

Summary of the recently issued notifications/circulars

01. CBDT Press Release dated 4th July 2018

Indian Advance Pricing Agreement regime moves forward with signing of three UAPAs by CBDT in May and June, 2018

02. CBDT Circular dated 11th July 2018

Revision of monetary limits for filing of appeals by the Department before Income Tax Appellate Tribunal, High Courts and SLPs/appeals before Supreme Court-measures for reducing litigation-Reg.

03. CBDT Notification dated 13th July 2018

Framing of Income-tax rules relating to Significant Economic Presence as per Section 9(1)(i) of the Income-tax Act, 1961, Comments and suggestions reg.

04. MCA Rule dated 5th July 2018

Companies (Registration Offices and Fees) Third Amendment Rules, 2018

05. MCA Rule dated 5th July 2018

Companies (Registration of Charges) Amendment Rules, 2018

06. MCA Rule dated 5th July 2018

Companies (Authorised to Register) Second Amendment Rules, 2018

07. MCA Rule dated 5th July 2018

Companies (Appointment and Qualification of Directors) 4th Amendment Rules, 2018.

08. MCA Rule dated 5th July 2018

Companies (Acceptance of Deposits) Amendment Rules, 2018

09. MCA Notification dated 5th July 2018

Commencement notification

10. MCA Notification dated 5th July 2018

Commencement notification

PGB Updates

17/15-JUL-18

11. SEBI Circular dated 16th July 2018

Strengthening the Guidelines and Raising Industry standards for RTAs, Issuer Companies and Banker to an Issue – Clarification

12. Central Tax Notification 29, dated 6th July 2018

Seek to make amendments (Seventh Amendment, 2018) to the CGST Rules, 2017

PGB Updates

17/15-JUL-18

Recently issued notifications/circulars are given below for your ready reference.

01. CBDT Press Release dated 4th July 2018

Subject: Indian Advance Pricing Agreement regime moves forward with signing of three UAPAs by CBDT in May and June, 2018

Brief note:

The Central Board of Direct Taxes (CBDT) has entered into three Unilateral Advance Pricing Agreements (UAPA) during the past couple of months. With the signing of these Agreements, the total number of APAs entered into by the CBDT has gone up to 223, which inter alia include 20 Bilateral APAs.

The UAPAs entered into during the past couple of months pertain to consumer industry, automobile and precious stones & metals sectors of the economy. The international transactions covered in the agreements pertain to provision of corporate guarantee, purchase of brand, availing of grading services, availing of management services and payment of royalty.

The progress of the APA scheme strengthens the Government's resolve of fostering a non-adversarial tax regime. The Indian APA programme has been appreciated nationally and internationally for being able to address complex transfer pricing issues in a fair and transparent manner

To view and print these PDF document, please follow below mentioned link:

<https://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/722/PressRelease-Indian-Advance-Pricing-Agreement-regime-moves-forward-with-signing-UAPAs-4-7-2018.pdf>

02. CBDT Circular dated 11th July 2018

Subject: Revision of monetary limits for filing of appeals by the Department before Income Tax Appellate Tribunal, High Courts and SLPs/appeals before Supreme Court-measures for reducing litigation-Reg.

Brief note:

Reference is invited to Board's Circular No . 21 of 2015 dated 10.12.2015 wherein monetary limits and other conditions for filing departmental appeals (in Income-tax matters) before Income Tax Appellate Tribunal, High Courts and SLPs/appeals before Supreme Court were specified.

2. In supersession of the above Circular, it has been decided by the Board that departmental appeals may be filed on merits before Income Tax Appellate Tribunal and High Courts and SLPs/appeals before Supreme Court keeping in view the monetary limits and conditions specified below.

3. Henceforth, appeals/ SLPs shall not be filed in cases where the tax effect does not exceed the monetary limits given hereunder:

S. No.	Appeals / SLPs in Income-tax matters	Monetary Limit (Rs.)
1.	Before Appellate Tribunal	20,00,000
2.	Before High Court	50,00,000
3.	Before Supreme Court	1,00,00,000

It is clarified that an appeal should not be filed merely because the tax effect in a case exceeds the monetary limits prescribed above. Filing of appeal in such cases is to be decided on merits of the case.

4. For this purpose, 'tax effect' means the difference between the tax on the total income

PGB Updates

17/15-JUL-18

assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of the issues against which appeal is intended to be filed (hereinafter referred to as 'disputed issues') Further, 'tax effect' shall be tax including applicable surcharge and cess. However, the tax will not include any interest thereon, except where chargeability of interest itself is in dispute. In case the chargeability of interest is the issue under dispute, the amount of interest shall be the tax effect. In cases where returned loss is reduced or assessed as income, the tax effect would include notional tax on disputed additions. In case of penalty orders, the tax effect will mean quantum of penalty deleted or reduced in the order to be appealed against.

