

ProXcel Advisory Services Private Limited

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TAX NEWSLETTER

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Summary of Regulatory updates for Oct'2020



PROFICIENTLY ADVISING
GLOBAL BUSINESSES
FOR TRADE IN INDIA

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1. Direct Tax Updates

Notifications, Circulars & Press Releases:-

1.1 Introduction of administrative requirements in consequence of Section 115BAA, 115BAB

CBDT has introduced some administrative requirement in consequence of Section 115BAA, 115BAB & 115BA which includes that companies opting for lower tax rates must provide additional information in Form No 3CD and Form No. 3CEB and individuals and Hindu undivided families and cooperative societies must provide additional information in Form No. 10-IE or Form No. 10-IF.

1.2 Computation of arm's length price:

Central Government notifies that if the difference between arm's length price and the price at which international / specified domestic transaction has actually been undertaken does not exceed one percent in respect of **wholesale trading** and three percent in other cases then the price at which international / specified transaction has actually been undertaken shall be deemed to be the arm's length price for AY 2020-21.

In this context, CBDT has defined wholesale trading as an international transaction or specified domestic transaction of trading in goods which fulfills following conditions:-

- Purchase cost of finished goods is 80% or more of the total cost pertaining to such trading activities; and
- Average monthly closing inventory of such goods is 10% or less of sales pertaining to such trading activities.

—Notification No 83/2020, dated 19th October, 2020

1.3 CBDT has amended Rule 67 of the Income Tax Rules ,1962 to allow Private Provident Fund & Superannuation funds to invest in lower A-rated instruments

Income tax Rule 67 prescribes an investment pattern for private provident funds & superannuation fund which is to be followed mandatorily for availing tax exemption.

As per the notification issued, now the private provident fund and superannuation funds can invest upto 55% of their funds in Central and state government securities. Now upto 40% of funds can be invested in debt securities with maturity of not less than three years issued by companies, banks and public financial institutions, term deposits of scheduled commercial banks and rupee bonds having an outstanding maturity of at least three years issued by multilateral institutions such as the International Bank for Reconstruction and Development, International Finance Corporation and the Asian Development Bank. Investments in money market mutual funds has been capped at 5% of the total corpus.

—Notification No 84/2020, dated 22nd October, 2020

1.4 CBDT has extended the date for making payment without additional amount under the Vivad-se-Vishwas Scheme from 31st December 2020 to 31st March 2021:

CBDT empowers the Central Government to notify certain dates relating to filing of declaration and making of the payment. CBDT has amended following dates under the Vivad-se-Vishwas Scheme:

- 31st December 2020: The declaration shall be filed to the designated authority.

- 31st March 2021: The payment date of the amount of the disputed tax.
- 1st April 2021: The payment date of the amount of the disputed tax with 10% additional amount.

_Notification No. 85/2020 dated 27th October, 2020

1.5 CBDT has amended the provisions of Equalization Levy Rules, 2016:

Equalization Levy Rules lay down the procedural framework for implementation, including prescribing forms for filing of annual return and appeals. Government has amended the equalization Levy Rules, 2016 as equalization levy (Amendment) Rules, 2020 to incorporate the amended provisions of equalization levy on non-resident e-commerce operators. The Board has also amended forms for filing annual statements and appeal before CIT (Appeals) and ITAT. Now all the rules of Equalization levy will be applicable to E-commerce operator also.

_Notification No. 87/2020 dated 28th October, 2020

1.6 CBDT announced further extension of deadlines for filing of Income Tax Return (ITR) and furnishing of Tax Audit Reports and Transfer Pricing (TP) Reports:

S. No.	Particulars	Assessment Year	Actual Due date	Revised Due date
1	ITR u/s 139 (Revised or belated return)	2019-20	31 st March 2020	30 th November 2020
2	ITR u/s 139 (In cases of assessee to whom TP Audit, Company audit and tax audit is applicable)	2020-21	31 st October 2020	31 st January 2021
3	ITR u/s 139 (Other than S.No. 2 above)	2020-21	31 st July 2020	31 st December 2020
4	Self-assessment (SA) Tax liability. No interest chargeable u/s 234A, If SA tax liability is up to INR 1 Lakh	2020-21	On or before 31 st July 2020/ 31 st October 2020	31 st January 2021 (In case of assessee not requiring any audit, due date is 31 st December 2020)
5	Filing of tax audit report u/s 44AB and TP report u/s 92E of the IT Act	2020-21	30 th September 2020 and 31 st October'2020	31 st December 2020
	Intimation for master file FORM 3CEAB	2020-21	31 st October 2020	31 st December 2020
	Safe Harbour Rule FORM 3CEFA	2020-21	30 th November 2020	31 st January 2021

_Notification No. 88/2020 dated 29th October, 2020

Income Tax Case laws

- **TTK Healthcare TPA (P.) Ltd. vs. DCIT, (Bangalore- HC)**

Third Party Administrator (TPA), who was responsible for making payment to hospitals for rendering services on medical/health insurance policies issued by insurance companies was liable to deduct tax at source under section 194J from payments made to hospitals.

