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NEWSLETTER **NOVEMBER 2020**



Covering Updates for the Month of October' 20
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INCOME TAX UPDATES

i. Equalisation levy

With tremendous increase in digital economy, it has been very efficient and effortless for a resident of one country to earn income from other countries by providing service and supplying goods through digital portal and website platform. Growth in cross border transactions are majorly attributable to technological developments due to which without physical movement of person, service or goods can be supplied to different countries. This significant expansion in online business has also turned into a challenge for each country to earn its share of revenue in form of tax on the basis of residence or source. The digital economy have considerably defeated the old concept of permanent establishment ('PE'), on the basis of which country obtained right to tax a particular cross-border transaction. In the absence of physical presence in new digital economy, the concept of physical PE called for a major change to protect tax share of countries being part of a transaction.

The Organization for Economic Cooperation and Development (OECD) has recommended, in Base Erosion and Profit Shifting (BEPS) project under Action Plan 1, several options to tackle the direct tax challenges which include modifying the existing PE rule to include that where an enterprise engaged in fully de-materialized digital activities would constitute a PE, if it maintained a significant digital presence in another country's economy. It further recommended a virtual fixed place of business PE in the concept of PE i.e. creation of a PE when the enterprise maintains a website on a server of another enterprise located in a country and carries on business through that website. It also recommended to impose a final withholding tax on certain payments for digital goods or services provided by a foreign e-commerce provider or imposition of an equalisation levy on consideration for certain digital transactions received by a non-resident from a resident or from a non-resident having permanent establishment in other country.

To find a solution to above issue, the Finance Act, 2016 (by insertion of sections 163 to 180) introduced 'Equalisation Levy' which is to be charged on consideration paid or payable by a resident in India (having business or profession) or by a non-resident having PE situated in India to a non-resident on specified services. The specified services are explained in subsequent paragraphs. Thereafter, the Finance Act, 2020 have levied the equalisation levy on consideration received or receivable by a non-resident e-commerce operator on account of e-commerce supply or services made or provided or facilitated in India as explained in this article.

A. Equalisation Levy on specified services:

- **The Finance Act, 2016 have levied equalisation levy of 6% on the amount paid or payable by:**
 - a. A person resident in India carrying on business or profession, or
 - b. A non-resident having PE in India to a non-resident in India on account of specified services which means:
 - i. Online advertisement, or
 - ii. Digital advertising space, or
 - iii. Any other facility or services for the purpose of online advertisement.
- **However, the equalisation levy is not chargeable in below mentioned circumstances:**
 1. The non-resident providing specified service has a PE in India and such services are connected with the said PE, or
 2. The aggregate of amount paid or payable by person specified at (a) & (b) above to each such non-resident service provider does not exceed ₹ 1 lakh in a financial year, or
 3. The amount paid or payable by person specified at (a) & (b) above is not for the purpose of business or profession.
- **Accordingly, it is liability of person specified in (a) & (b) above to deduct equalisation levy of 6% on amount paid or payable to non-resident service provider subject to above conditions.**

Further, it is to be noted that, even in case the person specified in (a) & (b) above have not deducted equalisation levy on such amount paid or payable, they are liable to pay the equalisation levy amount to the account of Central Government. In such case, there is absence of any clarity on grossing up of levy amount.

• Let us understand the above provision by an example:

Suppose Mr. A, being resident in India, have to pay 2,50,000 during financial year 2020-21 to Google INC for running advertisement online for marketing of his business of trading in home decor. Assuming, Google INC does not have a PE in India, in such case Mr. A will have to deduct 15,000 (being 6% of 2,50,000) from the payment to be made to Google INC and pay the deducted amount of 15,000 to the account of the Central Government. In case Mr. A paid the whole amount of 2,50,000 to Google INC, then also he shall be liable to pay the equalisation levy to the Government over and above 2,50,000.

• Collection & Recovery:

The amount of equalisation levy so deducted by the person specified at (a) & (b) above has to be paid to the credit of the Government by 7th day of the month following the month in which the equalisation levy is deducted. As referred in above paragraph, even if equalisation levy is not deducted then also such person is liable to pay the levy to the credit of Central Government.

• Interest:

In case of failure to pay the levy to the account of the Central Government, the person is liable to pay simple interest at 1% of the outstanding levy for every month or part thereof.