5. The Assessing Officer shall calculate the tax effect separately for every assessment year in respect of the disputed issues in the case of every assessee. If, in the case of an assessee, the disputed issues arise in more than one assessment year, appeal can be filed in respect of such assessment year or years in which the tax effect in respect of the disputed issues exceeds the monetary limit specified in para 3. No appeal shall be filed in respect of an assessment year or years in which the tax effect is less than the monetary limit specified in para 3. In other words, henceforth, appeals can be filed only with reference to the tax effect in the relevant assessment year. However, in case of a composite order of any High Court or appellate authority, which involves more than one assessment year and common issues in more than one assessment year, appeals shall be filed in respect of all such assessment years even if the tax effect is less than the prescribed monetary limits in any of the year(s), if it is decided to file appeal in respect of the year(s) in

which tax effect exceeds the monetary limit prescribed. In case where a composite order /judgement involves more than one assessee, each assessee shall be dealt with separately.

6. Further, where income is computed under the provisions of section 115JB or section 115JC, for the purposes of determination of 'tax effect', tax on the total income assessed shall be computed as per the following formula -

$$(A - B) + (C - D)$$

where,

A = the total income assessed as per the provisions other than the provisions contained in section 115JB or section 115JC (herein called general provisions);

B = the total income that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of the disputed issues under general provisions;

C = the total income assessed as per the provisions contained in section 115JB or section 115JC;

D = the total income that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC was reduced by the amount of disputed issues under the said provisions:

However, where the amount of disputed issues is considered both under the provisions contained in section 115JB or section 115JC and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item D.

7. In a case where appeal before a Tribunal or a Court is not filed only on account of the tax effect

being less than the monetary limit specified above, the Pro Commissioner of Income-tax/ Commissioner of Income Tax shall specifically record that "even though the decision is not acceptable, appeal is not being filed only on the consideration that the tax effect is less than the monetary limit specified in this Circular". Further, in such cases, there will be no presumption that the Income-tax Department has acquiesced in the decision on the disputed issues. The Income-tax Department shall not be precluded from filing an appeal against the disputed issues in the case of the same assessee for any other assessment year, or in the case of any other assessee for the same or any other assessment year, if the tax effect exceeds the specified monetary limits.

8. In the past, a number of instances have come to the notice of the Board, whereby an assessee has claimed relief from the Tribunal or the Court only on the ground that the Department has implicitly accepted the decision of the Tribunal or Court in the case of the assessee for any other assessment year or in the case of any other assessee for the same or any other assessment year, by not filing an appeal on the same disputed issues. The Departmental representatives/ counsels must make every effort to bring to the notice of the Tribunal or the Court that the appeal in such cases was not filed or not admitted only for the reason of the tax effect being less than the specified monetary limit and, therefore, no inference should be drawn that the decisions rendered therein were acceptable to the Department. Accordingly, they should impress upon the Tribunal or the Court that such cases do not have any precedent value and also bring to the notice of the Tribunal/ Court the provisions of sub section (4) of section

268A of the Income-tax Act, 1961 which read as under :

"(4) The Appellate Tribunal or Court, hearing such appeal or reference, shall have regard to the orders, instructions or directions issued under sub-section (1) and the circumstances under which such appeal or application for reference was filed or not filed in respect of any case."

9. As the evidence of not filing appeal due to this Circular may have to be produced in courts, the judicial folders in the office of Pr.CsIT / CsIT must be maintained in a systemic manner for easy retrieval.

10. Adverse judgments relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 above or there is no tax effect:

- (a) Where the Constitutional validity of the provisions of an Act or Rule is under challenge, or
- (b) Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or
- (c) Where Revenue Audit objection in the case has been accepted by the Department, or
- (d) Where the addition relates to undisclosed foreign assets/ bank accounts.

11. The monetary limits specified in para 3 above shall not apply to writ matters and Direct tax matters other than Income tax. Filing of appeals in other Direct tax matters shall continue to be governed by relevant provisions of statute and rules. Further, in cases where the tax effect is not quantifiable or not involved, such as the case of

PGB Updates

17/15-JUL-18

registration of trusts or institutions under section 12A/ 12AA of the IT Act, 1961 etc., filing of appeal shall not be governed by the limits specified in para 3 above and decision to file appeals in such cases may be taken on merits of a particular case.