- **Valencia Nutrition Ltd. vs. DCIT (Bangalore - Tribunal)**

Assessing Officer should scrutinize valuation report prepared under DCF method and if necessary, he can carry out fresh valuation either by himself or by calling a final determination from an independent valuer to confront assessee; he cannot change method of valuation and he has to follow DCF method only.

- **CIT , Ward-3, Terunelveli vs. Padmavathi (Madras - HC)**

Where in limited scrutiny with regard to purchase of property by assessee, Assessing Officer after hearing assessee and verifying source of funds made addition but Commissioner revised said order on the ground that guideline value of said property at relevant time was higher than sale consideration reflected in registered document, since guideline value is only an indicator and same is fixed by State Government for purposes of calculating stamp duty on a deal of conveyance, invoking of section 263 not sustainable.

- **Hyundai Motor (I.) Ltd. vs. Secretary Income Tax Department (Madras-HC)**

Where writ petition filed by assessee against order of TPO passed in consequence of directions given by DRP was dismissed as premature on ground that there is an appeal remedy available to assessee before Tribunal, said order could not be interfered with and assessee is free to raise all objections before Assessing Officer and then before Tribunal in manner provided under law.

- **BGSE Financials Ltd. vs. DCIT (Bangalore - Tribunal)**

Membership in stock exchange by assessee creates intangible right in its favor, hence depreciation is to be granted towards admission fees and processing charges paid for said membership.

- **Rajendra Kumar Jain vs. ITO- Non-Corporate Ward (Madras – HC)**

Where assessee claimed deduction under section 57(iii) on interest paid on loans taken by it from its relatives, since assessee had specifically stated that loans were availed through proper banking channels and interest amounts were paid to lenders, who had disclosed same in their respective return of income and tax was remitted by them on interest income, revenue was unjustified in disallowing assessee's claim for deduction under section 57(iii) in respect of interest paid and, thus, matter was to be remanded

- **Amadeus IT Group SA vs. ACIT, Circle-1(1), International Taxation (Delhi - Tribunal)**

Where payments were received by appellant from British Airways in relation to alleged use of Altea Reservation System (ARS), keeping in view fact that computer terminals are at Airport terminals and since amounts had been received for utilization of ARS which was predominantly a reservation system, same may be treated as income from royalty. However, in the absence of corresponding change in the

DTAA with regard to interpretation of royalty in the domestic law, the provisions of DTAA would have primacy over the domestic provisions and thus, royalty wouldn't be taxable in India

- **Augustus Capital (P.) Ltd. vs. DCIT , Circle 1(1), (International Taxation) (Delhi - Tribunal)**

In view of amended provisions of section 9(1)(i) of the Income-tax Act, 1961, read with Explanation 7, transaction involving sale of shares of foreign company, which held investment in India would not be taxable.

- **Giesecke & Devrient [India] Pvt. Ltd. vs. Ad CIT, (Delhi - Tribunal)**

DDT, a levy on dividend distributed by payer company, being an additional tax, is covered by definition of 'tax' as defined under section 2(43) which is covered by charging section 4 and charging section itself is subject to provisions of Act which would include section 90 and liability to DDT under Act which falls on company may not be relevant when considering applicability of rates of dividend tax set out in tax treaties; generally accepted principles relating to interpretation of treaties in light of object of eliminating double taxation, does not bar application of tax treaties to DDT and, thus, tax rates specified in DTAA in respect of dividend must prevail over DDT.

- **Turner Broadcasting System Asia Pacific Inc. vs. DDIT International taxation (Delhi - Tribunal)**

Advertisement and distribution revenue received by assessee a US based broadcasting company for granting distribution rights of products (Channels, interactive entertainment services and entertainment mobile telecommunications) to an Indian Company, whereby copyright in content always remained with assessee and at no point of time; same was transferred either to Indian company or the sub-distributor and Indian company acted as an exclusive distributor of such rights to cable operators and other permitted systems on principal-to-principal basis and broadcasting was sole responsibility of assessee and even content on TV Channel could not be changed by any party except for assessee, would not be taxable as 'royalty', albeit it was a business income of assessee

- **Growing Opportunity Finance (India) (P.) Ltd. vs. PCIT (Madras-HC)**

Where issue relating to section 90 of Income-tax Act read with Double Taxation Avoidance Agreement between India and USA had not been raised before Assessing Officer or before Commissioner (Appeals) or before Tribunal, but for first time assessee had raised issue before this Court and said issue had also been raised in substantial questions of law, occasion to deal with said issue in this tax case Appeal did not arise.

