

F. No. 370142/12/2017-TPL
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, dated the 19th of June, 2018

Subject: Amendment in Rule 10CB of Income-tax Rules, 1962 in respect of computation of interest income pursuant to secondary adjustment made under section 92CE of Income-tax Act, 1961 – Comments and suggestions – reg.

In order to make the actual allocation of funds consistent with that of the primary adjustment, section 92CE was inserted in the Income-tax Act, 1961 ('the Act') vide Finance Act, 2017 with effect from 1st April, 2018 to provide for secondary adjustment by attributing income to the excess money lying in the hands of the associated enterprise (AE).

2. Sub-section (2) of section 92CE empowers the Central Board of Direct Taxes (CBDT) to prescribe the time within which the excess money, which is available with the associated enterprise of an assessee as a result of primary adjustment to the transfer price which leads to an increase in the total income or reduction in the loss of the assessee, shall be repatriated to India.

2.1 Accordingly, rule 10CB of the Income-tax Rules, 1962 ('the Rules') was inserted vide Notification No. GSR 590(E) dated 15th June, 2017.

2.2 Under sub-rule (1) of the said rule 10CB, a uniform time limit of 90 days, starting from different dates, is prescribed for repatriation of excess money. This is done in order to provide for uniform treatment in respect of the different types/situations of primary adjustments specified under sub-section (1) of section 92CE.

2.3 Certain difficulties have been noted in the implementing the provisions of sub-rule (1) of rule 10CB in respect of primary adjustment that arises on account of agreement for advance pricing (APA) entered into by the assessee, or on account of an agreement reached under the mutual agreement procedure (MAP). In order to remove these difficulties, it is proposed to amend rule 10CB.

3. Accordingly, a draft notification has been prepared in this regard and is as under:
"In exercise of powers conferred by sub-section (2) to section 92CE and section 295 of the Income Tax Act, 1961 (43 of 1961) (hereinafter referred to as 'the Act'), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962 (hereinafter referred to as "the Principal Rules"), namely:-

1. (1) These rules may be called the Income-tax (... Amendment) Rules, 2018.

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

2. In the Principal Rules, in rule 10CB, in sub-rule (1),-

(A) for clause (iii), the following shall be substituted, namely:-

“(iii) from the date on which the advance pricing agreement has been entered into by the assessee under section 92CC, where the primary adjustment to transfer price is determined by such agreement;”

(B) for clause (v), the following shall be substituted, namely:-

“(v) from the date of giving effect by the Assessing Officer under Rule 44H to the resolution arrived at under mutual agreement procedure, where the primary adjustment to transfer price is determined by such resolution, under a Double Taxation Avoidance Agreement entered into under section 90 or 90A.”

4. Comments and suggestions of stakeholders and the general public on the above draft notification are invited. Comments and suggestions may be sent electronically by 9th July 2018 at the email address ustpl3@nic.in.

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