

Section 92D: Maintenance and keeping of information and document by persons entering into an international transaction or specified domestic transaction.

92D. (1) Every person who has entered into an international transaction or specified domestic transaction shall keep and maintain such information and document in respect thereof, as may be prescribed:

Provided that the person, being a constituent entity of an international group, shall also keep and maintain such information and document in respect of an international group as may be prescribed.

Explanation.—For the purposes of this section,—

(A) "constituent entity" shall have the meaning assigned to it in clause (d) of sub-section (9) of section 286;

(B) "international group" shall have the meaning assigned to it in clause (g) of sub-section (9) of section 286.]

(2) Without prejudice to the provisions contained in sub-section (1), the Board may prescribe the period for which the information and document shall be kept and maintained under that sub-section.

(3) The Assessing Officer or the Commissioner (Appeals) may, in the course of any proceeding under this Act, require any person who has entered into an international transaction or specified domestic transaction to furnish any information or document in respect thereof, as may be prescribed under sub-section (1), within a period of thirty days from the date of receipt of a notice issued in this regard:

Provided that the Assessing Officer or the Commissioner (Appeals) may, on an application made by such person, extend the period of thirty days by a further period not exceeding thirty days.

(4) Without prejudice to the provisions of sub-section (3), the person referred to in the proviso to sub-section (1) shall furnish the information and document referred to in the said proviso to the authority prescribed under sub-section (1) of section 286, in such manner, on or before the date, as may be prescribed.

Rule 10DA: Information and documents to be kept and maintained under proviso to sub-section (1) of section 92D and to be furnished in terms of sub-section (4) of section 92D.

10DA. (1) Every person, being a constituent entity of an international group shall,—

(i) if the consolidated group revenue of the international group, of which such person is a constituent entity, as reflected in the consolidated financial statement of the international group for the accounting year, exceeds five hundred crore rupees; and

(ii) the aggregate value of international transactions,—

(A) during the accounting year, as per the books of account, exceeds fifty crore rupees, or

(B) in respect of purchase, sale, transfer, lease or use of intangible property during the accounting year, as per the books of accounts, exceeds ten crore rupees,

keep and maintain the following information and documents of the international group, namely:—

(a) a list of all entities of the international group along with their addresses;

- (b) a chart depicting the legal status of the constituent entity and ownership structure of the entire international group;
- (c) a description of the business of international group during the accounting year including,—
 - (I) the nature of the business or businesses;
 - (II) the important drivers of profits of such business or businesses;
 - (III) a description of the supply chain for the five largest products or services of the international group in terms of revenue and any other products including services amounting to more than five per cent of consolidated group revenue;
 - (IV) a list and brief description of important service arrangements made among members of the international group, other than those for research and development services;
 - (V) a description of the capabilities of the main service providers within the international group;
 - (VI) details about the transfer pricing policies for allocating service costs and determining prices to be paid for intra-group services;
 - (VII) a list and description of the major geographical markets for the products and services offered by the international group;
 - (VIII) a description of the functions performed, assets employed and risks assumed by the constituent entities of the international group that contribute at least ten per cent of the revenues or assets or profits of such group; and
 - (IX) a description of the important business restructuring transactions, acquisitions and divestments;
- (d) a description of the overall strategy of the international group for the development, ownership and exploitation of intangible property, including location of principal research and development facilities and their management;
- (e) a list of all entities of the international group engaged in development and management of intangible property along with their addresses;
- (f) a list of all the important intangible property or groups of intangible property owned by the international group along with the names and addresses of the group entities that legally own such intangible property;
- (g) a list and brief description of important agreements among members of the international group related to intangible property, including cost contribution arrangements, principal research service agreements and license agreements;
- (h) a detailed description of the transfer pricing policies of the international group related to research and development and intangible property;
- (i) a description of important transfers of interest in intangible property, if any, among entities of the international group, including the name and address of the selling and buying entities and the compensation paid for such transfers;
- (j) a detailed description of the financing arrangements of the international group, including the names and addresses of the top ten unrelated lenders;
- (k) a list of group entities that provide central financing functions, including their place of operation and of effective management;

- (l) a detailed description of the transfer pricing policies of the international group related to financing arrangements among group entities;
- (m) a copy of the annual consolidated financial statement of the international group; and
- (n) a list and brief description of the existing unilateral advance pricing agreements and other tax rulings in respect of the international group for allocation of income among countries.

