

Tax and Regulatory Updates



ProBus Tax Alert

This alert summarizes major notifications / clarifications issued recently by Indian tax and regulatory authorities.

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Introduction

In the past few days, The Central Board of Indirect Taxes and Customs ('CBIC'), The Central Board of Direct Taxes ('CBDT'), The Ministry of Finance ('MoF'), The Institute of Chartered Accountants of India ('ICAI') and The Ministry of Corporate Affairs ('MCA') have released various notifications/clarifications. This alert summarizes major notification/clarifications issued holding relevance for business houses.

CBIC ISSUES CLARIFICATION¹ ON SEVERAL ISSUES RELATED TO CASUAL TAXABLE PERSON AND INPUT SERVICE DISTRIBUTOR

The GST Policy Wing of CBIC vide Circular No. 71/45/2018-GST dated October 26, 2018 has clarified that the amount of advance tax which a casual taxable person is required to deposit while obtaining registration should be calculated after considering the due eligible ITC which might be available to such taxable person and where the Input Service Distributor distributes the credit in contravention of the provisions contained in section 20 of the Central Goods and Services Tax ('CGST') Act resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipients along with interest and penalty, if any.

The Circular has provided clarification on the following 2 issues after various representations were received seeking clarification:

Issue 1: Whether the amount required to be deposited as advance tax while taking registration as a casual taxable person ('CTP') should be 100% of the estimated gross tax liability or the estimated tax liability payable in cash should be calculated after deducting the due eligible ITC which might be available to CTP?

Clarification:

CBIC has clarified that while applying for registration as a casual taxable person, the FORM GST REG-1 (S. No. 11) seeks information regarding the "estimated net tax liability" only and not the gross tax liability.

Accordingly, the amount of advance tax which a casual taxable person is required to deposit while obtaining registration should be calculated after considering the due eligible ITC which might be available to such taxable person.

Issue 2: As per section 27 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the said Act), period of operation by casual taxable person is ninety days with provision for extension of same by the proper officer for a further period not exceeding ninety days. Various representations have been received for further extension of the said period beyond the period of 180 days, as mandated in law.

Clarification:

CBIC has clarified that in case of long running exhibitions (for a period more than 180 days), the taxable person cannot be treated as a CTP and thus such person would be required to obtain registration as a normal taxable person.

While applying for normal registration the said person should upload a copy of the allotment letter granting permission to use the premises for the exhibition and the allotment letter/consent letter shall be treated as the proper document as a proof for place of business.

In such cases he would not be required to pay advance tax for the purpose of registration. Further, such registration can be surrendered once the exhibition is over.

¹ *Link to the aforesaid circular: <https://cbec-gst.gov.in/pdf/Circular-71-45-Misc-Issues-CTP-ISD-Circular.pdf>*

Issue 3: Manner of recovery of excess credit distributed by an Input Service Distributor (ISD) in contravention of the provisions contained in section 20 of the CGST Act.

Clarification:

CBIC has clarified that according to Section 21 of the CGST Act where the ISD distributes credit in contravention of the provisions of section 20 of the CGST Act resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipients along with interest and penalty.

The recipient unit(s) who have received excess credit from ISD may deposit the said excess amount voluntarily along with interest if any by using **FORM GST DRC-03**.

If the said recipient unit(s) does not come forward voluntarily, necessary proceedings may be initiated against the said unit(s) under the provisions of section 73 or 74 of the CGST Act as the case may be. **FORM GST DRC-07** can be used by the tax authorities in such cases.

CBIC has further clarified that the ISD would also be liable to a **general penalty** under the provisions contained in section 122(1)(ix) of the CGST Act.

GOVERNMENT PRESCRIBES PROCEDURE FOR RETURN OF GOODS ON ACCOUNT OF EXPIRY²

The GST Policy Wing of CBIC vide Circular No. 72/46/2018-GST dated October 26, 2018 has clarified the procedure to be followed in respect of return of time expired drugs or medicines under the GST laws.

As per the Circular the common trade practice in the pharmaceutical sector is that the drugs or medicines (hereinafter referred to as "goods") are sold by the manufacturer to the wholesaler and by the wholesaler to the retailer on the basis of an invoice/bill of supply as case may be. It is significant to mention here that such goods have a defined life term which is normally referred to as the date of expiry. Such goods which have crossed their date of expiry are colloquially referred to as time expired goods and are returned back to the manufacturer, on account of expiry, through the supply chain.

The Circular provides that the retailer/wholesaler can follow either of following method:

- 1. Return of time expired goods to be treated as fresh supply**
- 2. Return of time expired goods by issuing Credit Note**

The circular explains the procedure to be followed by the person returning of the goods (registered/unregistered) under either of the method. Illustrations have been provided regarding treatment in terms of tax liability & credit note.

