

F No 142/15/2015-TPL  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Direct Taxes

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New Delhi, 5<sup>th</sup> December, 2019

**Subject: Framing of rules with respect of Fund Manager Regime under section 9A of the Income-tax Act, 1961-Draft notification for inputs from stakeholders and the general public - reg.**

Section 9A of the Income-tax Act, 1961 (the Act) provides for a special taxation regime in respect of certain offshore funds in context of their fund managers being located in India. It is provided that in case of an eligible investment fund, the fund management activity carried out through an eligible fund manager acting on behalf of such fund shall not constitute business connection in India of the said fund. Further, it is provided that an eligible investment fund shall not be said to be resident in India merely because the eligible fund manager undertaking fund management activities on its behalf is located in India subject to the conditions mentioned in sub-section (3) of section 9A, one of which [clause (m) of said sub-section] provides that the remuneration paid by the fund to an eligible fund manager in respect of fund management activity undertaken by him on its behalf is not less than the arm's length price of the said activity.

2. Accordingly, Income-tax Rules, 1962 (the Rules) was amended by way of insertion of rules 10V to 10VB and Forms 3CEJ and 3CEK vide notification No 14/2016 with SO 1101 (E) dated 15.03.2016. Rule 10V was further amended vide notification No 106/2016 with SO 3498(E) dated 21.11.2016.

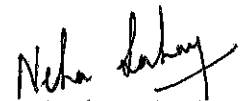
3. Sub-rule (5) to (10) of rule 10V of the Rules contains the provisions relating to determination of the arm's length price in respect of any remuneration paid by the eligible investment fund to an eligible fund manager as referred to in clause (m) of sub-section (5) of section 9A.

4. Finance (No 2) Act, 2019 with effect from 1<sup>st</sup> April, 2019, *inter alia*, amended clause (m) of sub-section (5) of section 9A so as to provide that the remuneration paid by the fund to an eligible fund manager in respect of fund management activity undertaken by him on its behalf is not less than the amount calculated in such manner as may be prescribed.

5. Accordingly, the manner for calculation of the amount to which remuneration paid to the eligible fund manager should not be less is required to be prescribed.

6. A draft notification to amend the Rules for this purpose is enclosed. It is requested from the **general public and the stakeholders to provide inputs electronically at the email address, [ustpl1@nic.in](mailto:ustpl1@nic.in), latest by 19<sup>th</sup> December, 2019.**

Encl: As above.

  
(Neha Sahay)

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3,

SUB-SECTION (ii)  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE

[CENTRAL BOARD OF DIRECT TAXES]

**NOTIFICATION**

New Delhi, .....<sup>th</sup> November, 2019

**INCOME-TAX**

G.S.R.....(E).- In exercise of the powers conferred by section 295 read with clause (m) of sub-section (3) of section 9A 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 (.....<sup>th</sup> Amendment) Rules, 2019.
- (2) They shall come into force from the 1<sup>st</sup> day of April, 2019.
2. In the Income-tax Rules, 1962,

I. in rule 10VA,-

(i) after sub-rule (10), the following shall be inserted, namely:-

“(11) The provisions of sub-rule (5) to sub-rule (10) shall not apply on or after the 1st day of April, 2019.

(12) the amount of remuneration to be paid by the fund to a fund manager, referred to in clause (m) of sub-section (3) of section 9A, shall be calculated in the following manner:

(i) in a case where the fund is such Category-I foreign portfolio investor as is referred to in item (i), item (ii) or item (iii), and sub-item III of item (iv) of clause (a) of section 5 of the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019, made under the Securities and Exchange Board of India Act, 1992 (15 of 1992), the amount shall be 0.1 per cent. of the assets under management of said fund which is managed by the fund manager.

(ii) in any other case, the amount shall be,-

(a) 0.30 per cent. of the assets under management of said fund which is managed by the fund manager, or

(b) 10 per cent. of the profits derived by the fund in excess of the specified hurdle rate from the fund management activity undertaken by the fund manager, where it is entitled only to remuneration linked to the income or profits derived by the fund; or

(c) 50 per cent. of the management fee, whether in the nature of fixed charge or linked to the income or profits derived by the fund from the management activity undertaken by the fund manager, received by such fund in respect of the fund management activity undertaken by the fund manager as reduced by the amount incurred towards operational expenses including distribution expenses, if any:

Provided that in case where the amount of remuneration is lower than the amount arrived at under clause (i) or clause (ii), the fund may, at its option, apply to the Member, Central Board of Direct Taxes referred to in sub-rule (2) of rule 10VA seeking approval of the Board under said rule for that lower amount to be the amount for the purposes of clause (m) of sub-

section (3) of section 9A and on receipt of such application the Board may, after satisfying itself considering the relevant facts, approve such lower amount to be the amount for the purposes of clause (m) of sub-section (3) of section 9A.

*Explanation.-* For the purposes of this rule,-

(a) "asset under management" means the annual average of the monthly average of the opening and closing balances of the value of the fund managed by the fund manager.

(b) "management fee" means the amount as mentioned in the certificate obtained from an accountant as defined in Explanation below sub-section (2) of section 288 for this purpose.

