

Proxcel Advisory Services LLP*Delivering Professional Excellence***Edition: August 2019****Volume 1, Issue 8****TAX NEWSLETTER**

Summary of Regulatory Updates for July 2019



PROFICIENTLY ADVISING
GLOBAL BUSINESSES
FOR TRADE IN INDIA

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1. Direct Tax



Income Tax Act, 1961

1.1 Income from Investment Fund is now exempt in the hands for Non Resident (NR)

Section 115UB(1) of Income Tax Act, 1961 provides that the investments made by 'Category I or Category II AIFs (Alternate Investment Funds)' hereinafter referred as 'investment fund' are deemed to have been made by the investor directly, CBDT has clarified that any income in the hands of the non-resident investor from 'off shore investments' (investments outside India) routed through the Investment fund, being a deemed direct investment outside India by the non-resident investor is not taxable in India.

It is further clarified that loss arising from the off shore investments relating to non-resident investor, being an exempt loss, shall not be allowed to be set off or carried forward and set off against the income of the investment fund.

-Circular No. 14/2019, dated 3rd July 2019

1.2 Extended due date of payment of third installment under the Income Declaration Scheme, 2016

As per powers conferred under Section 119 of Income Tax Act read with section 195 of IDS, CBDT has directed that all payments made/effectuated by the declarants on 3rd October, 2017 shall also be deemed to have been paid by the due date for the third instalment i.e. 30th September, 2017. The motive behind the same is to avoid hardships faced by declarants due to national holiday on 30th September and closed bank holidays on 1st and 2nd October, 2017.

Further it has been decided that payments effectuated through cheque/RTGS/electronic transfer by the declarant by 3rd of October, 2017 which were credited by the banks till 5th October, 2017

shall be deemed to have been paid within due date i.e. 30th September, 2017.

-Circular No. 15/2019, dated- 12th July, 2019

1.3 Exemption from filing of Return of income under 139(1) from AY 2019-20 for:

- A non-resident, not being a company
 - Foreign company
- who have any income chargeable during previous year from any investment in investment fund set up in an International Financial Services Centre (IFSC)

Conditions for availing exemption:

- ◆ Tax has been deducted at source and remitted to the Central Government by the investment fund as per provisions of section 194LBB of the Income tax Act; and
- ◆ No other income during the previous year for which liable to file the tax-return.

Note: Exemption will not be available if notice under section 142 (1) or section 148 or section 153A or section 153C of the Income tax Act has been issued for filing a return of income for the assessment year specified therein.

-Notification No.55/2019, dated 26th July, 2019

1.4 Extension in Due Date for filing Income Tax Return

CBDT has extended due date for filing Income tax Returns for Assessment Year 2019-20 in respect of some of the tax-payers which were required to file their Return of Income on **31st July, 2019**, now extended to **31st August, 2019**. The same has been extended considering difficulties faced in filing ITR due to various reasons including extension of due date for issue of Form 16 for the Assessment Year 2019-20.

-Order under section 119 of the Income-tax Act, 1961, dated 23rd July, 2019



2. Indirect Tax

Goods and Services Tax

2.1. Section 73: Payment of unpaid taxes:

This section of CGST Act provides a unique opportunity of self-correction to all taxpayers, before the service of the notice by any authority, by paying the amount of tax with interest. In such cases, no penalty shall be leviable on such taxpayer. If the taxpayer has not made payment of taxes in GSTR-3B, he shall pay the same through Form GST-DRC-03.

-Press Release, dated 3rd July, 2019

2.2 Primary data source for declaration in Annual Return

If the Form GSTR-1, Form GSTR-3B and books of accounts does not match and extra tax liability arise due to this, in that case, the same shall be declared in annual return and tax should be paid and if the excess tax had been paid to the Government, then all the information may be declared in the annual return and refund (if eligible) may be applied through Form GST RFD-01A. Further, no input tax credit can be reversed or availed through the annual return. If taxpayers find themselves liable for reversing any input tax credit, they may do the same through Form GST DRC-03 separately.

