

**(TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART-II
SUB SECTION (II))**

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
(CENTRAL BOARD OF DIRECT TAXES)

New Delhi, the 11th December, 2008

**NOTIFICATION
INCOME TAX**

S.O. 2861(E).- In exercise of the powers conferred by section 295 read with clause (iia) of sub-section (1) of section 35 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:-

1. (1) These rules may be called the Income-tax (11th Amendment) Rules, 2008.
(2) They shall come into force with effect from the 1st day of April, 2009.
2. In the Income-tax Rules, 1962, after rule 5E, the following rule shall be inserted, namely:-

“Prescribed authority, guidelines, form, manner and conditions for approval under clause (iia) of sub-section (1) of section 35.

5F. (1) For the purposes of clause (iia) of sub section (1) of section 35, the prescribed authority shall be the Chief Commissioner of Income-tax having jurisdiction over the applicant.

(2) *Guidelines, form and manner in respect of approval under clause (iia) of sub-section (1) of section 35 shall be as under:-*

- (a) An application for approval under clause (iia) of sub-section (1) of section 35 by a company shall be made in duplicate in Form No. 3CF-III, to the Commissioner of Income-tax having jurisdiction over the applicant, at any time during the financial year immediately preceding the assessment year from which the approval is sought.
- (b) The applicant shall send a copy of the application in Form No. 3CF-III to the prescribed authority, accompanied by the acknowledgement receipt as evidence of having furnished the application form in duplicate in the office of the Commissioner of Income-tax having jurisdiction over the case.
- (c) Every notification under clause (iia) of sub-section (1) of section 35 shall be issued or an order rejecting the application shall be passed within a period of twelve months from the end of the month in which the application was received in the office of the Chief Commissioner of Income-tax.
- (d) If any defect is noticed in the application in Form No. 3CF-III or if any relevant document is not attached thereto, the Commissioner of Income-tax shall serve a deficiency letter on the applicant before the expiry of one month from the date of receipt of the application form in his office.
- (e) The applicant shall remove the deficiency within a period of fifteen days from the date of service of the deficiency letter or within such further period which, on an application made in this behalf may be extended, so however, that the total period for removal of deficiency does not exceed thirty days, and if the applicant fails to remove the deficiency within the period of thirty days so allowed, the Commissioner of Income-tax shall send his recommendation to the Chief Commissioner of Income-tax for treating the application as invalid.

- (f) The Chief Commissioner of Income Tax may, after examining the recommendations referred to in clause (e), pass an order that the application is invalid.
- (g) If the application form is complete in all respects, the Commissioner of Income-tax may, make such inquiry as he may consider necessary regarding the genuineness of the activity of the company and send his recommendation to the Chief Commissioner of Income-tax for grant of approval or rejection of the application before the expiry of the period of three months to be reckoned from the end of the month in which the application form was received in his office.
- (h) The Chief Commissioner of Income-tax may, before granting approval under clause (iia) of sub-section (1) of section 35, call for such documents or information from the applicant as it considers necessary and may get any inquiry made for verification of the genuineness of the activity of the applicant.
- (i) The Chief Commissioner of Income-tax may, under sub-section (1) of section 35, issue the notification to be published in the Official Gazette granting approval to the company or for reasons to be recorded in writing reject the application.
- (j) The Chief Commissioner of Income -tax may withdraw the approval granted under clause (iia) of sub-section (1) of section 35 if he is satisfied that the company has ceased to carry on its activities or its activities are not genuine or are not being carried on in accordance with all or any of the conditions under this rule :
Provided that no order treating the application as invalid or rejecting the application or withdrawing the approval shall be passed without giving a reasonable opportunity of being heard to the company.

(k) A copy of the order invalidating or rejecting the application or withdrawing the approval shall be communicated to the applicant, the Assessing Officer and the Commissioner of Income-tax.

(3) Approval to a company under clause (iia) of sub-section (1) of section 35 shall be subject to the following conditions, namely:-

- (a) The sum paid to the company shall be used for scientific research;
- (b) The applicant company shall carry on scientific research through its own employees using its own assets;
- (c) A company approved under clause (iia) of sub-section (1) of section 35 shall maintain separate books of account in respect of the sums received by it for scientific research, reflect therein the amount used for carrying on research, get such books of account audited by an accountant, and furnish the report of such audit duly signed and verified by such accountant to the Commissioner of Income-tax having jurisdiction over the case, by the due date of furnishing the return of income under sub-section (1) of section 139.
Explanation.- For the purpose of this clause "accountant" shall have the same meaning as assigned to it in Explanation to sub-section (2) of section 288 of the Act.
- (d) The company shall maintain a separate statement of donations received and the amount used for research and a copy of such statement duly certified by the auditor shall accompany the report of audit referred to in sub-rule (3).
- (e) Subsequent to approval, the company shall, every year, by the due date of furnishing the return of income under sub-section (1) of section 139, furnish a statement to the Commissioner of Income-tax containing the following information, namely:-
 - (i) a detailed note on the research work undertaken by it during the previous year;

- (ii) a summary of research articles published in national or international journals during the year;
- (iii) any patents or other similar rights applied for or registered during the year;
- (iv) programme of research projects to be undertaken during the forthcoming year and the financial allocation for such subjects.