(c) "specified hurdle rate" means a pre-defined threshold beyond which the fund agrees to pay a share of the profits earned by the fund from the fund management activity undertaken by the fund manager.

(13) The fund manager shall, in addition to any report required to be furnished by it under section 92E, obtain a report from the accountant in respect of activity undertaken for the fund and furnish such report on or before the specified date in the Form No. 3CEJA duly verified by such accountant in the manner indicated therein and all the provisions of the Act shall apply as if it is a report to be furnished under section 92E."

(ii) sub-rule (11) and sub-rule (12) shall be renumbered as sub-rule (14) and sub-rule (15) respectively.

II. in Appendix II,

(i) after Form No 3CEJ, the following shall be inserted, namely:-

**"FORM No. 3CEJA**

[See rule 10V (13)]

**Report from an accountant to be furnished for purpose of section 9A regarding fulfilment of certain conditions by an eligible investment fund**

\*I/We have examined the accounts and records of ..... (name and address of the fund manager with PAN) relating to the fund management activity and other transactions or services rendered by the fund manager to the eligible investment fund/ funds during the previous year ending on 31<sup>st</sup> March,

1. In\*my/our opinion proper information and documents as are prescribed have been kept by the fund manager in respect of fund management activity and other transactions or services rendered by the fund manager to the fund/funds so far as appears from \*my/our examination of the records of the fund manager.
2. The particulars required to be furnished for the purpose of section 9A are given in the Annexure to this Form. In\*my/our opinion and to the best of my/our information and according to the explanations given to \*me/us, the particulars given in the Annexure are true and correct.

\*\*Signed

Name:

Address:

Membership No.:

Place:

Date:

Notes:

1. \*Delete whichever is not applicable.

2. **\*\*This report has to be signed by an accountant as defined in the Explanation below sub-section (2) of section 288.**

ANNEXURE TO FORM No. 3CEJA

**Particulars relating to fund management activity required to be furnished for the purposes of section 9A of the Income-tax Act, 1961**

1. Name of the Fund Manager
2. Address
3. Permanent account number
4. Nature of business or activities of the fund manager
5. Status
6. Residential status
7. Details of SEBI registration
  - (a) Regulation under which registered
  - (b) Registration number and date
  - (c) Foreign portfolio investor category, if applicable
8. Previous year ended
9. Whether Fund Manager and Fund are related in terms of provision under section 92B.
10. Aggregate value of remuneration received from the eligible fund/funds as per books of account
11. List of eligible investment funds for whom the fund manager has undertaken the fund management activity, with the following details:
  - (a) Name of the offshore fund.
  - (b) Country of residence of the fund
  - (c) Whether the fund manager is an employee of the fund Yes/No
  - (d) Whether the fund manager is a connected person of the Fund Yes/No
  - (e) The amount of profit accruing or arising, during the previous year, to the fund from the activities carried out through the fund manager
  - (f) The amount out of (e) to which the fund manager along with its connected persons is, directly or indirectly, entitled to
12. Particulars of remuneration received in respect of each eligible investment fund and each activity undertaken (if such activity is separately remunerated):
  - (a) Name and address of the fund for which the fund management activity has been undertaken.
  - (b) Description of the activity.
  - (c) Total amount received or receivable in respect of the activity-
    - (i) as per books of account;
    - (ii) as computed by the fund manager having regard to the amount prescribed in this behalf.
13. Particulars in respect of any other transaction undertaken by the fund manager with/on behalf of the eligible investment fund:
  - (a) Has the fund manager entered into any other transaction or rendered any other service to the eligible investment fund or on behalf of the fund, but not specifically referred to above?

- (b) If 'yes' provide the following details in respect of each fund and each transaction or service:
- (a) Name and address of the eligible investment fund with which the transaction has been entered or to whom services have been rendered
  - (b) Description of the transaction/nature of service.
  - (c) Amount paid/received or payable/receivable on account of such transaction/service-
    - as per books of account;
    - as computed by the fund manager having regard to the arm's length price.
  - (d) Method used for determining the arm's length price [See section 92C(1)]

\*\*Signed  
Name:  
Address:

Place:

Date:

**Notes:\*\*** This report has to be signed by an accountant as defined in the *Explanation* below sub-section (2) of section 288."

- (ii) Form No 3CEK shall be named as "Statement to be furnished by an eligible investment fund to the Assessing Officer".
- (iii) in Form 3CEK,-
  - (a) in row 1, in column 2, "Heading", in column 3 "Details" and in column 4 "Remarks, if any" shall be inserted.
  - (b) in row 15, in column 2, for the words "arm's length price and the basis on which it has been determined", the words "the amount prescribed and the basis on which it has been calculated" shall be substituted.

[Notification No. .... /2019/ F. No. 142/15/2015-TPL]

(Niraj Kumar)  
Deputy Secretary (Tax Policy and Legislation)

**Note:** The principal rules were published in the Gazette of India, Extraordinary, Part-II, Section-3, Sub-section (ii) vide number S.O. 969 (E) dated 26<sup>th</sup> March, 1962 and was last amended by notification number ..... dated .....