• Furnishing the statement:

The person specified in (a) & (b) above, has to furnish equalisation levy statement in Form No. 1 on or before 30th June after the end of the financial year in which the equalisation levy is liable to be deducted. The said statement can be filed belated or revised within two years from the end of the financial year in which service is provided.

- **Penalty for non-compliance:**

Failure	Penalty
To deduct equalisation levy (wholly or partly)	A penalty equal to amount of equalisation levy not deducted
To deposit with government	₹ 1000 for each day of default (not to exceed amount of equalisation levy)
To furnish statement	₹ 100 for each day of default

- **Allowance of expense under the Income Tax Act, 1961:**

The person specified in (a) & (b) above shall be allowed to claim the amount, paid to such non-resident service provider, as business expenditure only if equalisation levy on such amount have been paid to the account of Central Government on or before the due date of filing income tax return u/s. 139(1) of the Income Tax Act. In other word, if the levy is not deducted or after deduction have not been paid before the said due date of filing the income tax return, the expense will be disallowed u/s. 40(a)(ib) of the Income Tax Act, 1961 and will be allowed only in the year in which such levy is deposited.

B. Equalisation Levy on e-commerce supply of service (effective from 1st April 2020):

- **The Finance Act, 2020 have levied equalisation levy of 2% on the consideration received or receivable by non-resident e-commerce operator from e-commerce supply or services made or provided or facilitated by it to:**

- A person resident in India, or
- A non-resident in the specified circumstances, or
- A person who buys goods or services or both from such e-commerce operator by using internet protocol address ('IP address') in India

The specified circumstances as mentioned in (b) above are as below:

- Sale of advertisement targeting a customer who is resident in India or a customer who accesses advertisement through IP address located in India, and
- Sale of data which is collected from a person resident in India or from a person using IP address located in India

- **However, above referred equalisation levy is not chargeable in below mentioned circumstances:**

- The e-commerce operator has a PE in India and supply or service is connected to such PE, or
- The equalisation levy is leviable under point (A) above i.e. on specified online advertisement services, or
- Sales, turnover or gross receipts of the ecommerce operator from such e-commerce supply or services made or provided or facilitated is less than ₹ 2 crore during the financial year.

- **From the above,** it is evident that the e-commerce operator has to pay equalisation levy of 2% on the sales, turnover or gross receipts, if it exceeds ₹2 crore in a financial year, earned from making or providing or facilitating e-commerce supply or services to person specified at (a), (b) and (c) above. In other words, in this case, the e-commerce operator has to pay the amount of levy to the account of Central Government directly and not through the receipt of services.

- **Collection & recovery:**

The equalisation levy shall be paid by such e-commerce operator to the credit of government quarterly within the following due dates:

Quarter ending	Due Date
30thJune	7thJuly
30thSeptember	7thOctober
31stDecember	7thJanuary
31stMarch	31stMarch

- **Interest:**

In case of failure to pay the levy to the account of the Central Government, the e-commerce operator is liable to pay simple interest at 1% of the outstanding levy for every month or part thereof.

Failure	Penalty
Failure to pay equalisation levy (wholly or partly)	A penalty equal to amount of equalisation levy not paid
Failure to furnish statement	₹ 100 for each day of default

- **Furnishing the statement:**

The e-commerce operator has to furnish equalisation levy statement in Form No. 1 on or before 30thJune after the end of the financial year in which the equalisation levy is liable to paid. The said statement can be filed belated or revised within two years from the end of the financial year in which supply or service is provided.

C. The Equalisation Levy (Amendment) Rules, 2020:

The Government vide notification dated 28th October, 2020 introduced the Equalisation Levy (Amendment) Rules, 2020 which have effect to amend the earlier issued Equalisation Levy Rules, 2016. In the new amendments, along with other procedural changes, obtaining PAN for non-resident e-commerce operator (as mentioned in point (B) above) is mandatory for efficiency in paying the levy through specified challan.

D. Exemption from Income Tax:

The income earned from transactions as mentioned in Points (A) or (B) above by non-resident service provider or non-resident e-commerce operator (w.e.f. from AY 2021-22 to such e-commerce operator) respectively, is exempt from income tax in India as per section 10(50) of the Income Tax Act, 1961.

Further, it is to be noted that the credit of equalisation levy paid by such non-residents in India is not covered by double tax avoidance agreements and thus the above referred income, which are subject to equalisation levy, may be taxed twice if the country of residence of such non-residents also charge tax as per their domestic laws.

