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INCOME TAX

DOMESTIC TAXATION

Circulars/ Notifications/ Press Release

SECTION 269SU OF THE INCOME-TAX ACT, 1961, READ WITH RULE 119AA OF THE INCOME-TAX RULES, 1962 - ACCEPTANCE OF PAYMENT THROUGH PRESCRIBED ELECTRONIC MODES - IMPOSITION OF CHARGE ON THE PRESCRIBED ELECTRONIC MODES UNDER SAID SECTION

1. In furtherance to the declared policy objective of the Government to encourage digital transactions and move towards a less-cash economy, the Finance (No. 2) Act 2019 inserted a new provision namely section 269SU in the Income-tax Act, 1961 ("the IT Act"), which provides that every person having a business turnover of more than Rs. 50 crores during the immediately preceding previous year shall mandatorily provide facilities for accepting payments through prescribed electronic modes. Further, a new provision namely section 10A was also inserted in the Payment and Settlement Systems Act 2007 ("the PSS Act"), which provides that no Bank or system provider shall impose any charge on a payer making payment, or a beneficiary receiving payment, through electronic modes prescribed under section 269SU of their IT Act. Subsequently Vide notification no. 105/2019 dated 30-12-2019
 - a. Debit Card powered by RuPay;
 - b. Unified Payments Interface (UPI) (BHIM-UPI); and
 - c. Unified Payments Interface Quick Response Code (UPI QR Code) (BHIM-UPI QR Code) were notified as prescribed electronic modes under section 269 SU of the IT Act.

2. A circular no. 32/2019 dated 30-12-2019 was issued by the Board to clarify that based on section 10A of the PSS Act, any charge including the MDR (Merchant Discount Rate) shall not be applicable on or after 01st January, 2020 on payment made through prescribed electronic modes. However, representations have been received that some banks are imposing and collecting charges on transactions carried out through UPI. A certain number of transactions are allowed free of charge beyond which every transaction bears a charge. Such practice on part of banks is a breach of section 10A of the PSS Act as well as section 269SU of the IT Act. Such breach attracts penal provisions under section 271DB of the IT Act as well as section 26 of the PSS Act.

3. Banks are, therefore, advised to immediately refund the charges collected, if any, on or after 1st January, 2020 on transactions carried out using the electronic modes prescribed under section 269SU of the IT Act and not to impose charges on any future transactions carried through the said prescribed modes.

(Circular No.16/2020, dated 30th August, 2020)

SECTION 280A OF THE INCOME-TAX ACT, 1961, READ WITH SECTION 84 OF THE BLACK MONEY (UNDISCLOSED FOREIGN INCOME AND ASSETS) AND IMPOSITION OF TAX ACT, 2015 - SPECIAL COURTS - DESIGNATED SPECIAL COURTS FOR STATES OF MAHARASHTRA

1. In exercise of the powers conferred by sub-section (1) of section 280A of the Income-tax Act, 1961 (43 of 1961) and section 84 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (22 of 2015), the Central Government, in consultation with the Chief Justice of the High Court of Bombay, hereby designates the following courts of Magistrates of First Class as Special Courts under sub-section (1) of section 280A of the Income-tax Act, 1961 and section 84 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 in the State of Maharashtra, for trial of offences punishable under the Income-tax Act, 1961 and other related matters, namely:-
 - a. the 38th Court, Ballard Pier for Mumbai region and 31st Court of Additional Chief Metropolitan Magistrate, Vikhroli for Mumbai including cases at Thane;
 - b. the Court of the Chief Judicial Magistrate, Nagpur for entire Vidarbha region, and
 - c. the Court of 10th Joint Civil Judge Junior Division and Judicial Magistrate First Class (Court No. 8), Pune for Pune region.