-Press Release, dated 3rd July, 2019

2.3 Extension of last date for filing of Form GST CMP-02

As suggested in 36th GST council meeting, it has been approved to extend the last date to 30th Sep, 2019, for registered person for filing the intimation in FORM GST CMP-02 for availing the benefit of the alternate composition scheme (Suppliers of services or mixed suppliers, who were not eligible for the primary composition scheme and whose annual turnover in the preceding financial year did not exceed Rs.50 lakh).

-Press Release, dated 4th July, 2019

2.4 Quarterly Statement by Composition taxpayers- Form GST CMP-08

- ◆ Composition dealers shall be required to file Quarterly Statement for purpose of payment of tax in form CMP-08.
- ◆ Due date for furnishing FORM GST CMP-08 by composition dealer, for the quarter April, 2019 to June, 2019, or part thereof, is extended till the 31st August, 2019.

-Notification No. 35/2019-Central Tax Dated 29th July, 2019

2.5 Surrender of enrollment of GST Practitioner

- ◆ Rule 83B inserted in CGST Rules, 2017 and Form GST PCT-06 notified for the same.
- ◆ A GST practitioner seeking to surrender his enrolment shall electronically submit an application in FORM GST PCT-06, at the common portal, either directly or through a facilitation center not filed by the Commissioner.
- ◆ The Commissioner, or an officer authorized by him, may after causing such enquiry as deemed fit and by order in FORM GST PCT-07, cancel the enrolment of such practitioner.

-Notification No. 33/2019-Central Tax dated 18th July, 2019

2.6 Tenure of Anti-Profitteering Authority enhanced to four years

Rule 137 of the CGST Act, 2017: The Authority shall cease to exist after the expiry of four years from the date on which the Chairman enters upon his office unless the Council recommends otherwise.

-Notification No. 33/2019-Central Tax dated 18th July, 2019

2.7 Payment : Utilization of IGST Credit (implemented in Form- GSTR-3B only)

- ◆ Taxpayers filing Form GSTR 3B will have to utilize IGST credit towards payment of integrated tax, and the amount remaining, if any, may be utilized towards the payment of Central tax and State tax or Union territory tax, in any order.
- ◆ This can be done provided that the input tax credit on account of Central tax, State tax or Union territory tax shall be utilized towards payment of integrated tax, Central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilized fully.

2.8 Residential Welfare Association to levy GST on monthly contribution

Residential welfare association to levy GST on monthly contribution for common use and reimbursement of expenses exceeding Rs.7500/- only when its aggregate turnover is more than Rs.20 Lakhs for Financial Year.

-Circular No. 109/28/2019-GST dated July 22, 2019

2.9 Changes in GST Rates shall be effective from 1st August, 2019

- ◆ GST rate on all electric vehicles be reduced from 12% to 5%.
- ◆ GST rate on charger or charging stations for electric vehicles be reduced from 18% to 5%.
- ◆ Hiring of electric buses (of carrying capacity of more than 12 passengers) by local authorities be exempted from GST.

2.10 Goods sent/taken out of India for exhibition or on consignment basis

- ◆ The activity of sending / taking the goods out of India for exhibition or on consignment basis for export promotion, except when such activity satisfy the tests laid down in Schedule I of the CGST Act, do not constitute supply as it does not fall within the scope of section 7 of the CGST Act as there is no consideration at that point in time.
- ◆ Since such activity is not a supply, the same cannot be considered as “Zero rated supply” as per the provisions contained in section 16 of the IGST Act. The said activity is in the nature of “sale on approval basis”.
- ◆ The specified goods shall be accompanied with a delivery challan issued in accordance with the provisions contained in rule 55 of the CGST Rules.
- ◆ The activity of sending / taking specified goods out of India is not a zero-rated supply. That being the case, execution of a bond or LUT, as required under section 16 of the IGST Act, is not required.
- ◆ The specified goods sent / taken out of India are required to be either sold or brought back within the stipulated period of six months from the date of removal as per the provisions contained in section 31(7) of the CGST Act.
- ◆ The supply would be deemed to have taken place, on the expiry of six months from the date of removal, if the specified goods are neither sold abroad nor brought back within the said period.
- ◆ If the specified goods are sold abroad, fully or partially, within the specified period of six months, the supply is effected, in respect of quantity so sold, on the date of such sale.
- ◆ When the specified goods sent / taken out of India have been sold fully or partially, within the stipulated period of six months, a tax invoice shall be issued in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules.
- ◆ When the specified goods have neither been sold nor brought back, either fully or partially, a tax invoice shall be issued on the date of expiry of six months from the date of removal.
- ◆ The sender of goods cannot prefer any refund claim when the specified goods are sent / taken out of India.
- ◆ The sender can prefer refund claim even when the specified goods were sent / taken out of India without execution of a bond or LUT, if he is otherwise eligible for refund as per the provisions contained in section 54(3) the CGST Act read with rule 89(4) of the CGST Rules, in respect of zero rated supply of goods after he has issued the tax invoice. It is further clarified that refund claim cannot be preferred under