- **DCIT (International Taxation) vs. Autodesk Asia (P.) Ltd. (Karnataka – HC)**

Payment received by assessee, a Singapore based company, for sale of software license to customers in India would be taxable as royalty in hands of assessee at rate of 10 per cent as per substituted clause 2 of article 12 of India-Singapore DTAA.

2. Indirect Tax Updates

Notifications, Circulars & Press Releases:-

2.1 Special procedure for taxpayers for issuance of e-invoices in the period 01.10.2020-31.10.2020:

Government notifies that the registered persons are required to prepare the tax invoice within 30 days, by including such particulars contained in FORM GST INV-01 (Generation of Invoice Reference Number), after obtaining an Invoice Reference Number by uploading information contained therein on the Common Goods and Service Tax Electronic Portal and if they fail to do so within 30 days then the invoice will become invalid.

*Notification No 73/2020 (Central tax) dated
1st October, 2020*

2.2 Extension of the due date for filing of GSTR-1 for small taxpayers who files GSTR-1 Quarterly:

Registered person whose aggregate turnover in preceding financial year or current year up to 1.5 crores, will file GSTR-1 Quarterly as below:

S. No.	Quarter for which details in FORM GSTR-1 are furnished	Time period for furnishing details in FORM GSTR-1
1	October, 2020 to December, 2020	13th January, 2021
2	January, 2021 to March, 2021	13th April, 2021

*Notification No 74/2020 (Central tax) dated
15th October, 2020*

2.3 Extension of the due date for filing of GSTR-1 who files GSTR-1 monthly:

Registered person whose aggregate turnover in preceding financial year or current year exceeds 1.5 crores, will file GSTR-1 monthly as below:

S. No.	Month for which details in FORM GSTR-1 are furnished	Time period for furnishing details in FORM GSTR-1
1	Oct' 2020	11 th Nov
2	Nov' 2020	11 th Dec
3	Dec' 2020	11 th Jan
4	Jan' 2021	11 th Feb
5	Feb' 2021	11 th Mar
6	Mar' 2021	11 th Apr

*Notification No 75/2020 (Central tax) dated
15th October, 2020*

2.4 Return in FORM GSTR-3B of CGST Rules, 2017 along with due dates of furnishing the said form for October, 2020 to March, 2021:

- GSTR 3B to be filed within 20th of succeeding month for the period October, 2020 to March, 2021.
- Registered person whose aggregate turnover is up to 5 crore in the preceding financial year and have principal place of business in Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep can file FORM GSTR-3B for the months of October, 2020 to March, 2021, on or before the 22nd day of succeeding month.
- Taxpayers having an aggregate turnover of up to 5 crore in the preceding financial year, whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi, the return in FORM GSTR -3B of the said rules for the months of October, 2020 to March, 2021 shall be furnished on or before the 24th day of the month succeeding such month.
- Every registered person shall discharge his liability towards tax either by debiting the electronic cash ledger or electronic credit ledger on or before furnishing Form GSTR 3B.

Notification No 76/2020 (Central tax) dated 15th October, 2020

2.5 Seeks to make filing of annual return optional for small taxpayers:

Small taxpayer whose aggregate turnover in a financial year does not exceed 2 crores are not required (option given_ may or may not) to file Annual Return for the financial year 2019-20 if they have not filed the Annual return before the due date.

Notification No 77/2020 (Central tax) dated 15th October, 2020

2.6 Seeks to notify the number of HSN digits required on tax invoice:

CBIC has notified the number of HSN code to be mentioned in a tax invoice w.e.f. 1st Apr, 2021 as below-

Aggregate Turnover in preceding Financial Year	No of digits of HSN Code
Up to rupees five crores	4
More than rupees five crores	6

Provided that a registered person having aggregate turnover up to 5 crores in previous financial year may not mention the number of digits of HSN Code, in respect of supplies made to unregistered persons.