(Notification S.O. 2682(E) [NO. 59/2020/F. NO 285/30/2019-IT (INV.V) CBDT], dated 10-8-2020)

PROVIDING EASE OF TAX COMPLIANCE AND OPPORTUNITY TO TAXPAYERS BEFORE FINALIZING OF ASSESSMENT ORDER ARE CORE FEATURES OFFACELESS ASSESSMENT SCHEME, A RIGHT STEP TOWARDS MINIMUM GOVERNMENT, MAXIMUM GOVERNANCE: PRINCIPAL CHIEF COMMISSIONER -INCOME TAX, MUMBAI

The Faceless E-Assessment scheme is a right step towards Minimum Government, Maximum Governance and the foundation stone for a transparent tax system. This is how Principal Chief Commissioner of Income-tax in Mumbai, Shri Patanjali Jha summarizes the new platform of Income-tax Department. He added that providing Ease of Tax Compliance and Opportunity to taxpayers before finalizing of Assessment Order are the core features of this scheme, while speaking at a webinar on 'Faceless Assessment, Appeals & Taxpayer's Charter' jointly organized by the IMC Chamber of Commerce & Industry and Bombay Chamber of Commerce & Industry today.

Making a comparison between the faceless assessment system and the current system it replaces, the Principal Chief Commissioner explained how the new system is one designed for the 21st century. "There is no discretion in selection of assessment cases, while earlier, case selection used to happen manually. In place of single territorial jurisdiction, we now have automated random allocation of cases. While notices used to be issued both manually and, on the system, issue of notices will now be done through a central mechanism (by NeAC) in electronic mode. There will be no physical meeting with any officer, no officer will call you to office and no more waiting outside office", explained Shri Jha. He also noted, wide discretion and subjective assessment are being replaced by team-based assessment and a system wherein draft order is issued in one city, review is done in another city and finalization is done in yet another city, said the Principal Chief Commissioner. This apart, the scheme gives opportunity to taxpayers, in case of any order prejudicial before finalizing the Assessment order.

The Principal Chief Commissioner urged all taxpayers to visit the e-filing portal to understand how easy it is to use the platform from where all issues with the Department can be resolved easily. "On our part we expect you to understand and try to adapt; We will also provide suitable infrastructure facilities and ensure tax compliance is easy for tax payers", stated Shri Jha.

A National e-Assessment Centre (NeAC) and a network of Regional e-Assessment Centers will be set up to implement the Faceless Assessment Scheme of the Income-tax Department, launched nation-wide by Prime Minister Shri Narendra Modi on 13th August, 2020. The regional assessment network would comprise assessment units, verification units, technical units and review units. The system allows for dynamic jurisdiction, team-based working, and functional specialization and does away with human interface altogether.

(Press Release, dated 27th August, 2020)

Case laws

Pr. Commissioner of Income Tax vs. Solan District Truck Operators Transport Co-op. Society

Facts:

- The assessee-society filed return of income which was processed under section 143(1). For the assessment years 1996-97 to 1999-2000, certain refunds arising out of excess TDS were issued in favor of the assessee. There was delay in payment of such interest to assessee. However, the Assessing Officer refused to grant interest under section 244-A in respect of some of the refunds, while in the case of some other refunds, interest was paid for a shorter period than what was claimed by the assessee. The interest was refused on the ground that the delay in issuing refund was attributable to the assessee.
- Aggrieved On appeal, the Commissioner (Appeals) dismissed the appeal of the assessee on the ground that the question as to whether any part of the delay was attributable to the assessee was a question to be decided by the Chief Commissioner under section 244-A(2). Then, the matter was referred to the Chief Commissioner who directed to pay interest to the assessee from July, 1997 to February, 1999 on refund of certain amount.
- The assessee further filed an application under section 154 requesting therein to allow interest on delayed interest on the refund which was rejected.
- On appeal the Commissioner (Appeals), dismissed the appeal of the assessee.
- However, on further appeal, the Tribunal allowed the appeal of the assessee and directed the revenue to pay compensation in the shape of simple interest on the amount due at the rate at which the assessee otherwise would have been entitled to, on the delayed payment of excess tax paid.
- Revenue challenged the same by way of miscellaneous application before the Tribunal, which came to be dismissed.
- On revenue's appeal to the High Court:

Held:

- The interest on the delayed refund becomes part of the principle amount and the delayed interest includes the interest for not refunding the principle amount. Accordingly, it also includes the interest on the delayed refund.
- The revenue has been directed vide Notification dated 8-8-2019 to file appeals in income tax cases before the High Court where the monetary limit is less than Rs. 1.00 crore and where it is above the said amount, that shall not be a subject

matter of appeal before the High Court. But in the Notification dated 11-7-2018, there is an exception to the effect that in certain circumstances, an appeal should be contested on merits notwithstanding the fact that the tax effect entailed is less than Rs. 1.00 crore.

