CBDT notifies Rules pertaining to secondary transfer pricing adjustment

Background

Section 92CE was introduced by the Finance Act, 2017 to provide for secondary adjustments in certain cases where a primary transfer pricing adjustment has been made to the income of a taxpayer. This provision also provided for repatriation of excess money to India available with an associated enterprise. If no such repatriation is made within a prescribed period, the provision deems the money to be an 'advance' made by the taxpayer to its associated enterprise and interest will be computed on such advance in the prescribed manner.

Rules Notified

The Central Board of Direct Taxes (CBDT) vide notification dated 15 June 2017 has issued Rules (Rule 10CB) to support the implementation of section 92CE by prescribing the time limit for repatriation of excess money and methodology for computation of interest income. The notification also clarifies that section 92CE will be applicable from Financial Year 2016-17 and onwards and only where the quantum of primary transfer pricing adjustment is greater than Rs. 10 million.

Time limit for repatriation of excess money

<table>
<tr><td>Where primary adjustments have been made suo-moto by the taxpayer</td><td rowspan="4">On or before 90 days from the due date of filing of return under section 139(1) of the Act</td></tr>
<tr><td>Where the taxpayer has entered into an Advance Pricing Agreement (APA) under section 92CD of the Income-tax Act, 1961 (Act)</td></tr>
<tr><td>Where the taxpayer has exercised the option as per the safe harbour rules under section 92CB</td></tr>
<tr><td>Where the taxpayer has entered into an agreement under the Mutual Agreement Procedure (MAP)</td></tr>
</table>

Where the primary adjustments to transfer price as determined in the order of Assessing Officer or Appellate Authority has been accepted by the taxpayer	On or before 90 days from the date of the order of the Assessing Officer or the Appellate Authority. Where the transfer pricing order is appealed by the taxpayer, the time limit for repatriation shall commence after the appeal is finalised by the Appellate Authority[1].

Computation of Interest income on excess money

Where the international transaction is denominated in Indian rupee:	At one year marginal cost of fund lending rate of State Bank of India as on 1 April of the relevant financial year plus three hundred twenty five basis points (3.25%)
Where the international transaction is denominated in foreign currency:	At six month London Interbank Offered Rate (LIBOR) as on 30 September of the relevant financial year plus three hundred basis points (3%)

The interest shall be computed at the aforementioned rates on the excess money which is not repatriated within the time limit specified above.

[1] Press Release dated 19 June 2017 issued by CBDT

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