 305 (Mum Trib.)**

In case of assessee engaged in transportation of cargo to ports outside India and vice versa, benefit of article 8 of India-Germany DTAA is to be granted in respect of **revenue earned from feeder vessels** obtained under slot hire arrangements even when such revenue is obtained from such ancillary business.

❑ **PCIT vs Makemy Trip India (P.) Ltd.**

**[2017] 87 taxmann.com 284 (Del HC)**

Difference of opinion between CIT(A) and TPO as to appropriateness of one or other methods, cannot per se be a ground for interference; the appropriateness of the method unless shown to be contrary to the Rules specially Rules 10B and 10C, in the opinion of the Court, is hardly issues that ought to be gone into by High Court in appeals u/s 260A

❑ **BT e- Serv (India) (P.) Ltd. vs. ITO**  
**[2017] 87 taxmann.com 251 (Delhi - Trib.)**

Where certain invoices raised by assessee from AE were outstanding for more than 30 days, TPO was justified in computing interest on such amount considering outstanding receivable beyond stipulated period as a separate 'international transaction'. Thus, 'outstanding receivable' or any other debt arising during course of business is included in definition of 'capital financing' and therefore considered as an 'international transaction'

❑ **ACIT vs E-Funds IT Solutions Inc**  
**[2017] 86 taxmann.com 240(SC)**

Where Indian subsidiary company only rendered support services which **enabled assessee** (two American companies) in turn to render services to their clients abroad, **this outsourcing work** to India would not give rise to a fixed place PE



❑ **Modipon Ltd. Vs. CIT**  
**[2017] 87 taxmann.com 275 (SC)**

Advance deposit of central excise duty in Personal Ledger Account (PLA) constitutes actual payment of duty within meaning of section 43B and assessee is entitled to benefit of deduction of said amount

# Circular & Notification



**SECTION 9 OF THE INCOME-TAX ACT, 1961 - INCOME - DEEMED TO ACCRUE OR ARISE IN INDIA - CLARIFICATION ON INDIRECT TRANSFER PROVISIONS IN CASE OF REDEMPTION OF SHARE OR INTEREST OUTSIDE INDIA**

**CIRCULAR NO.28/2017 [F.NO.500/10/2017-FT&TR-IV], DATED 7-11-2017**

-Vide Finance Act, 2017, Category I and Category II FPIs have already been exempted from indirect transfer provisions of the Act through insertion of proviso to *Explanation 5* to section 9(1)(i) of the Act, with effect from 01.04.2015.

-There could be situations in multi-tiered investment structures, where interest or share held indirectly by a non-resident in an **“Investment Fund”** or a **“Venture Capital Company”** or a **“Venture Capital Fund”** (hereinafter referred to as 'specified funds'), is redeemed in an upstream entity outside India in consequence of transfer of shares or securities held in India by the specified funds, the income of which have been subject to tax in India i.e leading to multiple taxation of same income.

-The matter has been examined by the Board and it has been decided that the provisions of section 9(1)(i) of the Act read with *Explanation 5* thereof shall not apply in respect of income accruing or arising to a non-resident on account of transfer of its share or interest held indirectly (i.e. through upstream entities registered or incorporated outside India) in the specified funds.

-It is further clarified that a non-resident investing directly in the specified funds shall continue to be taxed as per the extent provisions of the Act.

**SECTION 286 OF THE INCOME-TAX ACT, 1961 - REPORT IN RESPECT OF INTERNATIONAL GROUP - FURNISHING OF - CBDT NOTIFIES RULES IN RESPECT OF COUNTRY BY COUNTRY REPORTING AND FURNISHING OF MASTER FILE**  
**CBDT PRESS RELEASE, DATED 1-11-2017**

Country-By-Country reporting (CBCR)	Master File
<p>-Where total consolidated group revenue of Rs 5,500 crore or more</p>	<p>-Where total consolidated group revenue of Rs 500 or more <b>and</b>                      -Aggregate value of international transactions exceeds Rs 50 crore or aggregate value of international transactions in respect of <b>intangible property</b> exceeding Rs. 10 crore.</p>
<p>-To report in Form 3CEAD along with Form 3CEB (Rule 10DB)</p>	<p>-To report in Form 3CEEA along with Form 3CEB (Rule 10DA).                      (Part A of the report is to be filled by every constituent entity irrespective of threshold limit above specified)</p>
<p>Due date for Furnishing the report is on or before <b>31/03/2018</b> for the F.Y 2016-17 as one time relief provided by CBDT being it is first reporting year.</p>	

**❑ EXTENSION OF DATE FOR LINKING OF AADHAAR NUMBER WITH PAN NUMBER.  
CBDT ORDER [F.NO. 225/270/2017/ITA.II], DATED 8-12-2017**

The said provision was relaxed by the Central Board of Direct Taxes ('CBDT') *vide* its order(s) dated 31-7-2017 & 31-8-2017, in file of even number, wherein further time till 31-12-2017 was allowed to the taxpayers to link Aadhaar with PAN.

On further consideration of the matter, CBDT, in exercise of powers conferred under section 119 of the Act, extends the time for linking Aadhaar with PAN till **31-3-2018**

**❑ SECTION 90 OF THE INCOME-TAX ACT, 1961 - DOUBLE TAXATION AGREEMENT -  
CABINET APPROVES AGREEMENT BETWEEN INDIA AND HONG KONG SPECIAL  
ADMINISTRATIVE REGION FOR CHINA FOR AVOIDANCE OF DOUBLE TAXATION AND  
PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME.**

The Agreement will stimulate flow of investment, technology and personnel from India to HKSAR & vice versa, prevent double taxation and provide for exchange of information between the two Contracting Parties. It will improve transparency in tax matters and will help curb tax evasion and tax avoidance.



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Thank you

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