- It can be said that though, the monetary limit to prefer an appeal before High Court is less than Rs. 1.00 crore, but if there is a valid question, where an Order, Notification, Instruction or Circular is to be challenged as illegal or ultra vires, an appeal could be filed before the High Court. In the present case, no such exception is available to the appellant.

Commissioner of Income-tax-1, (International Taxation), Delhi vs. Authority For Advance Ruling

Facts:

- The Revised return had been selected for scrutiny under computer aided selection system (CASS) and a notice under section 143(2) had been issued to the petitioners. On ground that “taxable income shown in revised return was less than the taxable income shown in the original return and large refund had been claimed simultaneously, question admitted for Ruling is "Whether on the facts and circumstances of the case and in law, the Royalty receivable by the Applicant from ("Crocs India") for use of intellectual property rights ("IPR")relating to design, development, marketing, distribution etc. would be taxable in the hands of Applicant only at the time of actual receipt under article 12.
- Writ petition was filed challenging the order passed by Authority for Advance Rulings on the ground that it was in violation of the jurisdictional bar under proviso to section 245R(2). It was prayed that only Commissioner had jurisdiction to deal with same.
- The department submitted that impugned order was liable to be quashed as the application of assessee was not maintainable before AAR because of non-existence of jurisdictional fact and referred to the report under section 245R(2) filed by the Dy. Commissioner to point out that the main issue before the Assessing Officer in the scrutiny proceedings was the same as before the Authority for Advance Rulings, namely whether the royalty was taxable in the hands of the assessee at the time of actual receipt or otherwise.

Held:

- The revised return had been selected for scrutiny under section 143(2) on ground that taxable income shown in revised return by the applicant (cross Europe) was less than the taxable income shown in the original return and large refund had been claimed. In contrast the question admitted for Advance Ruling is whether royalty receivable by the assessee from Crocs India for use of intellectual property rights (IPR) relating to design, development, marketing, distribution, etc. would be taxable in the hands of assessee only at the time of actual receipt under article 12 of agreement between India and Netherlands for avoidance of double taxation and prevention of fiscal evasion Treaty.
- High Court in *Hyosung Corporation v. Authority for Advance Rulings* [2016] 66 taxmann.com 217/238 Taxman 401/382 ITR 371 (Delhi) and *Sage Publications Ltd. U.K. v. Dy. CIT(International Taxation)* [2016] 73 taxmann.com 85/387 ITR 437 (Delhi) have held that a question cannot be said to be pending under clause (i) of proviso to section 245R(2) upon issuance of a mere notice under section 143(2) especially when it has been issued in a standard pre-printed format and questions raised before the authority for Advance Ruling do not appear to be forming subject matter of said notice. This is also more so when the notice fails to satisfy the particulars of claim of loss, exemption, deduction, allowance or relief as mandated by section 143(2)(i). The AAR has followed said decisions and held that notice under section 143(2) merely asks the assessee to produce any evidence on which it may like to rely in support of its return. It does not even remotely disclose any application of mind to the return filed by the assessee. For this reason, AAR has held that question cannot be said to be pending to attract the bar under clause (i) of the proviso to section 245R(2).
- The department submitted that the aforesaid judgments do not deal with the jurisdictional ground urged in the present petition and one should examine the matter afresh or refer the matter to a Larger Bench. Court was not inclined to agree. The precise question urged has been answered against the revenue in the above noted decisions. It is also pertinent note that the Special Leave Petitions challenging the said judgments have been dismissed. Consequently, the issues of law and fact raised by the petitioners are no longerers integra. There is no any infirmity in the approach adopted by the AAR.

