

Section 92CE: Secondary adjustment in certain cases.

92CE. (1) Where a primary adjustment to transfer price,—

- (i) has been made suo motu by the assessee in his return of income;
- (ii) made by the Assessing Officer has been accepted by the assessee;
- (iii) is determined by an advance pricing agreement entered into by the assessee under section 92CC;
- (iv) is made as per the safe harbour rules framed under section 92CB; or
- (v) is arising as a result of resolution of an assessment by way of the mutual agreement procedure under an agreement entered into under section 90 or section 90A for avoidance of double taxation,

the assessee shall make a secondary adjustment:

Provided that nothing contained in this section shall apply, if,—

- (i) the amount of primary adjustment made in any previous year does not exceed one crore rupees; and
- (ii) the primary adjustment is made in respect of an assessment year commencing on or before the 1st day of April, 2016.

(2) Where, as a result of primary adjustment to the transfer price, there is an increase in the total income or reduction in the loss, as the case may be, of the assessee, the excess money which is available with its associated enterprise, if not repatriated to India within the time as may be prescribed, shall be deemed to be an advance made by the assessee to such associated enterprise and the interest on such advance, shall be computed in such manner as may be prescribed.

(3) For the purposes of this section,—

- (i) "associated enterprise" shall have the meaning assigned to it in sub-section (1) and sub-section (2) of section 92A;
- (ii) "arm's length price" shall have the meaning assigned to it in clause (ii) of section 92F;
- (iii) "excess money" means the difference between the arm's length price determined in primary adjustment and the price at which the international transaction has actually been undertaken;
- (iv) "primary adjustment" to a transfer price, means the determination of transfer price in accordance with the arm's length principle resulting in an increase in the total income or reduction in the loss, as the case may be, of the assessee;

(v) "secondary adjustment" means an adjustment in the books of account of the assessee and its associated enterprise to reflect that the actual allocation of profits between the assessee and its associated enterprise are consistent with the transfer price determined as a result of primary adjustment, thereby removing the imbalance between cash account and actual profit of the assessee."

Rule 10CB: Computation of interest income pursuant to secondary adjustments.

10CB. (1) For the purposes of sub-section (2) of section 92CE of the Act, the time limit for repatriation of excess money shall be on or before ninety days,—

- (i) from the due date of filing of return under sub-section (1) of section 139 of the Act where primary adjustments to transfer price has been made suo-moto by the assessee in his return of income;
- (ii) from the date of the order of Assessing Officer or the appellate authority, as the case may be, if the primary adjustments to transfer price as determined in the aforesaid order has been accepted by the assessee;
- (iii) from the due date of filing of return under sub-section (1) of section 139 of the Act in the case of agreement for advance pricing entered into by the assessee under section 92CD ;
- (iv) from the due date of filing of return under sub-section (1) section 139 of the Act in the case of option exercised by the assessee as per the safe harbour rules under section 92CB;or
- (v) from the due date of filing of return under sub-section (1) section 139 of the Act in the case of an agreement made under the mutual agreement procedure under a Double Taxation Avoidance Agreement entered into under section 90 or 90A;

(2) The imputed per annum interest income on excess money which is not repatriated within the time limit as per sub-section (1) of section 92CE of the Act shall be computed,—

- (i) at the one year marginal cost of fund lending rate of State Bank of India as on 1st of April of the relevant previous year plus three hundred twenty five basis points in the cases where the international transaction is denominated in Indian rupee; or
- (ii) at six month London Interbank Offered Rate as on 30th September of the relevant previous year plus three hundred basis points in the cases where the international transaction is denominated in foreign currency.

Explanation— For the purposes of this rule "International transaction" shall have the meaning assigned to it in section 92B of the Act.

Section 94B: Limitation on interest deduction in certain cases.

94B. (1) Notwithstanding anything contained in this Act, where an Indian company, or a permanent establishment of a foreign company in India, being the borrower, incurs any expenditure by way of interest or of similar nature exceeding one crore rupees which is deductible in computing income chargeable under the head "Profits and gains of business or profession" in respect of any debt issued by a non-resident, being an associated enterprise of such borrower, the interest shall not be deductible in computation of income under the said head to the extent that it arises from excess interest, as specified in sub-section (2) :

Provided that where the debt is issued by a lender which is not associated but an associated enterprise either provides an implicit or explicit guarantee to such lender or deposits a corresponding and matching amount of funds with the lender, such debt shall be deemed to have been issued by an associated enterprise.

(2) For the purposes of sub-section (1), the excess interest shall mean an amount of total interest paid or payable in excess of thirty per cent of earnings before interest, taxes, depreciation and amortisation of the borrower in the previous year or interest paid or payable to associated enterprises for that previous year, whichever is less.

(3) Nothing contained in sub-section (1) shall apply to an Indian company or a permanent establishment of a foreign company which is engaged in the business of banking or insurance.

(4) Where for any assessment year, the interest expenditure is not wholly deducted against income under the head "Profits and gains of business or profession", so much of the interest expenditure as has not been so deducted, shall be carried forward to the following assessment year or assessment years, and it shall be allowed as a deduction against the profits and gains, if any, of any business or profession carried on by it and assessable for that assessment year to the extent of maximum allowable interest expenditure in accordance with sub-section (2):

Provided that no interest expenditure shall be carried forward under this sub-section for more than eight assessment years immediately succeeding the assessment year for which the excess interest expenditure was first computed.

(5) For the purposes of this section, the expressions—

(i) "associated enterprise" shall have the meaning assigned to it in sub-section (1) and sub-section (2) of section 92A;

(ii) "debt" means any loan, financial instrument, finance lease, financial derivative, or any arrangement that gives rise to interest, discounts or other finance charges that are deductible in the computation of income chargeable under the head "Profits and gains of business or profession";

(iii) "permanent establishment" includes a fixed place of business through which the business of the enterprise is wholly or partly carried on.