

[TO BE PUBLISHED IN THE GAZETTE OF INDIA EXTRAORDINARY, PART II,
SECTION 3, SUB-SECTION (ii)]

**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
[CENTRAL BOARD OF DIRECT TAXES]**

Notification

New Delhi, the 14th day of March, 2015

INCOME-TAX

S.O. 758(E).- In exercise of the powers conferred by sub-sections (9) and(9A) of section 92CC read with 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. (1). These rules may be called the Income-tax (Third Amendment) Rules, 2015.
(2). They shall come into force on the date of their publication in the Official Gazette.
2. In the Income-tax Rules, 1962 (hereafter referred to as the principal rules), -
 - (a) in rule 10 F,-
 - (i) after clause (b), the following clause shall be inserted, namely :-
“(ba) “applicant” means a person who has made an application;”;
 - (ii) after clause (h), the following clause shall be inserted, namely :-
“(ha) “rollback year” means any previous year, falling within the period not exceeding four previous years, preceding the first of the previous years referred to in sub-section (4) of section 92CC;”;
 - (b) in rule 10 H, in sub-rule (1),-
 - (i) for the word “Every” the word “Any” shall be substituted;
 - (ii) for the word “shall” the word “may” shall be substituted;
 - (c) in rule 10 I, for the words, figures and letter “who has entered into a pre-filing consultation as referred to in rule 10H”, the words, figures and letter “referred to in rule 10 G” shall be substituted;
 - (d) in rule 10 K, in sub-rule (2) after the words “with understanding reached in”, the word “any” shall be inserted;

(e) in rule 10 M, in sub-rule (1), after clause (v), the following clause shall be inserted, namely:-

“(va) rollback provision referred to in rule 10 MA;”;

(f) after rule 10 M, the following rule shall be inserted, namely:-

“Roll Back of the Agreement.

10 MA. (1) Subject to the provisions of this rule, the agreement may provide for determining the arm’s length price or specify the manner in which arm’s length price shall be determined in relation to the international transaction entered into by the person during the rollback year (hereinafter referred to as “rollback provision”).

(2) The agreement shall contain rollback provision in respect of an international transaction subject to the following, namely:-

- (i) the international transaction is same as the international transaction to which the agreement (other than the rollback provision) applies;
- (ii) the return of income for the relevant rollback year has been or is furnished by the applicant before the due date specified in Explanation 2 to sub-section (1) of section 139;
- (iii) the report in respect of the international transaction had been furnished in accordance with section 92E;
- (iv) the applicability of rollback provision, in respect of an international transaction, has been requested by the applicant for all the rollback years in which the said international transaction has been undertaken by the applicant; and
- (v) the applicant has made an application seeking rollback in Form 3CEDA in accordance with sub-rule (5);

(3) Notwithstanding anything contained in sub-rule (2), rollback provision shall not be provided in respect of an international transaction for a rollback year, if,-

- (i) the determination of arm’s length price of the said international transaction for the said year has been subject matter of an appeal before the Appellate Tribunal and the Appellate Tribunal has passed an order disposing of such appeal at any time before signing of the agreement; or
- (ii) the application of rollback provision has the effect of reducing the total income or increasing the loss, as the case may be, of the applicant as declared in the return of income of the said year.

(4) Where the rollback provision specifies the manner in which arm's length price shall be determined in relation to an international transaction undertaken in any rollback year then such manner shall be the same as the manner which has been agreed to be provided for determination of arm's length price of the same international transaction to be undertaken in any previous year to which the agreement applies, not being a rollback year.

(5) The applicant may, if he desires to enter into an agreement with rollback provision, furnish along with the application, the request for the same in Form No. 3 CEDA with proof of payment of an additional fee of five lakh rupees:

Provided that in a case where an application has been filed prior to the 1st day of January, 2015, Form No. 3CEDA along with proof of payment of additional fee may be filed at any time on or before the 31st day of March, 2015 or the date of entering into the agreement whichever is earlier:

Provided further that in a case where an agreement has been entered into before the 1st day of January, 2015, Form No. 3CEDA along with proof of payment of additional fee may be filed at any time on or before the 31st day of March, 2015 and, notwithstanding anything contained in rule 10 Q, the agreement may be revised to provide for rollback provision in the said agreement in accordance with this rule.”;

(g) in rule 10 R, in sub-rule (1), in clause (iv), after the words, brackets, figures and letter “under sub-rule (4) of rule 10Q”, the words, brackets, figures and letters “or sub-rule (7) of rule 10 RA” shall be inserted;

(h) after rule 10 R, the following rule shall be inserted, namely:-

“Procedure for giving effect to rollback provision of an Agreement.

10 RA.(1) The effect to the rollback provisions of an agreement shall be given in accordance with this rule.

(2) The applicant shall furnish modified return of income referred to in section 92CD in respect of a rollback year to which the agreement applies along with the proof of payment of any additional tax arising as a consequence of and computed in accordance with the rollback provision.

(3) The modified return referred to in sub-rule(2) shall be furnished along with the modified return to be furnished in respect of first of the previous years for which the agreement has been requested for in the application.