Notification No 78/2020 (Central tax) and Notification No 06/2020 (Integrated tax) dated 15th October, 2020

2.7 Amendment in the CGST Rules 2017:

- **Rule 46:** HSN Code: The amendment gave power to government to notify certain supply and the number of digits of HSN code that need to be mentioned in the invoice.
- **Rule 67A:** Filing of Return through SMS: Now GSTR-1, GSTR-3B and CMP-08 can be filed through Short messaging service (SMS) facility.
- **Rule 80:** Annual Audit and Filing of form GSTR-9C: For F.Y. 2018-19 and 2019-20, account need to be audited under section 35(5) and GSTR 9C need to be filed only if the turnover exceeds 5 crore during a financial year. Normally the threshold limit for audit and filing of GSTR-9C is Rs.2 crores.
- **Rule 138 E:** Generating Part A of E Way Bill: As per the rule if any person failed to file CMP-08 (Quarterly filed by Composite Tax payer within 18th of succeeding month of the quarter) for a consecutive 2 months, such person cannot fill the Part-A of E-way bill.

Provided also that the said restriction shall not apply during the period from the 20th day of March, 2020 till the 15th day of October, 2020 in case where the return in FORM GSTR-3B or the statement of outward supplies in FORM GSTR-1 or the statement in FORM GST CMP-08, as the case may be, has not been furnished for the period February, 2020 to August, 2020.

The above restriction to be applied after the period 15th October 2020.

*Notification No 79/2020 (Central tax) dated
15th October, 2020*

2.8 Extension of Time Limits for filing GSTR-9 & 9C for FY 2018-19

Due date for filing Form GSTR 9 & 9C for the financial year 2018-19 has been extended till 31st December, 2020

*Notification No. 80/2020 (Central Tax) dated
28th October, 2020*

2.9 Exempting satellite launch services provided by ISRO, Antrix Co. Ltd and NSIL from GST

CBIC on recommendations of GST Council hereby notifies that Satellite launch services supplied by Indian Space Research Organization, Antrix Corporation Limited or New Space India Limited are exempted from GST.

*Notification No 05/2020-Central Tax (Rate)
and Integrated Tax (Rate) dated 16th October,
2020*

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3 Companies Act Updates

3.1 Exemption from compliance of having a Resident Director for FY 20-21

Long awaited relaxation by Ministry of Corporate Affairs vide its Circular No. 36 dated 20th October, 2020 has provided relaxation that non- compliance of the minimum residency in India for a period of at least 182 days, by at least one director in every company in terms of section- 149 of the Companies Act, 2013 shall not be treated as non- compliance for the Financial year 2020-21.

Still the companies following the calendar year are waiting for such relaxation

Source: - http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.36_20102020.pdf

3.2 Relaxation from passing Special Resolution for Issue of Securities to Qualified Institutional Buyers

MCA vide its circular dated October 16, 2020 has relaxed the requirement of passing special resolution where securities are being offered to Qualified Institutional Buyers (QIB). Accordingly, if securities are offered to QIB's it shall be sufficient if Company passes a special resolution only once in a year for all the allotment to such buyers during the year.

Source- http://www.mca.gov.in/Ministry/pdf/SecuritiesAmendmentRules_16102020.pdf

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4 SEBI Updates

4.1 Standardization of timeline for listing of securities issued on a Private Placement Basis under:-

SEBI vide its notification SEBI/HO/DDHS/CIR/P/2020/198 dated October 05, 2020 has decided the timeline within which the securities issued on Private Placement basis under SEBI,ILDS,NCPRS, SEBI SDI and SEBI ILDM regulations needs to be listed after the completion of allotment. The Following shall be the timeline:-

S. No.	Details of Activities	Due Date
1.	Closure of issue	T day
2.	Receipt of funds	To be Completed by T+2 Trading day
3.	Allotment of Securities	To be Completed by T+2 Trading day
4.	Issuer to make Listing application to stock Exchange(s)	To be completed by T+4 Trading day
5.	Listing permission from Stock Exchange(s)	To be completed by T+4 Trading day

Depository shall activate the ISINs of debt securities issued on Private Placement basis only after the stock exchange have accorded approval for the listing of such securities.

In case of delay of listing of securities issued on private placement basis beyond the timelines, the issuer shall -

- Pay a penal interest of 1% per annum over the coupon rate for the period of delay to the investor(i.e. from date of allotment to the date of listing)
- Be permitted to utilize the issue proceeds of its subsequent two privately placed issuance of securities only after receiving final listing approval from stock exchanges.

