



Income Tax

Tax Treatment of Gifts Received By an Individual or HUF

Monetary Gifts: If the following conditions are satisfied then any sum of money received without consideration (i.e., monetary gift, may be received in cash, cheque, draft, etc.) by an individual/HUF will be charged to tax:

- Sum of money received without consideration; and
- The aggregate value of such sum of money received during the year exceeds Rs. 50,000

Cases in which sum of money received without consideration, i.e., monetary gift received by an individual or HUF is not charged to tax:

1. Money received from relatives.
2. Money received on the occasion of the marriage of the individual.
3. Money received under will/ by way of inheritance.
4. Money received in contemplation of death of the payer or donor.
5. Money received from a local authority
[as defined in Explanation to section 10(20) of the Income-tax Act].
6. Money received from any fund, foundation, university, other educational institution, hospital or other medical institution, any trust or institution referred to in section 10(23C).
7. Money received from a trust or institution registered under section 12AA.
8. Share received as a consequence of demerger or amalgamation of a company under clause (vid) or clause (vii) of section 47, respectively.
9. Share received as a consequence of business reorganization of a co-operative bank under section 47(vicb).

Key Points:

- Marriage of the individual is the only occasion when monetary gift received by him will not be charged to tax. Hence, monetary gift received on occasions like birthday, anniversary etc. will be charged to tax
- Friend is not a 'relative' and hence, gift received from friends will be charged to tax (if other criteria of taxing gift are satisfied).
- If the aggregate value of monetary gift received during the year by an individual or HUF exceeds Rs. 50,000 and the gifts are not covered under the exceptions discussed in earlier part, then gifts whether received from India or abroad will be charged to tax.
- Once the aggregate value of gifts received during the year exceeds Rs. 50,000 then all gifts are charged to tax

EDITORS NOTE

Dear Reader, this edition features Tax treatment of Gifts. Services charges reversed under GST, Corporate Law etc., Protecting your Intellectual Creations and more. As usual, expecting your valuable suggestions for improving in order to make it more relevant and useful.

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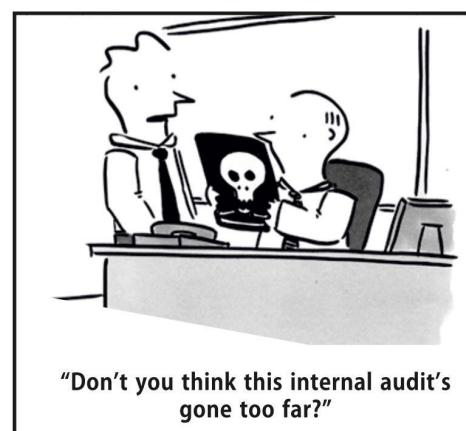
TAX DUE DATES - SEPTEMBER 2017

Income tax and Other Statutory Compliances

Sl. No	Particulars	Due Date
1.	TCS/TDS Payment for August 2017	07-Sep-2017
2.	Issue of the TDS Certificate for tax deducted under section 194-IA (Payment on transfer of certain immovable property other than agricultural land) in the month of July 2017.	14-Sep-2017
3.	Second Installment of Advance tax	15-Sep-2017
4.	PF Payment	15-Sep-2017
5.	ESIC Payment	21-Sep-2017
6.	PF Monthly Return	25-Sep-2017
7.	Payment of last installment (i.e., 50% of tax, surcharge and penalty) under Income Disclosure Scheme, 2016.	30-Sep-2017
8.	Annual return of Income and Audit Report u/s 44AB for AY 2017-18 if the assessee (not having any international or specified domestic transaction) is <input type="checkbox"/> corporate-assessee or <input type="checkbox"/> non-corporate assessee (whose books of account are required to be audited) or <input type="checkbox"/> Working partner of a firm (whose accounts are required to be audited)	30-Sep-2017 (Extended to 31-Oct-2017)

GST Compliances

Particulars	For July-2017	For August-2017
Form GSTR -3B(Summary Return) & Tax payment	25-Aug-2017	20-Sep-2017
Form GST-Trais 1(Claim of Transitional ITC)	28-Aug-2017	28-Sep-2017 (If Transitional ITC not opted for July month Liabilities)
Outward Supplies in GSTR-1	10-Oct-2017	Upto 5 Oct-2017
Inward Supplies in GSTR-2	31-Oct-2017	6 - 10 Oct-2017
Payment Details & Setoff in GSTR-3	10-Nov-2017	Upto 15-Oct-2017