INTERNATIONAL TAXATION

Circulars/ Notifications/Press Release

S.O. 2887(E).—Whereas the Multilateral Convention to Implement Tax Treaty related Measures to Prevent Base Erosion and Profit Shifting (hereinafter referred to as the “the said Convention”) was signed by India at Paris, France on the 7th day of June, 2017;

And whereas, the said Convention entered into force on the 01st day of July, 2018, being the first day of month following expiration of three calendar months beginning on the date of deposit of the fifth instrument of ratification, in accordance with para 1 of Article 34 of the said Convention;

And whereas, India had ratified the said Convention and had deposited the instrument of ratification along-with the list of Covered Tax Agreements, reservations and notifications (hereinafter referred to as “India’s Position under the said Convention”) to the Depositary as in Article 39 of the said Convention, on the 25th day of June, 2019;

And whereas, the date of entry into force of the said Convention for India is the 01st day of October, 2019, being the first day of the month following the expiration of a period of three calendar months beginning on the 25th day of June, 2019 being the date of deposit by India of the instrument of ratification, in accordance with para 2 of Article 34 of the said Convention;

And whereas, the provisions of the said Convention shall have effect in India with respect to a Covered Tax Agreement in accordance with provisions of Article 35 of the said Convention;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies that the provisions of the said Convention shall be given effect to in the Union of India, in accordance with India’s Position under the said Convention, as set out in the [Annexure](#).

(Notification No. 57/2020/F. No. 500/71/2015-FTD-I dated 09th August, 2020)

S.O. 3079(E).—Whereas, the Protocol, amending the Convention between the Government of the Republic of India and the Kingdom of Spain for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital which was signed at New Delhi on the 8th February, 1993, has been signed at New Delhi on 26th October 2012, as set out in the [ANNEXURE](#) appended to this notification (hereinafter referred to as the said amending Protocol);

And whereas, the date of entry into force of the said amending Protocol is the 29th December, 2014 being the two months after the receipt of later of the notifications of the completion of the internal procedures required by each Contracting State for giving effect to the said amending Protocol in accordance with Article 9 of the said amending Protocol;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies that all the provisions of the said amending Protocol, as annexed hereto, shall be given effect in the Union of India.

(Notification No. 60/2020/F. No. 503/02/1986-FTD-I, dated 27th August, 2020)

Case Laws

Van Oord Dredging and Marine Contractors BV vs. Deputy Commissioner of Income Tax [TS-252-ITAT-2020(Mum)] dated 27th May, 2020

Facts

- The assessee, a company based in Netherlands, established a project/site office, by RBI's approval, for executing contracts in India.
- On The assessee received an arbitration award in relation to the project in the current year for an appeal filed in the earlier years.
- The assessee did not add the income received in relation to the project in India as the project was completed in the earlier FY's on the contention that in the absence of any PE in India, the same would not be taxable in India as per Article 5 r.w. Article 7 of the India- Netherlands DTAA.
- AO disagreed and taxed income in India and levied penalty u/s.271(1)(c) during the assessment proceedings.
- Aggrieved, the assessee filed an appeal before ITAT.

Issue:

Whether excluding the arbitration reward received by the assessee in the return filed would result in inaccurate or incomplete return?

Held

- ITAT observed the fact that the assessee did not include the arbitration award in the return filed would not result to furnishing of inaccurate particulars to income as claiming or not claiming of the same was a matter of perspective of the assessee.
- ITAT ruled that just because the interpretation was not acceptable to the AO, it would not render the return incorrect.
- Without Also, ITAT noted that at the time of filing of the return the assessee explained the reasons for not including the amount in question received as "arbitration award" in its taxable income.
- ITAT stated that the assessee did not have any PE in India for the project at the time of receiving the arbitration award and therefore the same cannot be brought to tax in India.
- ITAT ruled that there was neither any concealment of particulars of income nor furnishing of inaccurate particulars of income by the assessee and therefore penalty u/s 271 (1)(c) cannot be imposed on the assessee.
- Accordingly, ITAT ruled in favor of the assessee.

