

Summary of the recently issued notifications/circulars

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Recently issued notifications/circulars are given below for your ready reference.

01. CBDT Notification dated 19th 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.

Brief note:

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

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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.

To view and print these PDF document, please follow below mentioned link:

<https://www.incometaxindia.gov.in/Lists/Latest%20News/Attachments/259/public-comments-amendment-rule-10CB-Misc-20-6-2018.pdf>

02. CBDT Notification dated 22nd June 2018

Subject: Special provisions relating to foreign company said to be resident in India under Section 115JH of the Income Tax Act, 1961

Brief note:

The Central Government hereby notifies that,—
A. in a case where a foreign company is said to be resident in India on account of its Place of Effective Management (hereinafter referred to as PoEM) being in India under sub-section (3) of section 6 of the Act in any previous year and such foreign company has not been resident in India in any of the previous years preceding the said previous year, then, notwithstanding anything contained in the Act, the provisions of the Act relating to the computation of total income, treatment of unabsorbed depreciation, set off or carry forward and set off of losses, collection and recovery and special provisions relating to avoidance of tax shall apply to the foreign company for the said previous year with

exceptions, modifications and adaptations specified here under:

(i) If the foreign company is assessed to tax in the foreign jurisdiction, and,—

(a) where it is required to take into account depreciation for the purpose of computation of its taxable income, the written down value (hereinafter referred to as WDV) of the depreciable asset as per the tax record in the foreign country on the 1st day of the previous year shall be adopted as the opening WDV for the said previous year,

(b) in cases not covered by (a), the WDV shall be calculated in the manner, as though the asset was installed, utilised and the depreciation was actually allowed as per the provisions of the laws of that foreign jurisdiction and the WDV so arrived at as on the 1st day of the previous year, shall be adopted to be the opening WDV for the said previous year.

(ii) If the foreign company is not assessed to tax in the foreign jurisdiction, then WDV of the depreciable asset as appearing in the books of account as on the 1st day of the previous year maintained in accordance with the laws of that foreign jurisdiction shall be adopted as the opening WDV for the said previous year.

(iii) If the foreign company is assessed to tax in the foreign jurisdiction, its brought forward loss and unabsorbed depreciation as per the tax record shall be determined year wise on the 1st day of the said previous year.

(iv) If the foreign company is not assessed to tax in the foreign jurisdiction, its brought forward loss and unabsorbed depreciation as per the books of account prepared in accordance with

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the laws of that country shall be determined year wise on the 1st day of the said previous year.

(v) The brought forward loss and unabsorbed depreciation of the foreign company as arrived at paras (iii) or (iv), as the case may be, shall be deemed as loss and unabsorbed depreciation brought forward as on the 1st day of the said previous year and shall be allowed to be set off and carried forward in accordance with the provisions of the Act for the remaining period calculated from the year in which they occurred for the first time taking that year as the first year.

Provided that the losses and unabsorbed depreciation of the foreign company shall be allowed to be set off only against such income of the foreign company which have become chargeable to tax in India on account of it becoming Indian resident.

(vi) In cases where the brought forward loss and unabsorbed depreciation referred to in para (iii) or (iv), as the case may be, originally adopted in India are revised or modified in the foreign jurisdiction due to any action of the tax or legal authority, the amount of the loss and unabsorbed depreciation shall be revised or modified for the purposes of set off and carry forward as referred to in para (v).

(vii) In cases where the accounting year does not end on 31st March, the foreign company shall be required to prepare profit and loss account and balance sheet for the period starting from the date on which the accounting year immediately following said accounting year begins, upto 31st March of the year immediately preceding the period beginning with 1st April and ending on 31st March during which the foreign company has become resident. The foreign company shall also be required to prepare profit and loss

account and balance sheet for succeeding periods of twelve months, beginning from 1st April and ending on 31st March, till the year the foreign company remains resident in India on account of its PoEM.

(viii) For the purpose of carry forward of loss and unabsorbed depreciation in cases where the accounting year followed by the foreign company does not end on 31st March and the period starting from the date on which immediately following year begins upto 31st March of the year, immediately preceding the period beginning with 1st April and ending on 31st March during which it has become resident, is,—

(a) less than six months, it shall be included in that accounting year;

(b) equal to or more than six months, that period shall be treated as a separate accounting year.

Thus, if the accounting year followed by the foreign company is calendar year, the accounting year immediately preceding the accounting year in which the foreign company is held to be resident in India, shall be increased by three months, i.e., 1st January to 31st March; and if the accounting year followed by the foreign company is from 1st July to 30th June, the accounting year immediately preceding the accounting year in which the foreign company is held to be resident in India, shall be of nine months from 1st July to 31st March.

(ix) In cases covered under para (viii), loss and unabsorbed depreciation as per tax record or books of account, as the case may be, of the foreign company shall, be allocated on proportionate basis.

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(x) Where more than one provision of Chapter XVII-B of the Act applies to the foreign company as resident as well as foreign company, the provision applicable to the foreign company alone shall apply.

(xi) Compliance to those provisions of Chapter XVII-B of the Act as are applicable to the foreign company prior to its becoming Indian resident shall be considered sufficient compliance to the provisions of said Chapter.

(xii) The provisions contained in sub-section (2) of section 195 of the Act shall apply in such manner so as to include payment to the foreign company.

(xiii) The foreign company shall be entitled to relief or deduction of taxes paid in accordance with the provisions of section 90 or section 91 of the Act.