GST

Services Covered Under Reverse Charge w.e.f. 01.07.2017

Sr. No.	Description of Services	Supplier of Service	Recipient of service	% of GST payable by Service Provider	% of GST payable by a receiver
1	Import of Service Import of taxable services other than non-assessee online information recipient.	Person located in a non taxable territory i.e. any foreign country	Any business entity located in taxable territory.	0%	100%
2	Goods Transport Agency Service (GTA) Services provided by a goods transport agency (GTA) in respect of transportation of goods by road.	Goods Transport Agency (GTA)	(a) any factory registered under or governed by the Factories Act,1948; (b) any society registered under the Societies Registration Act,1860 or under any other law for the time being in force in any part of India; (c) any cooperative society established by or under any law; (d) any person registered under CGST / IGST/SGST/ or UTGST Act; or (e) anybody corporate established, by or under any law; or (f) any partnership firm whether registered or not under any law including association of persons; or (g) any casual taxable person; located in the taxable territory.	0%	100%
3	Legal Service Legal services by a firm of advocates or an individual advocate.	An individual advocate including a senior advocate or firm of advocates	Any business entity located in the taxable territory.	0%	100%
4	Services provided by an arbitral Tribunal to a business entity.	An arbitral Tribunal	Any business entity located in the taxable territory.	0%	100%
5	Service provided by way of Sponsorship Service to anybody corporate or partnership firm.	Any person	Anybody corporate or partnership firm located in the taxable territory.	0%	100%

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6	<p>Government Services: Services provided by Central Government, State Government, Union territory or local authority excluding the following :</p> <p>(A) renting of immovable property service, and (B) services specified below:-</p> <p>(i) services by the Department of posts by way of speed post, life insurance, express parcel post and agency services provided to a person other than Government;</p> <p>(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;</p> <p>(iii) transport of goods or passengers.</p>	Central Government, State Government, Union territory or Local Authority	Any Business Entity located in the taxable territory.	0%	100%
7	<p>Services by Director: Services provided by a director of a company or a body corporate to the said company or the body corporate.</p>	A director of a company or a body corporate	A company or a body corporate located in the taxable territory	0%	100%
8	<p>Insurance Agent Service: Services provided by an insurance agent to person carrying on insurance business.</p>	An Insurance Agent	Any person carrying on insurance business, located in the taxable territory.	0%	100%
9	<p>Recovery Agent Service: Services provided by a recovery agent to a banking company or a financial institution or a non banking financial company.</p>	A Recovery Agent	Banking company Financial institution or a non-banking financial company, located in the taxable territory.	0%	100%
10	<p>Goods Transport Services by Vessel: Services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India</p>	A person located in non-taxable territory to a person located in non-taxable territory	Importer as defined under Clause (26) of section 2 of the Customs Act,1962	0%	100%
11	<p>Copyright Service : Transfer or permitting the use or enjoyment of a copyright of a covered under clause (a) of</p>	Author or music composer photograph	Publisher, Music company, producer or the like, located in the taxable territory.	0%	100%

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	sub-section (1) of Section 13 of the Copyright Act, 1957 relating to original literary, dramatic, musical or artistic works.	her artist, or the like.				
12	Services by E-commerce Operator: Radio taxi or passenger Transport Services provided through electronic commerce operator.	Taxi driver or Rent-a-cab operator	Any person located in the taxable territory.	0%	100% by Electronic Commerce Operator	

The cited table is showing the list of services as notified by the Government and approved by the GST Council for levy of GST under reverse charge.

Corporate Law

Loan to directors etc.

[CHAPTER XII- SECTION 185 – SHALL NOT APPLY (IN CERTAIN CONDITIONS)]

Section 185 of Companies Act, 2013, prohibits a company from advancing loan (including represented by book debt) to any of its directors or to any other person in which the director is interested. Prohibition even extends to giving of guarantee or providing any security in connection with any loan that the directors avail in their personal capacity.

The exemption has now been granted to private companies from compliance of provisions of Section 185 provided it complies with the following conditions:

- (a) There shall be no other body corporate shareholder in the lending company;
- (b) If the borrowings of such a company from banks or financial institutions or anybody corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower; and
- (c) Such a company has no default in repayment of such borrowings subsisting at the time of making transactions under this Section. The restriction under Section 185 was one of the most significant pain points under the 2013 Act.

This has probably been the most resisted provision by the industry. Considering the closely held nature of private companies and the way in which such companies function, it was expected that intra-group transactions between private companies be relaxed.

However, exemption from Section 185 being contingent on the condition that no corporate shall be a shareholder and debt – equity ratio shall not be more than 2:1 substantially restricts the applicability of the exemption. It also remains to be seen whether convertible debt on the books of the company will be seen as debt or equity.

Revised Secretarial Standard -1& 2

Secretarial Standard -1 and Secretarial Standard -2 have now been revised by ICSI and the same have been approved by the Ministry of Corporate Affairs (MCA) vide its letter No. 1/3/2014-CL.I dated 14th June, 2017.

Effective date of revised secretarial standard

The revised Secretarial Standard -1 and Secretarial Standard -2 shall be applicable to all the companies (except the exempted class of companies) w.e.f. 1st October, 2017 and accordingly all Board Meetings (including meetings of committees of Board) and General Meetings in respect of which Notices are issued on or after 1st October, 2017 need to comply with the revised SS-1 and SS-2. The existing SS-1 and SS-2 will be applicable to the Board Meetings and General Meetings held on or before 30th September, 2017.