Its worthy to note that this circular discusses the scenarios in relation to return of expired drugs or medicines, however, it has been specifically provided that circular may be applicable to such other scenarios and businesses where the goods are returned on account of reasons other than the one detailed above.

²Link to the aforesaid Circular: <https://cbec-gst.gov.in/pdf/Circular-72-46-EXPIRED-DRUGS.pdf>

UNIQUE DOCUMENT IDENTIFICATION NUMBER FOR CERTIFICATES ISSUED BY ANY PRACTISING CHARTERED ACCOUNTANT³

The Institute of Chartered Accountants of India ('ICAI'), has introduced the Unique Document Identification Number ('UDIN') for its members.

As per the press release issued by the ICAI, the UDIN would be mandatory for all practicing Chartered Accountants ('CAs') w.e.f. January 1, 2019 to register all certificates issued by them with UDIN portal which can be verified by users/ stakeholders.

Through UDIN and the key fields as mentioned by CAs, the Regulators/Banks/third parties will be able to check the authenticity of the documents/reports/certificate. Further, this portal would help in tracing forged/wrong documents prepared by any third person misrepresenting himself as a Chartered Accountant, as any person other than Chartered Accountant will not be able to upload the documents.

Further Indian Bank's Association has also requested all the Banks to insist for UDIN in all certificates / documents / reports certified by CAs and make use of the UDIN portal to verify the authenticity of attested documents.

DUE DATE FOR FILING FINANCIAL STATEMENTS & ANNUAL RETURN WITH REGISTRAR OF COMPANIES EXTENDED TO DEC. 31, 2018⁴

The Ministry of Corporate Affairs vide General Circular No. 10/2018 dated October 29, 2018, keeping in view the requests received from various stakeholders seeking extension of time for filing of financial statements for the financial year ended on March 31, 2018, has decided to relax the additional fees payable by companies on e-forms AOC-4, AOC (CFS) AOC-4 XBRL and e-Form MGT-7 upto December 31, 2018, wherever additional fee is applicable.

NBFCs, HAVING ASSETS WORTH RS. 500 CRORE AND ABOVE ARE CONSIDERED AS FINANCIAL INSTITUTION

The Central Government vide notification dated October 24, 2018, in exercise of the powers conferred by sub-clause (iv) of clause (m) of sub-section (1) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), has specified the Non-Banking Financial Companies including Non-Banking Financial Companies - Deposit Taking, which are covered under clause (f) of section 45-I of the RBI Act and are registered with RBI, having assets worth Rs. 500 crore or more as per their last audited balance sheet, as ***Financial Institution***. The list of the NBFC's specified as financial institution has been provided in the notification⁵.

³ https://www.icai.org/new_post.html?post_id=15131

⁴ http://www.mca.gov.in/Ministry/pdf/NoticeAndCircularGC_30102018.pdf

⁵ <https://fema.taxmann.com/topstories/10401000000059428/nbfc-having-assets-worth-rs-500-crore-or-more-are-considered-as-financial-institution-mof.aspx>

MAJOR DUE DATES FOR NOVEMBER 2018

Statute	Due Date	Compliance
Income Tax	November 07, 2018	TDS/TCS for the month of October 2018.
GST	November 11, 2018	Filing of GSTR-1 for the month of October 2018.
GST	November 13, 2018	Filing of GSTR-6 for the month of October 2018.
Income Tax	November 15, 2018	Issuance of quarterly TDS certificate (Form 16A) for the Quarter 2.
GST	November 20, 2018	Payment of GST and filing of GSTR-3B for the month of October 2018.
Income Tax	November 30, 2018	Filing of Income Tax Return for the assessment year 2018-19 for the assessee subject to Transfer Pricing Audit.
Income Tax	November 30, 2018	Tax Audit report under section 44AB for the assessment year 2018-19 for the assessee subject to Transfer Pricing Audit.
Income Tax	November 30, 2018	Transfer Pricing Audit Report in Form 3CEB for the assessment year 2018-19.
Income Tax	November 30, 2018	Report in Form No. 3CEAA (Master File) by a constituent entity of an international group for the accounting year 2017-18.
Income Tax	November 30, 2018	Due date for claiming FTC for year 2017-18 in Form no. 67 (If due date of submission of ITR is November 30, 2018).
Income Tax	November 30, 2018	Submission copy of audit of accounts to the Secretary, Department of Scientific and Industrial Research in Form 3CLA in case company is eligible for weighted deduction u/s 35(2AB).

About ProBus

ProBus Advisors offers wide range of Tax, Advisory, Assurance and Regulatory services to its clients. We are a team of experienced professionals helping domestic and multinational companies in complying with the laws and providing optimal solutions for business issues.

Our focus is on serving you effectively wherever you need our services. Our professional approach helps us in understanding and achieving your priorities.

We have presence in the cities of Delhi, Mumbai, Chennai and Pune. If you have any questions, feel free to write to us at info@probusadvisory.com or visit www.probusadvisory.com to know more about us.