Source:-https://www.sebi.gov.in/legal/circulars/oct-2020/standardization-of-timeline-for-listing-of-securities-issued-on-a-private-placement-basis_47790.html

4.2 Contribution by the issuers of listed or proposed to be listed debt securities towards creation of “Recovery Expense Fund”

SEBI vide its notification SEBI/HO/MIRSD/CRADT/CIR/P/2020/207 dated October 22, 2020 to enable the Debenture Trustee(s) to take prompt action for enforcement of securities in case of “default” in listed debt securities, “Recovery expense Fund” shall be created which shall be used in manner as decided in the meeting of the holders of Debt securities.

Manner of creation and operation of REF:-

- The issuer proposing to list debt securities shall deposit an amount equal to 0.01% of the issue size subject to the maximum of Rs.25 lakh per issue towards REF with the Designated stock exchange

- The Designated Stock Exchange shall invest cash in Government securities or treasury bills or Fixed Deposit with a Schedule commercial Bank or Gilt Fund or debt mutual fund or debt Exchange trade funds and the income/interest earned thereof shall be added to REF of the issuer
- The issuer shall ensure the Bank Guarantee remains valid for a period of 6 months post the maturity date of the listed debt securities.
- In case of Change in the status of issuer of the listed debt securities on account of corporate restructuring by way of scheme of Amalgamation, the designated stock exchange shall make sure that the amount maintained in the REF is available before issuing the observation letter.

Manner of utilization of Recovery Expense fund:-

In case of default, the debenture trustee shall obtain the consent of holders of debt securities for enforcement of securities and inform the same to the designated stock exchange who shall release the amount lying in the REF to the Debenture trustee within 5 working days of receipt of intimation.

Refund of recovery expense fund to the issuer:-

The Balance in the Recovery Expense Fund shall be refunded to the issuer on repayment to the holders of Debt securities on their maturity or at the time of exercise of call or put option for which a No objection certificate shall be issued by the Debenture Trustee to the designated stock exchange.

Source:-<https://www.sebi.gov.in/legal/circulars/oct-2020/contribution-by-issuers-of-listed-or-proposed-to-be-listed-debt-securities-towards-creation-of-recovery-expense-fund-47939.html>

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6 Monthly Compliance Calendar November'2020

<p>November 7, 2020</p> <p>Depositing of TDS/ TCS For the month of October, 2020</p>	<p>November 10, 2020</p> <p>Due date of filing GSTR-7 and GSTR-8</p>	<p>November 11, 2020</p> <p>Due date of filing of GSTR-1 for October month by the taxpayers having an aggregate turnover of more than 1.50 crores in preceding financial year or current year</p>
<p>November 13, 2020</p> <p>Due Date for filing GSTR-6 by Input Service Distributors for October, 2020</p>	<p>November 10, 2020</p> <p>Due Date for payment of Professional tax for the month Of October, 2020</p>	<p>November 15, 2020</p> <p>Due Date for Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ended September 30, 2020</p>
<p>November 15, 2020</p> <p>Due Date for payment of Provident fund contribution And ESI contribution for the month of October, 2020</p>	<p>November 20, 2020</p> <p>Due date for filing of GSTR-3B by Tax-payers having Annual Turnover of more than 5 Crores for October, 2020</p>	<p>November 30, 2020</p> <p>Due date for filing of Belated Income Tax Return for the Assessment Year 19-20 u/s 139 (4) & Due date for filing of revised return for the Assessment Year 19-20 u/s 139 (5)</p>

About Us

Proxcel Advisory Services Private Limited is a specialized financial, tax and management consulting company based in India. Proxcel offers 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 in India and outside India, business valuations for merger & acquisitions and in line with global regulatory compliance, financial re- porting, corporate law advisory, international taxation, 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.

Editorial Board: CA Ajay Jain, CA Naveen Goyal, Manuj Singhal CFA, CA Chandan Rajgadhia, CS Sakshi Goyal, Apoorv Singhal, CA Nikita Aggarwal, Vipul Kumar Gupta

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Contact Details

Proxcel Advisory Services Private Limited

26, GF, JMD Megapolis,
Sector-48, Sohna Road,
Gurgaon-122018

Suite No 307 SG Mall DC
Chowk Rohini Sector -09 New
Delhi-110085

Kocreate, 3rd Floor, Tapasya
Corp Heights, Tower A,
Noida-Greater Noida Expy,
Sector 126, Noida, Uttar
Pradesh 201303

Phone: 0124-421-9460

Web: www.proxcel.in

E-mail: contact@proxcel.in

Naveen Goyal

M: +9911095297

E: naveen.goyal@proxcel.in

Ajay Jain

M: +9899987124

E: ajay.jain@proxcel.in



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AND DOMESTIC START-UPS IN INDIA