12. It is clarified that the monetary limit of Rs. 20 lakhs for filing appeals before the ITAT would apply equally to cross objections under section 253(4) of the Act. Cross objections below this monetary limit, already filed, should be pursued for dismissal as withdrawn/ not pressed. Filing of cross objections below the monetary limit may not be considered henceforth. Similarly, references to High Courts and SLPs/ appeals before Supreme Court below the monetary limit of Rs. 50 lakhs and Rs. 1 Crore respectively should be pursued for dismissal as withdrawn/ not pressed. References before High Court and SLPs/appeals below these limits may not be considered henceforth.

13. This Circular will apply to SLPs/appeals/ cross objections/ references to be filed henceforth in SC/HCs/Tribunal and it shall also apply retrospectively to pending SLPs/ appeals/cross objections/ references. Pending appeals below the specified tax limits in para 3 above may be withdrawn/ not pressed.

To view and print these PDF document, please follow below mentioned link:

https://www.incometaxindia.gov.in/Communications/Circular/Circular_3_2018.pdf

03. CBDT Notification dated 13th July 2018

Subject: Framing of Income-tax rules relating to Significant Economic Presence as per Section 9(1)(i) of the Income-tax Act, 1961, Comments and suggestions reg.

Brief note:

As per the allocation of taxing rules under Article 7 of Double Taxation Avoidance Agreements, business profit of an enterprise is taxable in the country in which the taxpayer is a resident. However, if an enterprise carries on its business in another country through a 'Permanent Establishment' situated therein, such other country may also tax the business profits attributable to the 'Permanent Establishment'. For this purpose, 'Permanent Establishment' means a 'fixed place of business' through which the business of an enterprise is wholly or partly carried out provided that the business activities are not of preparatory or auxiliary in nature and such business activities are not carried out by a dependent agent.

2. For a long time, nexus based on physical presence was used as a proxy to regular economic allegiance of a non-resident. However, with the advancement in information and communication technology in the last few decades, new business models operating remotely through digital medium have emerged. Under these new business models, the non-resident enterprises can carry on business and interact with customers in another country without having any physical presence in that country resulting in avoidance of taxation in the source country. Therefore, the existing nexus rule based on physical presence no longer holds good for taxation of business profits in source country. As a result, the rights of the source country to tax business profits that are derived from its economy are unfairly and unreasonably eroded.

3. In view of the above, Finance Act, 2018 introduced the concept of 'Significant Economic Presence' (SEP) in the Income-tax Act, 1961 ('the

PGB Updates

17/15-JUL-18

Act') for taxation of nonresidents in India by amplifying the scope of the definition of "business connection" through Explanation 2A to section 9(1)(i) of the Act. The definition of 'business connection', was clarified to provide that a non-resident's significant economic presence in India shall constitute "business connection" of the non-resident in India and the "significant economic presence" for this purpose shall mean-

(i) any transaction in respect of any goods, services or property carried out by a nonresident in India including provision of download of data or software in India if the aggregate of payments arising from such transaction or transactions during the previous year exceeds the amount as may be prescribed; or

(ii) systematic and continuous soliciting of its business activities or engaging in interaction with such number of users as may be prescribed, in India through digital means.

3.1 It is further provided that the transactions or activities shall constitute significant economic presence in India, whether or not the agreement for such transactions or activities is entered into in India or the non-resident has a residence or place of business in India or renders services in India. Moreover, it is also provided that only so much of income as is attributable to the transactions or activities referred above shall be deemed to accrue or arise in India.

4. Accordingly, for the purpose of determining significant economic presence of a nonresident in India, the threshold for the aggregate amount of payments arising from the specified transactions and for the number of users requires to be prescribed.

5. In this regard, suggestions/comments of stakeholders and the general public are invited on the following:

(i) Revenue threshold of transaction in respect of physical goods or services carried out by a non-resident in India;

(ii) Revenue threshold of transaction in respect of digital goods or services or property including provision of download of data or software carried out by a non-resident in India;

(iii) Threshold for number of 'users' with whom a non-resident engages in interaction or carries out systematic and continuous soliciting of business activities in India through digital means.

6. Comments and suggestions may be sent electronically by 10th August, 2018 at the email address ustpl3@nic.in.

To view and print these PDF document, please follow below mentioned link:

<https://www.incometaxindia.gov.in/Lists/Latest%20News/Attachments/262/sep-rules-calling-stakeholder-comments-13-07-2018.pdf>

04. MCA Rule dated 5th July 2018

Subject: Companies (Registration Offices and Fees) Third Amendment Rules, 2018

Brief note:

The Central Government hereby makes the following rules further to amend the Companies (Registration Offices and Fees) Rules, 2014, namely:-

1. (1) These rules may be called the Companies (Registration Offices and Fees) Third Amendment Rules, 2018.