- ◆ rule 96 of CGST Rules as supply is taking place at a time after the goods have already been sent/taken out of India earlier.

-Circular No. 108/27/2019-GST dated 18th July, 2019

2.11 Supply of Information Technology enabled service (ITeS services)

- ◆ The definition of intermediary inter alia provides specific exclusion of a person i.e. of a person who supplies such goods or services or both or securities on his own account. Therefore, the supplier of services would not be treated as intermediary even where the supplier of services qualifies to be “an agent/ broker or any other person” if he is involved in the supply of services on his own account.
- ◆ Information Technology enabled Services (ITeS services), though not defined under the GST law, have been defined under the sub-rule (e) of rule 10 TA of the Income-tax Rules, 1962 which pertains to Safe Harbour Rules for international transactions.
- ◆ Scenario -I: The supplier of ITeS services supplies back end services. In such a scenario, the supplier will not fall under the ambit of intermediary under section 2(13) of the IGST Act where these services are provided on his own account by such supplier. Even where a supplier supplies ITeS services to customers of his clients on clients’ behalf, but actually supplies these services on his own account, the supplier will not be categorized as intermediary. In other words, a supplier “A” supplying services, on his own account to his client “B” or to the customer “C” of his client would not be intermediary in terms of section 2(13) of the IGST Act.

- ◆ Scenario -II: The supplier of backend services located in India arranges or facilitates the supply of goods or services or both by the client located abroad to the customers of client. Such backend services may include support services, during pre-delivery, delivery and post-delivery of supply (such as order placement and delivery and logistical support, obtaining relevant Government clearances, transportation of goods, post-sales support and other services, etc.). The supplier of such services will fall under the ambit of intermediary under section 2(13) of the IGST Act as these services are merely for arranging or facilitating the supply of goods or services or both between two or more persons. In other words, a supplier “A” supplying backend services as mentioned in this scenario to the customer “C” of his client “B” would be intermediary in terms of section 2(13) of the IGST Act.
- ◆ Scenario -III: The supplier of ITeS services supplies backend services, on his own account along with arranging or facilitating the supply of various support services during pre-delivery, delivery and post-delivery of supply for and on behalf of the client located abroad. In this case, the supplier is supplying two set of services, namely ITeS services and various support services to his client or to the customer of the client. Whether the supplier of such services would fall under the ambit of intermediary under section 2(13) of the IGST Act will depend on the facts and circumstances of each case. In other words, whether a supplier “A” supplying services as well as support services listed in Scenario -II above to his client “B” and / or to the customer “C” of his client is intermediary or not in terms of section 2(13) of the IGST Act would have to be determined in facts and circumstances of each case and would be determined keeping in view which set of services is the principal / main supply.

-Circular No. 107/2019-dated 18th July, 2019

2.12 General Updates: Proposed Amendment to CGST Act, 2017

Section 10

The council has proposed to make Amendment to introduce the benefit of composition scheme to service providers whose turnover in the preceding financial year does not exceed Rs.50 Lakh.

Section 22

The council has proposed to amend the threshold limit for registration under GST act to increase the limit for taxpayers engaged in **exclusive supply of goods**, from Rs.20 Lakh to Rs.40 Lakh.

