

MINISTRY OF FINANCE

(Department of Revenue)

(CENTRAL BOARD OF DIRECT TAXES)

NOTIFICATION

New Delhi, the 6th May, 2020

INCOME-TAX

G.S.R. 282(E).—In exercise of the powers conferred by section 295 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. Short title and commencement. — (1) These rules may be called the Income-tax (8th Amendment) Rules, 2020.

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

2. In the Income-tax Rules, 1962 (hereinafter referred to as the principal rules),—

(i) for rule 44G, the following rule shall be substituted, namely: —

“44G. Application seeking to give effect to the terms of any agreement under clause (h) of sub-section (2) of section 295 and the procedure for giving effect to the decision under the Agreement. - (1) Where an assessee, being a resident of

India, is aggrieved by any action of the tax authorities of any country or specified territory outside India for the reason that, according to him, such action is not in accordance with the terms of agreement with such other country or specified territory, he may make an application to the Competent Authority in India seeking to invoke the mutual agreement procedure, if provided in such agreement, in Form No. 34F.

(2) Where a reference has been received from the competent authority of any country or specified territory outside India under any agreement with that country or specified territory with regard to any action taken by any income-tax authority in India or by the tax authorities of such country or specified territory, the Competent Authority in India shall convey his acceptance or otherwise for taking up the reference under mutual agreement procedure to the competent authority of the other country or specified territory.

(3) The Competent Authority in India shall, with regard to the issues contained in Form No. 34F or in the reference from the competent authority of a country or specified territory outside India, call for the relevant records and additional document from the income-tax authorities or the assessee or his authorised representative in India, or have a discussion with such authorities or assessee or representative, to understand the actions taken by the income-tax authorities in India or outside that are not in accordance with the terms of the agreements between India and the other country or specified territory.

(4) The Competent Authority in India shall endeavour to arrive at a mutually agreeable resolution of the tax disputes, arising from such actions of the income-tax authorities, in accordance with the agreement between India and the other country or specified territory within an average time period of twenty-four months.

(5) In case the mutual agreement procedure is invoked on account of action taken by any income-tax authority in India, the resolution arrived at under sub-rule (4) in a previous year shall not result in decreasing the income or increasing the loss, as the case may be, of the assessee in India, as declared by him in the return of income of the said year.

(6) If a resolution is arrived at under sub-rule (4) between the Competent Authority in India and that of the other country or specified territory, the same shall be communicated in writing to the assessee.

(7) The assessee shall communicate his acceptance or non-acceptance of the resolution in writing to the Competent Authority in India within thirty days of receipt of the communication under sub-rule (6).

(8) The assessee's acceptance of the resolution shall be accompanied by proof of withdrawal of appeal, if any, pending on the issues that were the subject matter of the resolution arrived at under sub-rule (4).

(9) On receipt of acceptance under sub-rule (7), the Competent Authority in India shall communicate the resolution arrived at under sub-rule (4) and the acceptance by the assessee alongwith proof of withdrawal of appeal, if any, submitted by the assessee under sub-rule (8), to the Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or Director General, as the case may be, who in turn shall forward it to the Assessing Officer.

(10) On receipt of communication under sub-rule (9), the Assessing Officer shall give effect to the resolution arrived at under sub-rule (4), by an order in writing, within one month from the end of the month in which the communication was received by him and intimate the assessee about the tax payable determined by him, if any.

(11) The assessee shall pay the tax as determined under sub-rule (10) within the time allowed by the Assessing Officer and shall submit the proof of payment of taxes to the Assessing officer who shall then proceed to withdraw the pending appeal, if any, pertaining to subject matter of the resolution under sub-rule (4), which were filed by the Assessing Officer or the Principal Commissioner or Commissioner or any other income-tax authority.

(12) A copy of the order under sub-rule (10), shall be sent to the Competent Authority in India and to the assessee.

(13) The amount of tax, interest or penalty already determined shall be adjusted in accordance with the resolution arrived at under sub-rule (4) and in the manner provided under the Act or the rules made thereunder to the extent that such manner is not contrary to the resolution arrived at.

Explanation. – For the purposes of this rule, the “Competent Authority in India” shall mean an officer authorised by the Central Government for the purposes of discharging the functions as such.”;

(ii) rule 44H shall be omitted;

(iii) in Appendix II, for Form No. 34F, the following Form shall be substituted, namely: –

“FORM NO. 34F

[See rule 44-G]

Form of application for an assessee, resident in India, seeking to invoke mutual agreement procedure provided for in agreements with other countries or specified territories

To

The Competent Authority in India
Foreign Tax and Tax Research Division,
Central Board of Direct Taxes,
Department of Revenue,
Ministry of Finance,
New Delhi
Madam/Sir,

Whereas the applicant is aggrieved by the action of the tax authority of -----
---- (name of the country or specified territory) for the reasons given hereunder. The matter may kindly be taken up with the Competent Authority of ----- (name of the country or specified territory) under Article ----- of the ----- (specify the agreement) between India and ----- (name of the country or specified territory). The relevant details in this regard are as under:

- (a) Name of the Applicant -
 - (b) Permanent Account No. /Aadhar -
 - (c) Circle /Ward -
 - (d) Assessment Year(s) -
 - (e) Previous Year(s) -
 - (f) Office Address & Telephone No. -
 - (g) Residential Address & Telephone No. (If applicable) -
 - (h) Status -
 - (i) Name and Designation of Tax Authority in the other country or specified territory (Treaty Partner) -
 - (j) Date of the notice or order giving rise to the action -
 - (k) Is the order/action of the Tax Authority of the Treaty Partner not in accordance with the agreement? If so, the reasons thereof -
(complete details may be provided in a separate sheet, if required)
 - (l) Details of remedy sought in the other country or specified territory, if any, with documentary evidence -
2. The following documents in support of the claim are enclosed: —
- (I) Copy of notice or order giving rise to action
 - (II) Detailed reasons provided in respect of (k), if any
 - (III) Documents in respect of (l), if any
 - (IV) (Any other document)

Verification

I, _____, son/daughter/wife of Shri _____, solemnly declare that to the best of my knowledge and belief, the information given in this application and the annexures and statements accompanying it is correct and complete and particulars shown therein are truly stated and relate to the previous year(s) relevant to the assessment year.

2. I also declare that to the best of my knowledge; I have not concealed any fact or information which could be relevant for deciding my application.

3. I further declare that I am making this application in my capacity as..... (designation) and that I am holding PAN/ Aadhar _____ and I am competent to make this application and verify it.

Date -----

Place -----

(Signature)”

[Notification No. 23/2020/F.No. 370142/31/2019-TPL]

NIRAJ KUMAR, Dy. Secy. (Tax Policy and Legislation Division)

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (ii) *vide* notification number S.O. 969(E) dated the 26th March, 1962 and were last amended *vide* notification number G.S.R No.159(E) dated the 5th March, 2020.