REGULATION GOVERNING INVESTMENTS FOREIGN EXCHANGE MANAGEMENT ACT (FEMA)

Analysis of Compounding Orders

Overseas Direct Investment – FEMA Notification No. 120

Everest Kanto Cylinder Limited - CA No. 5008/2019 dated 17/02/2020

Nature of Contravention	Regulation Reference	Amount of Contravention	Period of Contravention	Compounding Fee Levied (Rs.)
Delayed repatriation of interest due on loans	Regulation 15(ii) of FEMA 120	21,08,84,700	6 months to 11 years approximately	15,30,025
Delay in submission of APRs	Regulation 15(iii) of FEMA 120	APR for 2007, 2017 and 2018	3 APRs	30,000

It may be noted that due-date for filing GSTR 3B are not extended vide above notifications in all cases. There is only waiver of late fees & interest for certain period as mentioned here in above in table.

For Registered Person having turnover of more than Rs. 5 crore in preceding financial year, there is no extension of Due-date for filing GSTR 3B beyond May, 2020. Therefore, from June, 2020 onwards the due-date of GSTR 3B will be 20th Day of Succeeding month. For the month of May,2020 the due date is extended to 27th June,2020.

Securities and Exchange Board of India (Investment Advisers) (Amendment) Regulations, 2020 - Amendment in Regulations 2, 3, 4, 6, 13, 15, 18, 19, 25, 27, Form A and Third Schedule; Substitution of Regulations 7, 8, 22; Insertion of Regulations of 15A and 22A Vide Notification No. SEBI/LAD-NRO/GN/2020/22, Dated 3-7-2020.

Standard operating procedure in the Cases of trading Member/ Clearing Member Leading to Default Vide Circular No. SEBI/HO/ MIRSD/DPIEA/CIR/P/2020/115, Dated 1-7-2020

Relaxation from compliance to Reits and Invits due to the Covid-19 Virus Pandemic Vide Circular No. SEBI/HO/DDHS/ DDHS/CIR/P/2020/114, Dated 1-7-2020.

COMPANY LAW

MCA amends provisions related to differential Voting Rights.

MCA has amended the provisions relating to issue of shares with differential voting rights provisions under the Companies Act with the objective of enabling promoters of Indian companies to retain control of their companies in their pursuit for growth and creation of long-term value for shareholders, even as they raise equity capital from global investors.

The key change to the Companies (Share Capital & Debentures) Rules, 2014 brings in an enhancement in the previously existing cap of 26% of the total post issue paid up equity share capital to a revised cap of 74% of total voting power in respect of shares with differential voting rights of a company.

Another key change brought about is the removal of the earlier requirement of distributable profits for 3 years for a company to be eligible to issue shares with differential voting rights. This would encourage more companies to issue shares with differential voting rights.

MCA amends provisions relating to DEBENTURE REDEMPTION RESERVE (DRR)

MCA has amended the provisions relating to the conditions for creating DRR under the Companies Act. The requirement of creation of DRR of 25% of the value of outstanding debentures has been removed in respect of listed companies, non-banking financial companies registered with the RBI and housing finance companies registered with National Housing Banks for both public issue and private placement.

For unlisted companies, the adequacy of DRR has been reduced from 25% to 10% of the value of the outstanding debentures.

ACCOUNTS & AUDIT

Extension of various time limits under Direct Tax & Benami laws

In view of Corona Virus (COVID-19), the Government brought the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 [the Ordinance] on 31st March, 2020 which extended various time limits. In order to provide further relief to the taxpayers for making various compliances, the Government has issued a Notification on 24th June, 2020.

