

CBDT seeks input on secondary adjustments

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The Central Board of Direct Taxes (CBDT) released a draft notification on 19 June for comments and suggestions in relation to amending rule 10CB, which prescribes the timelines for secondary adjustments. In order to align primary adjustment in respect to transfer pricing with the actual allocation of funds, section 92CE was introduced in the Income Tax Act, 1961, with effect from 1 April 2018 to provide for secondary adjustment by attributing income to the excess money lying in the hands of the associated enterprise (AE).

Section 92CE empowered the CBDT to prescribe the time limit within which the excess money lying in the hands of the AE as a result of primary adjustment shall be repatriated to India. Accordingly, rule 10CB was introduced in the Income Tax Rules, 1962, which provides a uniform period of 90 days starting from different times depending on the nature of primary adjustment (the starting point) for the repatriation of excess money.

Certain difficulties arose in relation to the starting point provided in case of primary adjustments on account of an 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 resolve these difficulties, it has been proposed that the starting point, in case of APAs and MAPs, be amended from “from the due date of filing return under section 139(1)” to “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” – in the case of APAs, and “from the date of giving effect by the assessing officer under rule 44H to the resolution arrived at under the 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” – in the case of MAPs.

These amendments are proposed to be effective from the date of their publication in the official gazette, and stakeholders were given until 9 July to provide their feedback.

The business law digest is compiled by Nishith Desai Associates (NDA). NDA is a research-based international law firm with offices in Mumbai, New Delhi, Bengaluru, Singapore, Silicon Valley, Munich and New York. It specializes in strategic legal, regulatory and tax advice coupled with industry expertise in an integrated manner.