(2) The report of the information referred to in sub-rule (1) shall be in Form No. 3CEAA and it shall be furnished to the Director General of Income-tax (Risk Assessment) on or before the due date for furnishing the return of income as specified in sub-section (1) of section 139:

Provided that the information in Form No.3CEAA for the accounting year 2016-17 may be furnished at any time on or before the 31st day of March, 2018.

(3) Information in,—

- (i) Part A of Form No. 3CEAA shall be furnished by every person, being a constituent entity of an international group, whether or not the conditions as provided in sub-rule (1) are satisfied;
- (ii) Part B of Form No. 3CEAA shall be furnished by a person, being a constituent entity of an international group, in those cases where the conditions as provided in sub-rule (1) are satisfied.

(4) Where there are more than one constituent entities resident in India of an international group, then the report referred to in sub-rule (2) or information referred to in clause (i) of sub-rule (3), as the case may be, may be furnished by that constituent entity which has been designated by the international group to furnish the said report or information, as the case may be, and the same has been intimated by the designated constituent entity to the Director General of Income-tax (Risk Assessment) in Form 3CEAB.

(5) The intimation referred to in sub-rule (4) shall be made at least thirty days before the due date of filing the report as specified under sub-rule (2).

(6) The Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems), as the case may be, shall specify the procedure for electronic filing of Form No. 3CEAA and Form No. 3CEAB and shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to the information furnished under this rule.

(7) The information and documents specified in sub-rule (1) shall be kept and maintained for a period of eight years from the end of the relevant assessment year.

(8) The rate of exchange for the calculation of the value in rupees of the consolidated group revenue in foreign currency shall be the telegraphic transfer buying rate of such currency on the last day of the accounting year.

Explanation.— For the purposes of this rule,—

- (A) "telegraphic transfer buying rate" shall have the same meaning as assigned in the Explanation to rule 26;
- (B) the terms 'accounting year', 'consolidated financial statement' and 'international group' shall have the same meaning as assigned in sub-section (9) of section 286.

Section 286: Furnishing of report in respect of international group.

286. (1) Every constituent entity resident in India, shall, if it is constituent of an international group, the parent entity of which is not resident in India, notify the prescribed income-tax authority (herein referred to as prescribed authority) in the form and manner, on or before such date, as may be prescribed,—

- (a) whether it is the alternate reporting entity of the international group; or
- (b) the details of the parent entity or the alternate reporting entity, if any, of the international group, and the country or territory of which the said entities are resident.

(2) Every parent entity or the alternate reporting entity, resident in India, shall, for every reporting accounting year, in respect of the international group of which it is a constituent, furnish a report, to the prescribed authority within a period of twelve months from the end of the said reporting accounting year, in the form and manner as may be prescribed.

(3) For the purposes of sub-section (2) and sub-section (4), the report in respect of an international group shall include,—

- (a) the aggregate information in respect of the amount of revenue, profit or loss before income-tax, amount of income-tax paid, amount of income-tax accrued, stated capital, accumulated earnings, number of employees and tangible assets not being cash or cash equivalents, with regard to each country or territory in which the group operates;
- (b) the details of each constituent entity of the group including the country or territory in which such constituent entity is incorporated or organised or established and the country or territory where it is resident;
- (c) the nature and details of the main business activity or activities of each constituent entity; and
- (d) any other information as may be prescribed.