PGB Updates

17/15-JUL-18

(2) Save as otherwise provided in these rules, they shall come into force with effect from 10.07.2018.

2. In the Companies (Registration Offices and Fees) Rules, 2014, in the Annexure, after item VI relating to Fees for Removal of Names of Companies from the Registrar of Companies under section 248 (2) of the Act, in the Annexure, the following item shall inserted, namely:-

"VII. FEE FOR FILING e- Form DIR-3 KYC under rule 12A of the Companies (Appointment and Qualification of Directors) Rules, 2014.

i) Fee payable till the 30th April of every financial year in respect of e-form DIR-3 KYC as at the 31st March of immediate previous year.	----
ii) Fee payable (in delayed case).	Rs.5000

Note: For the current financial (2018-2019), no fee shall be chargeable till, the 31st August, 2018 and fee of Rs.5000 shall be payable on or after the 1st September, 2018"

To view and print these PDF document, please follow below mentioned link:

http://www.mca.gov.in/Ministry/pdf/CompaniesRegistrationOfficesFeesRle_06072018.pdf

05. MCA Rule dated 5th July 2018

Subject: Companies (Registration of Charges) Amendment Rules, 2018

Brief note:

The Central Government hereby makes the following rules further to amend the Companies (Registration of Charges) Rules, 2014, namely:-

1. (1) These rules may be called the Companies (Registration of Charges) Amendment Rules, 2018.

(2) They shall come into force from the date of their publication in the Official Gazette.

2. In the Companies (Registration of Charges) Rules, 2014,

(i) in rule 3, in sub-rule (1), for the words "and filed", the words "shall be filed" shall be substituted;

(ii) for sub-rule (1) of rule 8, the following shall be substituted namely:-

"8. "(1) A company or charge holder shall within a period of three hundred days from the date of the payment or satisfaction in full of any charge registered under Chapter VI, give intimation of the same to the Registrar in Form No.CHG-4 along with the fee." ;

(iii) in rule 12, in sub-rule (1), for the words "within thirty days" the words 'within a period of three hundred days" shall be substituted.

To view and print these PDF document, please follow below mentioned link:

http://www.mca.gov.in/Ministry/pdf/CompaniesRegistrationChargesRules_06072018.pdf

06. MCA Rule dated 5th July 2018

Subject: Companies (Authorised to Register) Second Amendment Rules, 2018

Brief note:

The Central Government hereby makes the following rules further to amend the Companies (Authorised to Register) Rules, 2014, namely:-

PGB Updates

17/15-JUL-18

1. These rules may be called the Companies (Authorised to Register) Second Amendment Rules, 2018.

2. They shall come into force with effect from 15th August 2018.

3. In the Companies (Authorised to Register) Rules, 2014, various clauses are shall be inserted, the same are given in the notification.

To view and print these PDF document, please follow below mentioned link:

http://www.mca.gov.in/Ministry/pdf/CompaniesAuthorisedRegister_06072018.pdf

07. MCA Rule dated 5th July 2018

Subject: Companies (Appointment and Qualification of Directors) 4th Amendment Rules, 2018.

Brief note:

The Central Government hereby makes the following rules further to amend the Companies (Appointment and Qualification of Directors) Rules, 2014, namely:-

1. These rules may be called the Companies (Appointment and Qualification of Directors) fourth Amendment Rules, 2018.

2. They shall come into force with effect from 10th July 2018.

3. In the Companies (Appointment and Qualification of Directors) Rules, 2014, various clauses are shall be inserted, the same are given in the notification.

To view and print these PDF document, please follow below mentioned link:

http://www.mca.gov.in/Ministry/pdf/CompaniesAppointmentQualificationRules_06072018.pdf

08. MCA Rule dated 5th July 2018

Subject: Companies (Acceptance of Deposits) Amendment Rules, 2018

Brief note:

The Central Government hereby makes the following rules further to amend the Companies (Acceptance of Deposits) Rules, 2014, namely:-

1. These rules may be called the Companies (Acceptance of Deposits) Amendment Rules, 2018.

2. They shall come into force with effect from 15th August 2018.

3. In the Companies (Acceptance of Deposits) Rules, 2014, various clauses are shall be inserted, the same are given in the notification.