The extension of various time limits under Direct Tax & Benami laws for making various compliances are already covered while explaining the relief granted under notification no 35 dated 24.06.2020. The other clarification issued under this press note are as under:

- Deferment of the implementation of new procedure for approval/ registration/ notification of certain entities u/s 10(23C), 12AA, 35 and 80G of the IT Act has already been announced vide Press Release dated 8th May, 2020 from 1st June, 2020 to 1st October, 2020. It is clarified that the old procedure i.e. pre-amended procedure shall continue to apply during the period from 1st June, 2020 to 30th September, 2020. Necessary legislative amendments in this regard shall be moved in due course of time.
- The Finance Minister has already announced reduced rate of TDS for specified non-salaried payments to residents and specified TCS rates by 25% for the period from 14th May, 2020 to 31st March, 2021. The announcement was also followed by the Press Release dated 13th May, 2020. The necessary legislative amendments in this regard shall be moved in due course of time.

S. 11(1)(c) – Deduction in respect of approved donation to foreign university

Trust is entitled to claim deduction u/s 11(1)(c) in respect to donation made to the foreign university on the basis of specific approval from CBDT. Once specific approval is granted by CBDT, it is not open to the CIT(A) to review the decision of CBDT. It was observed by the ITAT “the CBDT has approved the exemption being granted in respect of payments made by the assessee trust to the Cornell University USA and Harvard University USA, in which the Assessing Officer has duly given effect to the stand so taken by the CBDT, and yet a hyper-pedantic, even if a bonafide, approach of the learned CIT(A), seemingly more loyal to the CBDT than CBDT itself, has resulted in this wholly avoidable litigation which does not only clog the serious litigation before the judicial forums but also diverts scarce resources of the philanthropic bodies, like the assessee before us, to the areas which do no good to the society at large. It appears that the view taken in the matter by the CIT(A) in reviving

an issue which was already concluded by the Assessing Officer in favour of the assessee, and in the Assessing Officer defending the action of the CIT(A), is inherently incompatible with much appreciated and very forward looking approach of the Government of India towards minimizing litigation and thus creating a taxpayer friendly environment. We hope that the admirable work being done by the Government of India, in pursuing such forward looking policies at the macro level, is not allowed to be overshadowed by the isolated situations like this, at the field level, which must be minimized by sensitizing the authorities concerned. An effort should be made to create a taxpayer friendly atmosphere by adopting just and fair approach at every level of the tax administration.” - *Tata Education and Development Trust v. ACIT [2020] 117 taxmann.com 946 (Mumbai - Trib.)*

GOODS AND SERVICE TAX

CBIC vide notification 51/2020-CT dated 24th June, 2020, 52/2020- CT & 54/2020-CT dated 24th June, 2020 has reduced Interest rate & waived late fees for delay in filing GSTR 3B as follows

Class of registered Person	Tax Period	Date till which no Interest & Late Fees payable	Remarks
Taxpayers having an aggregate turnover of more than Rs. 5 crores in the preceding financial year	Feb, 2020	4th April, 2020	Filing after the extended Due-date shall attract interest @ 9% till 24 th June, 2020 No Late fees will be charged till 24th June, 2020 After 24th June, 2020, Interest @ 18% along with Late fees
	March, 2020	5th May, 2020	
	April, 2020	4th June, 2020	
Taxpayers having an aggregate turnover of up to Rs. 5 crores in the preceding financial year, whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep	Feb, 2020	30th June, 2020	Filing after the Due-date shall attract interest @ 9% till 30th September, 2020 No Late fees will be charged till due-date After 30th September, 2020, Interest @ 18% along with Late fees
	March, 2020	3rd July, 2020	
	April, 2020	6th July, 2020	
	May, 2020	12 th September,2020	
	June, 2020	23 rd September,2020	
	July, 2020	27 th September,2020	
	August, 2020	1st October, 2020	

Taxpayers having an aggregate turnover of up to Rs. 5 crores 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 or the Union territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi	Feb, 2020	30th June, 2020	Filing after the Due-date shall attract interest @ 9% till 30th September, 2020 No Late fees will be charged till due-date After 30th September, 2020, Interest @ 18% along with Late fees
	March, 2020	5th July, 2020	
	April, 2020	9th July, 2020	
	May, 2020	15 th September,2020	
	June, 2020	25 th September,2020	
	July, 2020	29 th September,2020	
	August, 2020	3rd October, 2020	

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