II. Recent amendments

1. Amendment to Income Tax Rules - (Notification No - 82, Dt 1-10-2020)

The C.B.D.T. has amended Rules called Income-tax (22nd Amendment) Rules, 2020. Some important amendments are discussed below:-

i. Insertion of Second Proviso to Rule 5(1) : Increase in WDV of Assets

If a company has exercised an option under section 115BAA(5) for the assessment year 2020-21(F.Y.2019-20) and there is unabsorbed depreciation allowance attributable to the provisions of section 32(1)(iia) (i.e. Additional Depreciation) as on 01st April 2019 in respect of a block of asset, the written down value of the block of asset as on the 1st day of April, 2019 shall be increased by such depreciation or allowance for unabsorbed depreciation not allowed to be set off.

Accordingly, the W.D.V. of assets can be increased by a company assessee if (i) it has exercised an option under section 115BAA for A.Y. 2020-21 and (ii) there is unabsorbed depreciation which includes such additional depreciation claimed under sec 32(1)(iia).

Similar adjustment to written down value of assets can be made to the block of assets as on 1st day of April, 2020 in the case of an individual or H.U.F., who has exercised an option under section 115BAC and by a co-operative society which has exercised an option under section 115BAD.

ii. Insertion of Rule 21AG:

An individual or H.U.F. who intends to exercise option under section 115BAC(5) from A.Y. 2021-22, has to e-file a Declaration in Form no. 10IE before the due date of filing his income tax return.

iii. Insertion of Rule 21AH

A Co-operative Society which intends to exercise option under section 115BAD(5) from A.Y. 2021-22, has to e-file a Declaration in Form no. 10IF before the due date of filing its income tax return.

iv. Amendment in Form No. 3CD :

- a. Clause 8a in Part A has been inserted to report whether any option under section 115BA/115BAA/115BAB has been exercised by the assessee.
- b. Clause 18(ca) and (cb) in Part B is inserted to report about adjustment to written down value of assets on exercise of option under section 115BAA for A.Y. 2020-21 only.
- c. Clause 32(a) in Part B is inserted to provide details of losses, allowances or additional depreciation not allowable on exercise of option under section 115BAA.

v. Amendment in Form No. 3CEB :

- a. Clause 22 is omitted in Part C and Clauses 23 and 24 have been renumbered as clauses 22 and 23.
- b. Clause 24 is inserted in Part C to provide information about specified domestic transaction in the nature of business transaction with a person mentioned under section 115BAB(6).

2. Extension of Dates under Vivad Se Vishwas Act,2020 (C.B.D.T.Cir.No.18 dated 28.10.2020):

Extension for filing of declaration and payment of taxes without additional amount:

Under the existing provisions of section 5(2) of the Vivad se Vishwas, the declarant is required to pay the amount within a period of 15 days from the date of receipt of certificate from the designated authority.

This provision is now amended by the said Notification. It is now provided that the declarant who files declaration on or before 31st December, 2020 can make payment of disputed tax, interest or penalty without additional amount on or before 31st March, 2021. Thus the requirement of payment within 15 days on receipt of certificate from the designated authority has been removed. It is also provided that the designated authority shall allow the declarant to make payment without additional amount on or before 31st March, 2021.

3. Important Circulars & Notifications under Allied Laws :

Extension of filing Annual Accounts with Charity Commissioner, Maharashtra (Notification No. 582/2020 dated 28.10.2020):

Due date for filing of Annual Audited Accounts for the F.Y. 2019-20 by Public Charitable Trust with the office of the Charity Commissioner in Maharashtra has been extended again from 30.10.2020 to 30.11.2020.

COMPANY LAW UPDATES

A. Amendment in Companies (Prospectus and Allotment of Securities) Rules, 2014

In case of Private Placement, it has been clarified that for offer or invitation of any securities to qualify institutional buyers, it shall be sufficient if the company passes a previous special resolution only once in a year for all the allotments to such buyers during the year.

Notification can be accessed at:

https://www.mca.gov.in/Ministry/pdf/SecuritiesAmendmentRules_16102020.pdf

B. Relaxation in residency requirements for directors:

It has been clarified through Circular that non-compliance of minimum residency in India for a period of at least 182 days in a year, by at least one director in every company shall not be treated as non-compliance for the financial year 2020-21 also.