(4) A constituent entity of an international group, resident in India, other than the entity referred to in sub-section (2), shall furnish the report referred to in the said sub-section, in respect of the international group for a reporting accounting year within the period as may be prescribed, if the parent entity is resident of a country or territory,—

- (a) where the parent entity is not obligated to file the report of the nature referred to in sub-section (2);]
- (aa) with which India does not have an agreement providing for exchange of the report of the nature referred to in sub-section (2); or
- (b) there has been a systemic failure of the country or territory and the said failure has been intimated by the prescribed authority to such constituent entity:

Provided that where there are more than one such constituent entities of the group, resident in India, the report shall be furnished by any one constituent entity, if,—

- (a) the international group has designated such entity to furnish the report in accordance with the provisions of sub-section (2) on behalf of all the constituent entities resident in India; and
- (b) the information has been conveyed in writing on behalf of the group to the prescribed authority.

(5) Nothing contained in sub-section (4) shall apply, if, an alternate reporting entity of the international group has furnished a report of the nature referred to in sub-section (2), with the tax authority of the country or territory in which such entity is resident, on or before the date specified by that country or territory and the following conditions are satisfied, namely:—

- (a) the report is required to be furnished under the law for the time being in force in the said country or territory;
- (b) the said country or territory has entered into an agreement with India providing for exchange of the said report;
- (c) the prescribed authority has not conveyed any systemic failure in respect of the said country or territory to any constituent entity of the group that is resident in India;
- (d) the said country or territory has been informed in writing by the constituent entity that it is the alternate reporting entity on behalf of the international group; and
- (e) the prescribed authority has been informed by the entity referred to in sub-section (4) in accordance with sub-section (1).

(6) The prescribed authority may, for the purposes of determining the accuracy of the report furnished by any reporting entity, by issue of a notice in writing, require the entity to produce such information and document as may be specified in the notice within thirty days of the date of receipt of the notice:

Provided that the prescribed authority may, on an application made by such entity, extend the period of thirty days by a further period not exceeding thirty days.

(7) The provisions of this section shall not apply in respect of an international group for an accounting year, if the total consolidated group revenue, as reflected in the consolidated financial statement for the accounting year preceding such accounting year does not exceed the amount, as may be prescribed.

(8) The provisions of this section shall be applied in accordance with such guidelines and subject to such conditions, as may be prescribed.

(9) For the purposes of this section,—

(a) "accounting year" means,—

- (i) a previous year, in a case where the parent entity or alternate reporting entity is resident in India; or
- (ii) an annual accounting period, with respect to which the parent entity of the international group prepares its financial statements under any law for the time being in force or the applicable accounting standards of the country or territory of which such entity is resident, in any other case;

(b) "agreement" means a combination of all of the following agreements, namely:—

- (i) an agreement entered into under sub-section (1) of section 90 or sub-section (1) of section 90A; and
- (ii) an agreement for exchange of the report referred to in sub-section (2) and notified by the Central Government;

(c) "alternate reporting entity" means any constituent entity of the international group that has been designated by such group, in the place of the parent entity, to furnish the report of the nature referred to in sub-section (2) in the country or territory in which the said constituent entity is resident on behalf of such group;

(d) "constituent entity" means,—

- (i) any separate entity of an international group that is included in the consolidated financial statement of the said group for financial reporting purposes, or may be so included for the said purpose, if the equity share of any entity of the international group were to be listed on a stock exchange;
- (ii) any such entity that is excluded from the consolidated financial statement of the international group solely on the basis of size or materiality; or