(xiv) In a case where income on which foreign tax has been paid or deducted, is offered to tax in more than one year, credit of foreign tax shall be allowed across those years in the same proportion in which the income is offered to tax or assessed to tax in India in respect of the income to which it relates and shall be in accordance with the provisions of rule 128 of the Income-tax Rules, 1962.

Explanation.— For the purposes of this notification,—

(i) the term “Foreign jurisdiction” would mean the place of incorporation of the foreign company.

(ii) the rate of exchange for conversion into rupees of value expressed in foreign currency, wherever applicable, shall be in accordance with provision of rule 115 of the Income-tax Rules, 1962.

B. the exceptions, modifications and adaptations referred to in para A shall not apply in respect of such income of the foreign company becoming Indian resident on account of its PoEM being in India which would have been chargeable to tax in India, even if the foreign company had not become Indian resident.

C. in a case where the foreign company is said to be resident in India during a previous year, immediately succeeding a previous year during which it is said to be resident in India; the exceptions, modifications and adaptations referred to in para A shall apply to the said previous year subject to the condition that the WDV, the brought forward loss and the unabsorbed depreciation to be adopted on the 1st day of the previous year shall be those which have been arrived at on the last day of the preceding previous year in accordance with the provisions of this notification.

D. any transaction of the foreign company with any other person or entity under the Act shall not be altered only on the ground that the foreign company has become Indian resident.

E. subject to the above, the foreign company shall continue to be treated as a foreign company even if it is said to be resident in India and all the provisions of the Act shall apply accordingly.

Consequently, the provisions specifically applicable to,—

(i) a foreign company, shall continue to apply to it;

(ii) non-resident persons, shall not apply to it; and

(iii) the provisions specifically applicable to resident, shall apply to it.

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F. in case of conflict between the provision applicable to the foreign company as resident and the provision applicable to it as foreign company, the later shall generally prevail. Therefore, the rate of tax in case of foreign company shall remain the same, i.e., rate of income-tax applicable to the foreign company even though residency status of the foreign company changes from non-resident to resident on the basis of PoEM.

2. This notification shall be deemed to have come into force from the 1st day of April, 2017.

To view and print these PDF document, please follow below mentioned link:

https://www.incometaxindia.gov.in/Communications/Notification/Notification29_2018.pdf

03. CBDT Notification dated 30th June 2018

Subject: Order under Section 119 of the Income Tax Act, 1961

Brief note:

Vide its order dated 31.07.2017, 31.08.2017, 08.12.2017 & 27.03.2018, in file of even number, CBDT had allowed time till 30th June 2018 to link PAN with Aadhaar while filing Income Tax returns. Upon consideration of the matters, the CBDT further extends the time for linking PAN with Aadhaar till 31st March 2019

To view and print these PDF document, please follow below mentioned link:

<https://www.incometaxindia.gov.in/Lists/Latest%20News/Attachments/261/CBDT-order-regarding-linking-of-PAN-with-Aadhaar-while-filing-of-ITRs-30-06-2018.pdf>

04. MCA Notification, dated 18th June 2018

Subject: Companies (Accounting Standards) Amendment Rules, 2018

Brief note:

The Central Government, in consultation with National Advisory Committee on Accounting Standards, hereby make following rule to amend the Companies (Accounting Standards) Rules, 2006, namely :-

1. Short title and Commencement: (1) These rules may be called Companies (Accounting Standards) Rules, 2018. (2) They shall come into force on the 1st day of April 2018

2. In the Companies (Accounting Standards) Rules, 2006, in the "ANNEXURE", under the heading "ACCOUNTING STANDARDS" , UNDER Accounting Standard (AS) 11, for the paragraph 32 new paragraph shall be substituted, for details refer the notification.

To view and print these PDF document, please follow below mentioned link:

http://www.mca.gov.in/Ministry/pdf/CompanyAmendmentRule1806_19062018.pdf

05. CT Notification 28, dated 19th June 2018

Subject: Notification issued for amending the CGST Rules, 2017

Brief note:

The Central Government hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely:-

(1) These rules may be called the Central Goods and Services Tax (Sixth Amendment) Rules, 2018.

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(2) Save as otherwise provided in these rules, they shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017, -

(i) in rule 58, after sub-rule (1), the following sub-rule shall be inserted, namely:-

“(1A) For the purposes of Chapter XVI of these rules, a transporter who is registered in more than one State or Union Territory having the same Permanent Account Number, he may apply for a unique common enrolment number by submitting the details in FORM GST ENR-02 using any one of his Goods and Services Tax Identification Numbers, and upon validation of the details furnished, a unique common enrolment number shall be generated and communicated to the said transporter:

Provided that where the said transporter has obtained a unique common enrolment number, he shall not be eligible to use any of the Goods and Services Tax Identification Numbers for the purposes of the said Chapter XVI.”;

(ii) in rule 138C, after sub-rule (1), the following proviso shall be inserted, namely:-

“Provided that where the circumstances so warrant, the Commissioner, or any other officer authorised by him, may, on sufficient cause being shown, extend the time for recording of the final report in Part B of FORM EWB-03, for a further period not exceeding three days.

Explanation.- The period of twenty four hours or, as the case may be, three days shall be counted from the midnight of the date on which the vehicle was intercepted.”;

(iii) in rule 142, in sub-rule (5), after the words and figures “of section 76”, the words and figures “or section 129 or section 130” shall be inserted;

(iv) after FORM GST ENR-01, the new FORM shall be inserted, namely:-

“FORM GST ENR-02

To view and print these PDF document, please follow below mentioned link:

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/Notification-28-2018-central tax-English.pdf;jsessionid=1B0FCD893A67160BB49C7DD19A41BA72>

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