Section 25

Aadhar authentication is being made mandatory for specified class of new taxpayers and the manner in which certain class of registered taxpayers are required to undergo Aadhar authentication is being prescribed.

Section 39

Composition taxpayers shall now be allowed to file annual return while payment of taxes shall require to be made quarterly.

Section 49

Taxpayer will now be able to transfer amount from one head to another head in the electronic cash ledger. Such transfer shall be deemed to be a refund from the electronic cash ledger under this Act. Any amount that has been transferred to the electronic cash ledger under this Act, the same shall be deemed to be deposited in the said ledger.

Section 50

Taxpayers shall now be required to pay interest on late payment of taxes only on the net cash tax liability (Gross liability less ITC), except where the tax is payable as a result of proceedings under section 73 or 74.

Section 52:

Commissioner or Joint Secretary posted in the Board has been empowered to extend the date of monthly and annual statement of TCS.

Section 53A:

New section has been introduced to provide for consequential transfer of amounts between centre and states in Electronic cash ledger under section 49.

Section 171

National Anti-profiteering Authority to impose penalty equivalent to 10% of the profiteered amount. However, no penalty shall be levied if the profiteered amount is deposited within thirty days of the date of passing of the order by the Authority.





3. Secretarial Compliances

Companies Act, 2013

3.1 Nidhi (Amendment) Rules, 2019

Following are the key amendments as per Nidhi (Amendment) Rules, 2019:

- ◆ Definition of Nidhi Company has been provided in the Rules as a company which has been incorporated as a Nidhi with the object of cultivating the habit of thrift and saving amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit, and which complies with the rules made by the central Government for regulation of such class of companies.
- ◆ A public company is required to make application in Form NDH-4 to be declared itself as a Nidhi Company and Central Government on being satisfied that the Company meets the requirement of Nidhi Rules, 2014, will notify the Company as a Nidhi Company in the official Gazette.
- ◆ Every company functioning on the lines of Nidhi or Mutual Benefit Society but has either not applied for or has applied for and is awaiting notification to be a Nidhi or Mutual Benefit Society under Section 620A(1) of the Companies Act, 1956 and every Nidhi incorporated under the Companies Act, 2013 before the commencement of Nidhi (Amendment) Rules, 2019, shall also get itself declared as such by filing Form NDH-4 within a period of one year from the date of its incorporation or within a period of six months from the date of commencement of Nidhi (Amendment) Rules, 2019, whichever is later.
- ◆ Every company which has been declared as a Nidhi or Mutual Benefit Society Under Section 620A(1) of the Companies Act, 1956 shall also be required to file Form NDH-4 within 6 months from the commencement of Nidhi (Amendment) Rules, 2019 without any fees.

Nidhi (Amendment) Rules, 2019 shall come into force with effect from August 15, 2019.

3.2 Extension of due date for filing of e-Form BEN-2

Ministry of Corporate Affairs vide its Circular dated July 29, 2019 has extended the last date for filing of e-Form BEN-2 without payment of additional fees till September 30, 2019.



3.3 Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2019

Ministry of Corporate Affairs vide its Notification dated July 25, 2019 has introduced the Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2019. In terms of the amended Rules read with the Companies (Registration Offices and Fees) Rules, 2019, every person who holds a Director Identification Number (DIN) as on 31st March of a Financial Year shall submit e-Form DIR-3 KYC for the said financial year on or before 30th September of immediate next financial year in the following manner:

Case	Form to be filed	Applicable Fees
Person who had submitted e-form DIR-3 KYC in relation to any previous financial year and there is no change in the particulars filed earlier	DIR-3KYC WEB to be filed in the subsequent financial year	Up to 30 th September: Nil After 30 th September: Rs. 5,000
Person who had submitted e-form DIR-3 KYC in relation to any previous financial year and there is change in the particulars filed earlier	e-Form DIR-3KYC is required to be filed in the subsequent financial year	Up to 30 th September: Nil After 30 th September: Rs. 5,000
Person who has been allotted DIN after March 31, 2018	e-Form DIR-3KYC is required to be filed	Up to 30 th September: Nil After 30 th September: Rs. 5,000
Person who has not filed e-Form DIR-3 KYC in the previous financial year	e-Form DIR-3KYC is required to be filed	Rs. 5,000