Protecting your Intellectual Creations - The benefits of registering Intellectual Property Rights

All computer programmers, engineers, photographers, architects and artists invest considerable amount of time, effort and possibly money in the creation of their works, be it a picture or software code. It is thus understandable that such persons would seek to secure this investment thereby ensuring adequate protection for their final works. There again, significant profits can be made by securing the more important and expensive creations. Looking at the pharmaceutical or industry for example, patenting of new drugs, gives security to the company, that their investment in the creation of new drugs, cannot be stolen. The same applies in the technological industry, where for example, the patent disputes between Samsung and Apple over smart technology have stretched numerous jurisdictions, from North America to Asia. It is thus understandable and recommended, that proper intellectual property registrations are done, at the right place at the right time.

Trademarks- Copyright- Patents- Industrial Designs- Trade Secrets

While all forms of intellectual property rights are different in their form, their core purpose remains the same, the protection of the rights of the creator to prevent others from copying the creation or using such a creation for their own benefit, to the prejudice of the creator. However, understanding the fundamental difference between the types of Intellectual Property rights is essential.

One can practically distinguish between five primary Intellectual Property Rights as illustrated below:

Trademarks: Trademarks are essentially marks, logos or brand names which identify a particular person, entity or even a product or product range. Trademarks may consist of shapes, pictures, colours, names, words, numbers or symbols so long as the final mark is identifiable and distinguishable. Trademarks are important since they identify products and services of a seller in the market and guide consumers to the seller simply through the brand name and reputation of the seller. Trademarks are normally registered to obtain formal recognition although some jurisdictions provide a limited form of protection to unregistered Trademarks through prior use.

Copyright: Copyright, is a right granted to the creator of a work, upon inception, so long as such a creation is fixed on a tangible medium and is deemed to be an original work. Copyrightable works include paintings, photographs, software code, books, articles and other similar works. In some jurisdictions, more exotic works where deemed to be copyrightable like the smell of a perfume. In principle, copyright is granted on the creation of the work, however some jurisdictions provide for optional additional registrations as well.

Patents: Patent protection is granted to inventions should the invention satisfy the general requirements of patentability which generally involve that the creation is novel, non-obvious and which is useful or which have an industrial application. Patentable objects vary depending on jurisdictions and thus what is patentable in the United States is not necessarily patentable in the European Union. While this is true for most intellectual property types, such distinction is more evident in patent registrations.

Industrial Designs: In essence, designs are ascetic aspects of an object or a thing, in either two dimensional or three dimensional format, would include its shape, lines, patterns, contours, material and the colour of the item. Design protection can be granted to a number of different products varying from electronic devices, to containers and jewellery, however, for a design to be registerable, the design would need to be in essence new. Protection to industrial designs is granted in most countries, upon registration and in some cases, the protection granted might also overlap over copyright protection.

Trade Secrets: Trade Secrets are commercially sensitive information usually a process, a method, practice or formula which are not known to the public. Such information is valuable to the owners of such information however, should this information not fall under other protectable Intellectual property, no official legal protection can be granted and the owner of the information must keep such information confidential to ensure its protection.

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Why register your Intellectual Property Rights?

As a general principle, Intellectual Property Right protection, grants the holder of the right, exclusive protection on the creation so as far that, third parties, cannot use the creation of the creator without the permission of the creator, which is usually granted through a license from the creator against the payment of a fee in the form of royalties. A license would allow a third party, to utilise the creation against the payment of a royalty, with the creator keeping exclusive rights on the creation.

Registration is usually affected in the jurisdictions where the creation shall be mostly used. Thus if a company is planning to mainly deal in certain countries, it would obtain trademark registration in such countries. However, it is a common practice, that although that registration on the Intellectual Property is affected in the subject jurisdictions of use, the holder of the right would be an entity in other jurisdictions for numerous reasons, usually for logistical, asset protection and tax reasons so that in the event that a group of companies have numerous registrations in Intellectual property rights, such assets would be separated from other group assets through a separate legal person and also so that all royalty fees as cantered into one tax efficient structure.

Advantages of Audit

The annual auditing of financial statements is a statutory requirement for any company; nevertheless it produces a series of notable advantages:

- An audit helps to identify weaknesses in the accounting systems and enables us to provide suggestions for improvements
- An audit assures directors, who are not involved in the accounting functions on a day-to-day basis, that the business is running in accordance with the information they are receiving. An audit also helps reduce the risk of fraud and poor accounting.
- An audit facilitates the provision of advice that can have real financial benefits for a business, including how the business is running, what margins can be expected, and how these can be achieved. Advice can cover anything from the tightening of internal controls, to tax planning or reducing the risk of fraud.
- An audit will enhance the credibility and reliability of the figures being submitted to prospective investors. If an owner is planning on attracting investment or selling shares in the next three years, carrying out regular audits is highly beneficial.

An audit adds credibility to published information for employees, customers, suppliers, investors and tax authorities:

- Credit ratings may be affected by not having an audit. Suppliers may not be prepared to give appropriate credit limits. Banks and trade suppliers rely in part on credit rating agencies' assessment of the company, and will look more favourably on companies that have an audit.
- In the event of insurance claims, loss adjusters often have more faith in audited accounts.
- An audit provides assurance to shareholders (if they are not directors closely involved in the business) that the figures in the accounts show a true and fair view.

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