- (iii) any permanent establishment of any separate business entity of the international group included in ⁸⁷[sub-clause (i) or sub-clause (ii)], if such business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting or internal management control purposes;
- (e) "group" includes a parent entity and all the entities in respect of which, for the reason of ownership or control, a consolidated financial statement for financial reporting purposes,—
 - (i) is required to be prepared under any law for the time being in force or the accounting standards of the country or territory of which the parent entity is resident; or
 - (ii) would have been required to be prepared had the equity shares of any of the enterprises were listed on a stock exchange in the country or territory of which the parent entity is resident;
- (f) "consolidated financial statement" means the financial statement of an international group in which the assets, liabilities, income, expenses and cash flows of the parent entity and the constituent entities are presented as those of a single economic entity;
- (g) "international group" means any group that includes,—
 - (i) two or more enterprises which are resident of different countries or territories; or
 - (ii) an enterprise, being a resident of one country or territory, which carries on any business through a permanent establishment in other countries or territories;
- (h) "parent entity" means a constituent entity, of an international group holding, directly or indirectly, an interest in one or more of the other constituent entities of the international group, such that,—
 - (i) it is required to prepare a consolidated financial statement under any law for the time being in force or the accounting standards of the country or territory of which the entity is resident; or
 - (ii) it would have been required to prepare a consolidated financial statement had the equity shares of any of the enterprises were listed on a stock exchange, and, there is no other constituent entity of such group which, due to ownership of any interest, directly or indirectly, in the first mentioned constituent entity, is required to prepare a consolidated financial statement, under the circumstances referred to in sub-clause (i) or sub-clause (ii), that includes the separate financial statement of the first mentioned constituent entity;
- (i) "permanent establishment" shall have the meaning assigned to it in clause (iiia) of section 92F;
- (j) "reporting accounting year" means the accounting year in respect of which the financial and operational results are required to be reflected in the report referred to in [sub-sections (2) and (4)];
- (k) "reporting entity" means the constituent entity including the parent entity or the alternate reporting entity, that is required to furnish a report of the nature referred to in sub-section (2);
- (l) "systemic failure" with respect to a country or territory means that the country or territory has an agreement with India providing for exchange of report of the nature referred to in sub-section (2), but—
 - (i) in violation of the said agreement, it has suspended automatic exchange; or

- (ii) has persistently failed to automatically provide to India the report in its possession in respect of any international group having a constituent entity resident in India.

Rule 10BD: Furnishing of Report in respect of an International Group.

10DB. (1) For the purposes of sub-section (1) of section 286, every constituent entity resident in India, shall, if its parent entity is not resident in India, intimate the Director General of Income-tax (Risk Assessment) in Form No. 3CEAC, the following, namely:—

- (a) whether it is the alternate reporting entity of the international group; or
- (b) the details of the parent entity or the alternate reporting entity, as the case may be, of the international group and the country or territory of which the said entities are residents.

(2) Every intimation under sub-rule (1) shall be made at least two months prior to the due date for furnishing of report as specified under sub-section (2) of section 286.

(3) Every parent entity or the alternate reporting entity, as the case may be, resident in India, shall, for every reporting accounting year, furnish the report referred to in sub-section (2) of section 286 to the Director General of Income-tax (Risk Assessment) in Form No. 3CEAD.

(4) A constituent entity of an international group, resident in India, other than the entity referred to in sub-rule (3), shall furnish the report referred to in sub-rule (3) within the time specified therein if the provisions of sub-section (4) of section 286 are applicable in its case.

(5) If there are more than one constituent entities resident in India of an international group, other than the entity referred to in sub-rule (3), then the report referred to in sub-rule (4) may be furnished by that entity which has been designated by the international group to furnish the said report and the same has been intimated to the Director General of Income-tax (Risk Assessment) in Form No. 3CEAE.

(6) For the purposes of sub-section (7) of section 286, the total consolidated group revenue of the international group shall be five thousand five hundred crore rupees.

(7) Where the total consolidated group revenue of the international group, as reflected in the consolidated financial statement, is in foreign currency, the rate of exchange for the calculation of the value in rupees of such total consolidated group revenue shall be the telegraphic transfer buying rate of such currency on the last day of the accounting year preceding the accounting year.

(8) The Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems), as the case may be, shall specify the procedure for electronic filing of Form No. 3CEAC, Form No. 3CEAD and Form No. 3CEAE and shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to the information furnished under this rule.

Explanation.— For the purposes of this rule,—

- (A) "telegraphic transfer buying rate" shall have the same meaning as assigned in the Explanation to rule 26;
- (B) the terms 'accounting year', 'alternate reporting entity', 'consolidated financial statement', 'international group' and 'reporting accounting year' shall have the same meaning as assigned in sub-section (9) of section 286.]