Circular can be accessed at:

https://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.36_20102020.pdf

FAMILY OFFICES: AN OVERVIEW

- A Family Office can be defined as the 'ecosystem' that a family builds around itself to get organized, manage their assets and enable them to enjoy their lifestyles.
- A "Chief Financial Advisor" to the Family
- A Family Office allows the family to pursue its own customized wealth management approach.
- The key role of the Family Office is to be an integrator of financial strategies.

Key Drivers to creating a Family Office:

- Legacy over Generations
- Time Saving and Complexity Management
- Transforming a private investment approach to an institutional one.
- Distinct Identity
- A comprehensive approach to risk management, so you know your family and wealth are protected.
- Expert transition planning for multigenerational wealth

Benefits of creating a Family Office:

- A Proper Governance and Management Structure
- Alignment of Interest between Financial Advisors and the Family
- Potential higher returns through focused efforts
- Distinction of Business Holdings and Personal Wealth
- Centralization of Risk

Structuring:

The entity structure of the Family Office can be done in the following various ways, each has its own benefits and pitfalls and each shall have to be deliberated upon

- Limited Liability Partnership
- Limited Liability Company
- Private Family Trust

EXTENSION OF DUE DATES FOR DIRECT AND INDIRECT TAX COMPLIANCES

The Finance Ministry vide Press Release dated 24th October 2020 and Central Board of Direct Taxes vide Notification No. 88/2020 dated 29th October 2020 as well as Central Board of Indirect Taxes and Customs vide press release dated 24th October 2020 announced further extension of due dates for various compliances as under:

Particulars	Actual Due Date	Last Extended Due date	New Extended Due Date
Income Tax Return u/s 139 (4) & 139(5) (Revised or Belated Return) for AY 2019-20	31st March 2020	30th September, 2020 (earlier extension was up to 31st July,2020)	30th November, 2020
Income Tax Return u/s 139(1) (In cases of assessee, who is liable to audit) for AY 2020-21	31st October 2020/ 30th November 2020	--	31st January, 2021
Income Tax Return u/s 139(1) (Other than above) for AY 2020-21	31st July, 2020	30th November, 2020	31st December, 2020
Self - Assessment (SA) Tax Liability for AY 2020-21 - Interest will not be chargeable under Section 234A, if the SA Tax liability is upto ₹ 1 lakh	On or Before 31st July 2020/ 31st October 2020	30th November 2020	31st January, 2021 (In case of assessee not requiring any audit, it is 31st December, 2020)
Filing of various audit reports such as tax audit report (Form No. 3CA, 3CB and 3CD), Transfer Pricing Reports - (Form No. 3CEB), Charitable Trust/Institution Audit Report (Form No. 10B), Audit Report u/sec 80IA/80IB (Form No. 10CCB,10CCBA,etc) for AY 2020-21	30th September, 2020	31st October, 2020	31st December, 2020
Filing of Annual Return in Form GSTR 9 or GSTR 9A and Reconciliation statement in Form GSTR 9C for financial year 2018-19	31st December 2019	31st October 2020	31st December 2020

DUE DATES OF VARIOUS COMPLIANCES FALLING IN THE MONTH OF NOVEMBER 2020

Sr.No	Due Date	Act/Authority	Compliance Description
1	07-11-2020	Income Tax	Deposit of Tax Deducted/Collected (TDS/TCS) during the month of October-2020
2	10-11-2020	GST	GSTR-7/GSTR-8 for the month of October-2020 for persons required to deduct TDS
3	10-11-2020	GST	GSTR-8 for the month of October-2020 for e-commerce operator required to Collect TCS
4	11-11-2020	GST	GSTR-1 for the month of October-2020
5	13-11-2020	GST	GSTR-6 for the month of October-2020
6	15-11-2020	PF/ESIC	Payment of PF / ESIC for the month of October-2020
7	20-11-2020	GST	Payment of GST & Filing of GSTR-3B for the month of October-2020, for taxpayers having turnover of more than Rs.5 Crore in preceding financial Year
8	20-11-2020	GST	GSTR-5 & 5A by Non-resident taxable person & OIDAR for the month of October-2020
9	22-11-2020	GST	Payment of GST & Filing of GSTR-3B for taxpayers having turnover upto Rs.5 Crore in preceding Financial year for the month of October-2020 depending on place of business(State)
	24-11-2020		
10	30-11-2020	Income Tax	Filing of Belated/Revised Income Tax Return for the financial year 2018-2019



Happy
DIWALI & NEW YEAR

Manubhai & Shah parivar
wishes you and your family
Happy Diwali & Prosperous New Year

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