(4) If any appeal filed by the applicant is pending before the Commissioner (Appeals), Appellate Tribunal or the High Court for a rollback year, on the issue which is the subject matter of the rollback provision for that year, the said appeal to the extent of the subject covered under the agreement shall be withdrawn by the applicant before furnishing the modified return for the said year.

(5) If any appeal filed by the Assessing Officer or the Principal Commissioner or Commissioner is pending before the Appellate Tribunal or the High Court for a rollback year, on the issue which is subject matter of the rollback provision for that year, the said appeal to the extent of the subject covered under the agreement shall be withdrawn by the Assessing Officer or the Principal Commissioner or the Commissioner, as the case may be, within three months of filing of modified return by the applicant.

(6) The applicant, the Assessing Officer or the Principal Commissioner or the Commissioner, shall inform the Dispute Resolution Panel or the Commissioner (Appeals) or the Appellate Tribunal or the High Court, as the case may be, the fact of an agreement containing rollback provision having been entered into along with a copy of the same as soon as it is practicable to do so.

(7) In case effect cannot be given to the rollback provision of an agreement in accordance with this rule, for any rollback year to which it applies, on account of failure on the part of applicant, the agreement shall be cancelled.”;

(i) in Appendix-II of the principal rules,-

(A) in Form No. 3CEC, in item 10, after the words, “Number of years for which APA is proposed to be applied”, the words “including the rollback years” shall be inserted;

(B) in Form No. 3CED, in item 5, after sub-item (e), the following shall be inserted, namely:-

| | |
|---|--------|
| “f. whether any rollback request is being made . | Yes/No |
| g. If yes, enclose copy of relevant Form No. 3CEDA.”; | |

(C) after Form No. 3CED, following Form shall be inserted, namely: -

**“Form No. 3 CEDA
(See sub-rule (5) of rule 10 MA)
Application for rollback of an Advance Pricing Agreement**

To,
The Competent Authority of India
or
Director General of Income Tax (International Taxation)
New Delhi
Sir/Madam,

This is to state that..... (Name of the Applicant).....wishes to negotiate an APA with the Central Board of Direct Taxes containing rollback provision. I am submitting herewith the necessary particulars hereunder:

- | | |
|--|-----|
| 1. | Pa |
| rticulars of the applicant: | |
| (a) | Ful |
| l name of the applicant: | |
| (b) | Pe |
| rmanent Account Number: | |
| (c) | Ad |
| dress of the applicant: | |
| (d) | Ad |
| dress for communication: | |
| (e) | Lo |
| cation(s) of the business enterprises in India: | |
| (f) | E |
| mail id and the contact numbers of the person with whom correspondence is required to be made: | |
| (g) | Na |
| mes and designation of the authorised representatives who would be appearing before the authorities for negotiations of the APA: | |

2. Whether pre-filing discussions in respect of rollback were sought by the applicant? If yes, please furnish:

(a) Date of application for pre-filing meeting:

(b) Date of pre-filing meeting(s) with the APA Team:

3. Whether application in Form 3CED is being filed simultaneously:

4. Details of international transaction(s) including Name(s) of the Associated Enterprises in respect of which rollback is requested for:

5. Whether the international transaction(s) is the same as that in respect of which APA request is being made in Form 3CED by the applicant:

6. Particulars of additional Fee paid by the applicant:

Amount in Rs.

Challan No:

Dated:

7. The details of previous years for which rollback is being sought:

8. Has the same international transaction been undertaken in any other year for which rollback is permissible but the same is not being requested for. If yes, the reasons for the same be provided:

9. Period of APA proposed along with the date from which APA is sought to be made applicable in the application in Form 3CED:

10. Whether return of income for all the previous

years mentioned in 7 above have been furnished on or before the due date:

Yes/No

11. If yes, provide details including acknowledgement No., date of furnishing etc.

12. Whether audit report under section 92 E in respect of the international transaction referred to in 4 above for all the previous years mentioned in 7 above have been furnished on or before the due date:

Yes/No

13. If yes, provide details including date of furnishing etc.

14. Details of pending proceedings including appeals for the years mentioned in 7 above in respect of international transaction(s) mentioned in 4 above :

15. Whether Appellate Tribunal has disposed of any appeal in respect of international transaction mentioned in 4 above for any of the years mentioned in 7 above? if yes, then details may be provided:

I declare that the information furnished in the application is correct and truly stated.

Yours faithfully,

Place:

Date:

Applicant

Notes:

1. The Form shall be filed along with an application in Form 3CED for entering into an APA.
2. If the space provided for answering any item in the application is found insufficient, separate enclosures may be used for the purpose. These enclosures should be signed by the person authorised to sign the application in Form 3CED.

3. The Form shall be accompanied with proof of having paid fee of five lakh rupees. This fee is in addition to any fee payable along with Form 3CED.
4. The application shall be accompanied by all the relevant documents.”.

[Notification No. 23/2015/ F.No.142 /14/2014-TPL]

(Amit Katoch)
Under Secretary (Tax Policy and Legislation-I)

Note. - The principal rules were published vide notification No. S.O.969 (E), dated the 26th March, 1962 and last amended by Income-tax (Second Amendment) Rules, 2015 vide notification number S.O. 350 (E), dated 04-02-2015.