4. Securities and Exchange Board of India (SEBI)

4.1 Revised format for compliance report on Corporate Governance to be submitted to stock exchange(s) by listed entities

SEBI vide its Circular No. SEBI/HO/CFD/CMD1/CIR/P/2019/78 dated July 16, 2019 has specified the revised format for compliance report on Corporate Governance which will come into force with effect from the quarter ending September 30, 2019.

4.2 Disclosure of divergence in the asset classification and provisioning by banks

In line with the revised RBI requirements, SEBI vide its Circular No. CIR/CFD/CMD1/79/2019 dated July 17, 2019 has specified that all banks which have listed specified securities shall disclose to the stock exchanges divergences in the asset classification and provisioning, if either or both of the following conditions are satisfied:

- the additional provisioning for NPAs assessed by RBI exceeds 10 per cent of the reported profit before provisions and contingencies for the reference period, and
- the additional Gross NPAs identified by RBI exceed 15 per cent of the published incremental Gross NPAs for the reference period

4.3 Revised format for limited review/ audit report of the listed entities and those entities whose accounts are to be consolidated with the listed entity

SEBI vide its Circular No. CIR/CFD/CMD1/80/2019 dated July 19, 2019 has specified the revised format for limited review/ audit report of the listed entities and those entities whose accounts are required to be consolidated with the listed entity.

The provisions of this Circular shall be applicable for limited review report/ audit report required to be attached to the financial results for the quarter ending September 30, 2019 and after.

4.4 Standardized reporting of violations related to Code of Conduct under SEBI (Prohibition of Insider Trading) Regulations, 2015

SEBI has prescribed a standardized format for reporting of violation of Code of Conduct by designated persons and immediate relatives of such persons under SEBI (Prohibition of Insider Trading) Regulations, 2015.

Listed companies, intermediaries and fiduciaries shall also maintain a database of the violation of code of conduct by designated persons that would entail initiation of appropriate action against them

5. Articles

Valuation of Shares and Securities in case of fresh issuance and transfer of shares under Income Tax Act, 1961

5.1 Valuation of shares and securities u/s 56(2)(viib) (Applicable to company issuing shares and securities)

As per Section 56(2)(viib), where a private company receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value (FMV) of the shares shall be chargeable to income tax under income from other sources.

FMV as on the valuation date (VD) for **issuance of shares** shall be the value—

- as may be determined in accordance with Rule 11UA(2) of Income Tax Rules, 1962; or
- or as may be substantiated by the company to the satisfaction of the Assessing Officer, whichever is higher.

5.2 Valuation of shares and securities u/s 56(2)(x)(Applicable to recipient of shares and securities)

As per section 56(2)(x)(c) where a person receives any property other than immovable property without consideration or for a consideration less than fair market value of such property by an amount exceeding Rs. 50,000, the difference between fair market value of property and consideration paid, shall be taxable in hands of recipient as income from other source.

We have summarized requirement of valuation, prescribed method for valuation and authorized valuer in different cases of the transactions relating to shares and securities covered under aforementioned sections:

Valuation of quoted shares and securities			
Type of security	Quoted Shares	Quoted Shares	Quoted Shares
	Carried through Recognized Stock Exchange	Carried out other than through Recognized Stock Exchange	Carried out other than through Recognized Stock Exchange
Transaction	NA	If valuation date is trading day	If valuation date is non-trading day
Applicable Rule	Rule 11UA(1)(c)(a)(i)	Rule 11UA(1)(c)(a)(ii)(a)	Rule 11UA(1)(c)(a)(ii)(b)
Fair Market Value	Transaction Value as recorded in stock exchange	Lowest price quoted on any recognised stock exchange on such valuation date	Lowest price quoted on any recognised stock exchange on trading day immediately preceding from valuation date
Prescribed Valuer	Not Prescribed	Not Prescribed	Not Prescribed
Valuation of unquoted shares and securities			
Type of security	Unquoted equity shares	Unquoted equity shares	Unquoted securities other than equity shares
Transaction	In case of fresh issuance of shares	Any person receiving the share or security	Applicable for all cases
Applicable section and rule	Section 56 (2) (viib) read with Rule 11UA(2)	Section 56 (2) (x) read with Rule 11UA(1)(c)(b)	Section 56 (2) (viib) and (x) read with rule 11UA(1)(c)(c)
Method prescribed for computation of FMV	Discounted Cash Flow method (DCF) or book value method ¹ at the option of assessee	Book Value method ²	Not prescribed
Valuer	Merchant Banker for DCF. For book value not prescribed	Not prescribed	Merchant Banker or chartered accountant

1. Book Value Method prescribed under rule 11UA(2)(a) of Income Tax Rules, 1962 (Applicable to company issuing share or securities)

Fair market value of unquoted equity shares = $(A-L) \times (PV)/(PE)$

where,

A = Book value of assets after certain adjustments as defined in rule

L = Book value of liabilities after certain adjustments as defined in rule

PV = Paid up value of such equity share

PE = Total amount of paid up equity share capital as shown in the balance-sheet

As per **Rule 11U(b)(i)**, for the purpose of determining FMV using book value method,

- ◆ Valuation date shall be date on which property or consideration as the case may be is received by the assessee.
- ◆ Audited balance-sheet as drawn up on the valuation date will be considered. If balance-sheet as on valuation date is not drawn up, then balance-sheet drawn up as on a date immediately preceding the valuation date which has been approved and adopted in the annual general meeting of the shareholders of the company may be considered.

2. Book Value Method prescribed under Rule 11UA(1)(c)(b) of Income Tax Rules, 1962 (Applicable to recipient of shares and securities)

FMV = $(A+B+C+D-L) \times (PV)/(PE)$

where,

A = Book value of Assets (other than jewellery, artistic work, shares, securities, immovable property)

B = Fair value of jewellery and artistic work based on valuation report from registered valuer

C = FMV of shares and securities as per Rule 11UA

D = Stamp value of Immovable Property

L = Book value of liabilities after certain adjustments as defined in rule

PV = Paid up value of such equity share

PE = Total amount of paid up equity share capital as shown in the balance-sheet

As per Rule 11U(b)(ii), for the purpose of determining FMV using book value method,

- ◆ For Indian company, Audited Balance Sheet as drawn up **on the valuation date** shall be required.
- ◆ For other companies, Audited Balance Sheet as drawn up on the valuation date which has been audited by the auditor of the company appointed under the laws in force of the country in which the company is registered or incorporated shall be required.
- ◆ Valuation date shall be date on which property or consideration as the case may be is received by the assessee.

The reader should note that in case of transfer of unquoted shares by a person at value lesser than fair market value as defined in above rule 11UA (1)(c)(b) and 11UA (1)(c)(c), the fair market value as defined in these rules shall be considered as sale consideration for such transaction. Refer Section 50CA of Income tax act read with Rule 11UAA.

About Us

Proxcel is a specialized corporate advisory firm with a vision to deliver professional excellence in the field of corporate financial and management consultancy. We offer range of integrated professional services to help entrepreneurs set up businesses and constantly grow by leveraging all opportunities smoothly through advising them on the right financial and legal strategies for expansion.

Our Services include business set up services, business valuations for merger & acquisitions and regulatory compliance, financial reporting, corporate law advisory, direct and indirect tax advisory, internal and external audit etc.

Our Expert Team while sharing a common vision, belong to diverse technical, business and legal backgrounds and comprise of Chartered accountants, Chartered financial Analysts (US), Company Secretaries, Cost Accountants, Lawyers and Engineers. We deploy specialized and multidisciplinary teams to serve assignments requiring specific skills. This enables us to work proactively and closely with clients and respond effectively to their needs in a highly focused manner, which in today's fast changing business environment is quite crucial to a client's success.

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