(f) If the Commissioner of Income-tax is satisfied that the company,—

- (i) is not maintaining separate books of account for research activities, or
- (ii) has failed to furnish its audit report, or
- (iii) has not furnished its statement of the sums received and the sums used for research, or a statement referred to in sub-clause (e), or
- (iv) has ceased to carry on its research activities, or its activities are not genuine, or
- (v) is not fulfilling the conditions subject to which approval was granted to it,

he may after making appropriate enquiries, furnish a report on the circumstances referred to in sub-clauses (i) to (v) to the jurisdictional Chief Commissioner of Income-tax within six months from the date of furnishing the return of income under sub-section (1) of section 139."

3. In the Income-tax Rules, 1962, in Appendix II, after Form 3CF-II, the following form shall be inserted, namely: -

“FORM NO. 3CF-III

[See rule 5F]

Application form for approval under clause (iia) of sub-section (1) of section 35 of the Income-tax Act, 1961 in the case of company

1. (i) Name and address of the registered office of the applicant.
(ii) Enclose a copy of the Memorandum and Articles of Association, and if the company was approved earlier, furnish notification number and date of the latest notification. [Please enclose a copy]
(iii) If approval was withdrawn in the past, mention reasons on account of which the approval was withdrawn. [Enclose a copy of the Order/Orders withdrawing approval/approvals]
(iv) Date from which approval has been sought for.
- 2 Legal status of the applicant:
(Enclose a copy of certificate of incorporation)
- 3 (i) Address(es) of the research laboratory/research facility of the applicant.
(ii) Year of establishment.
(iii) Name and address of the Officer in-charge of the Laboratory/research facility.
(iv) Total number of employees engaged in scientific research.
- 4 List of research facilities or assets acquired by the applicant:
(i) Plant and machinery.

- (ii) Land and building along with cost of acquisition.
- (iii) Any other research facility/asset along with cost of acquisition.

5 Research subjects and projects undertaken by the applicant:

- (i) Research projects completed by the organization during last three years, if any.
- (ii) Research projects which have been taken up during the year and research projects which are underway from the past years.
- (iii) Research papers published in any eminent national or international research journal.

6 Other details of scientific research :

- (i) New products, processes, methods, techniques developed.
- (ii) Improvements in existing products, processes, methods, techniques.
- (iii) Import substitution.
- (iv) Patents filed: obtained, if any, and if so, in whose name?
- (v) Whether products, processes methods and techniques mentioned at (i) above have been commercialized or implemented and if so, by whom?
- (vi) New theories/models developed.
- (vii) New hypothesis which has been widely accepted.
- (viii) Any copyrights applied for/obtained.
- (ix) Earnings from patents or registered trade marks, if any.

7 Enclose details of seminars, conferences, workshops, and training courses, etc., conducted by the applicant during the last three years and a brief note regarding the relevance of such exchanges to the research area or activity carried on by the applicant.

- 8** Programmes contemplated for research in future and financial projections to meet the likely expenditure on such programmes.
- 9** (i) Sources of income of the applicant (for the last three years)
(ii) Indicate assessment particulars:
(PAN, Ward/Circle if assessed to tax)
(iii) When was the last return of income furnished?
- 10** Amount received by the company and actually applied for research conducted by it during the last three years:

<i>Year</i>	<i>Amount received</i>	<i>Amount actually utilized for research out of the amount at column (2)</i>
(1)	(2)	(3)

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SECTION 3, SUB-SECTION (ii)]**

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(CENTRAL BOARD OF DIRECT TAXES)

New Delhi, the 22nd December, 2008

**CORRIGENDUM
INCOME-TAX**

S.O. 2949(E).- In the Notification of the Government of India, Ministry of Finance, Department of Revenue (Central Board of Direct Taxes), number 107/2008 dated 11th December, 2008 bearing S.O. (E) and published in the Gazette of India, Extraordinary, Part-II, Section -3, Sub-section (ii) dated 11th December, 2008—

In clause 1, sub-section (1), instead of “**Income-tax (11th Amendment) Rules, 2008**” read as “ **Income-tax (10th Amendment) Rules, 2008**”

[Notification No. 109./2008/ F.No. 142/11/2008-TPL]

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Director to the Government of India