To view and print these PDF document, please follow below mentioned link:

http://www.mca.gov.in/Ministry/pdf/CompaniesAcceptanceDepositsAmendmentRules_06072018.pdf

09. MCA Notification dated 5th July 2018

Subject: Commencement notification

Brief note:

In exercise of the powers conferred by sub section (2) of section 1 of the Companies (Amendment) Act, 2017 (1 of 2018), the Central Government hereby appoints the 5th July, 2018 as the date on which the provisions of Section 20 of the said Act shall come into force.

To view and print these PDF document, please follow below mentioned link:

http://www.mca.gov.in/Ministry/pdf/CommencementNotification05_06072018.pdf

PGB Updates

17/15-JUL-18

10. MCA Notification dated 5th July 2018**Subject:** Commencement notification**Brief note:**

In exercise of the powers conferred by sub section (2) of section 1 of the Companies (Amendment) Act, 2017 (1 of 2018), the Central Government hereby appoints the 15th August, 2018 as the date on which the following provisions of the said Act shall come into force, namely:-

Sl. No.	Section
(1)	Section 15;
(2)	Section 16;
(3)	Section 75; and
(4)	Section 76.

To view and print these PDF document, please follow below mentioned link:

http://www.mca.gov.in/Ministry/pdf/CommencementNotification0507_06072018.pdf

11. SEBI Circular dated 16th July 2018

Subject: Strengthening the Guidelines and Raising Industry standards for RTAs, Issuer Companies and Banker to an Issue – Clarification

Brief note:

1. SEBI, vide circular No. SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018, inter-alia, mandated RTAs to send a letter under Registered/ Speed post seeking PAN and bank details within 90 days of the said circular and two reminders thereof after the gap of 30 days.

2. In this regard SEBI has received several representations to extend the timelines of first letter so as to bunch it up with annual reports/ notices of AGM. Further, clarifications have been sought to send the reminders by way of modes

other than Registered/ Speed post, citing huge cost involved and the efficacy of sending reminders by way of other modes; especially in cases where first letter sent by Registered / Speed Post returned undelivered.

3. Accordingly, in respect of para II (12)(ii) of Annexure to the aforementioned circular, it is clarified that:

a. The timeline for sending the initial letter by Registered / Speed Post to physical shareholders has been extended to September 30, 2018 to enable companies to send the initial letter along with Annual Reports/ notice of AGM.

b. Subsequently, two reminders may be sent by other modes including ordinary post/ courier.

To view and print these PDF document, please follow below mentioned link:

https://www.sebi.gov.in/legal/circulars/jul-2018/strengthening-the-guidelines-and-raising-industry-standards-for-rtas-issuer-companies-and-banker-to-an-issue-clarification_39553.html

12. Central tax Notification 29, dated 6th July 2018

Subject: Seek to make amendments (Seventh Amendment, 2018) to the CGST Rules, 2017

Brief note:

The Central Government hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely:-

1. (1) These rules may be called the Central Goods and Services Tax (Seventh Amendment) Rules, 2018.

PGB Updates

17/15-JUL-18

(2) They shall be deemed to have come into force with effect from the 12th day of June, 2018.

2. In the Central Goods and Services Tax Rules, 2017, -

(i) in rule 125, for the words “Directorate General of Safeguards”, the words “Directorate General of Anti-profiteering” shall be substituted;

(ii) in rule 129, for the words “Director General of Safeguards”, wherever they occur, the words “Director General of Anti-profiteering” shall be substituted;

(iii) in rule 130, in sub-rule (2), for the words “Director General of Safeguards”, at both places where they occur, the words “Director General of Anti-profiteering” shall be substituted;

(iv) in rule 131, for the words “Director General of Safeguards”, the words “Director General of Anti-profiteering” shall be substituted;

(v) in rule 132, in sub-rule (1), for the words “Director General of Safeguards”, the words “Director General of Anti-profiteering” shall be substituted;

(vi) in rule 133, for the words “Director General of Safeguards”, wherever they occur, the words “Director General of Anti-profiteering” shall be substituted.

To view and print these PDF document, please follow below mentioned link:

http://www.cbic.gov.in/resources/htdocs-cbec/gst/Notification-29-2018-central_tax-English.pdf

➤ **If you have any questions, please write to updates@pgbhagwatca.com**

➤ **If you do not want such updates, please email to updates@pgbhagwatca.com.**

Disclaimer:

This information is brief summary of the updates & does not contains any official/ standard view of M/s P.G. Bhagwat, Chartered Accountants. Further M/s P. G. Bhagwat, Chartered Accountants is not responsible for any kind of loss arising due to use of this information.