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SUB-SECTION (ii)]

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

Notification No. 36 of 2012

New Delhi, the 30th day of August, 2012

INCOME-TAX

S.O.2005(E).- In exercise of the powers conferred by sub-section (9) 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 (Amendment) Rules, 2012.
(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) after rule 10E, the following rule shall be inserted, namely.-

“Advance Pricing Agreement Scheme

Meaning of expressions used in matters in respect of advance pricing agreement.

10F For the purposes of this rule and rules 10G to 10T,-

- (a) ‘agreement’ means an advance pricing agreement entered into between the Board and the applicant, with the approval of the Central Government, as referred to in sub-section (1) of section 92CC of the Act;
- (b) “application” means an application for advance pricing agreement made under rule 10I ;
- (c) “bilateral agreement” means an agreement between the Board and the applicant, subsequent to, and based on, any agreement

referred to in rule 44 GA between the competent authority in India with the competent authority in the other country regarding the most appropriate transfer pricing method or the arms' length price;

- (d) "competent authority in India" means an officer authorised by the Central Government for the purpose of discharging the functions as such for matters in respect of any agreement entered into under section 90 or 90A of the Act;
- (e) "covered transaction" means the international transaction or transactions for which agreement has been entered into;
- (f) "critical assumptions" means the factors and assumptions that are so critical and significant that neither party entering into an agreement will continue to be bound by the agreement, if any of the factors or assumptions is changed;
- (g) "most appropriate transfer pricing method" means any of the transfer pricing method, referred to in sub-section (1) of section 92C of the Act, being the most appropriate method, having regard to the nature of transaction or class of transaction or class of associated persons or function performed by such persons or such other relevant factors prescribed by the Board under rule 10B and 10C;
- (h) "multilateral agreement" means an agreement between the Board and the applicant, subsequent to, and based on, any agreement referred to in rule 44GA between the competent authority in India with the competent authorities in the other countries regarding the most appropriate transfer pricing method or the arms' length price;
- (i) "tax treaty" means an agreement under section 90, or section 90A, of the Act for the avoidance of double taxation;
- (j) "team" means advance pricing agreement team consisting of income-tax authorities as constituted by the Board and including such number of experts in economics, statistics, law or any other field as may be nominated by the Director General of Income Tax (International Taxation);
- (k) "unilateral agreement" means an agreement between the Board and the applicant which is neither a bilateral nor multilateral agreement.

Persons eligible to apply

10G Any person who –

- (i) has undertaken an international transaction; or
- (ii) is contemplating to undertake an international transaction,

shall be eligible to enter into an agreement under these rules.

Pre-filing Consultation

10H (1) Every person proposing to enter into an agreement under these rules shall, by an application in writing, make a request for a pre-filing consultation.

(2) The request for pre-filing consultation shall be made in Form No. 3 CEC to the Director General of Income Tax (International Taxation).

(3) On receipt of the request in Form No. 3 CEC, the team shall hold pre-filing consultation with the person referred to in rule 10G.

(4) The competent authority in India or his representative shall be associated in pre-filing consultation involving bilateral or multilateral agreement.

(5) The pre-filing consultation shall, among other things,-

- (i) determine the scope of the agreement;
- (ii) identify transfer pricing issues;
- (iii) determine the suitability of international transaction for the agreement;
- (iv) discuss broad terms of the agreement.

(6) The pre-filing consultation shall–

- (i) not bind the Board or the person to enter into an agreement or initiate the agreement process;
- (ii) not be deemed to mean that the person has applied for entering into an agreement.

Application for advance pricing agreement

- 10 I (1) Any person, who has entered into a pre-filing consultation as referred to in rule 10H may, if desires to enter into an agreement furnish an application in Form No. 3 CED alongwith the requisite fee.
- (2) The application shall be furnished to Director General of Income Tax (International Taxation) in case of unilateral agreement and to the competent authority in India in case of bilateral or multilateral agreement.
- (3) Application in Form No. 3 CED may be filed by the person referred to in rule 10G at any time–
- (i) before the first day of the previous year relevant to the first assessment year for which the application is made, in respect of transactions which are of a continuing nature from dealings that are already occurring; or
 - (ii) before undertaking the transaction in respect of remaining transactions.
- (4) Every application in Form No. 3 CED shall be accompanied by the proof of payment of fees as specified in sub-rule (5).
- (5) The fees payable shall be in accordance with following table based on the amount of international transaction entered into or proposed to be undertaken in respect of which the agreement is proposed:

Amount of international transaction entered into or proposed to be undertaken in respect of which agreement is proposed during the proposed period of agreement.	Fee
Amount not exceeding Rs. 100 crores	10 lacs
Amount not exceeding Rs. 200 crores	15 lacs
Amount exceeding Rs. 200 crores	20 lacs

Withdrawal of application for agreement

- 10 J (1) The applicant may withdraw the application for agreement at any time before the finalisation of the terms of the agreement.
- (2) The application for withdrawal shall be in Form No. 3CEE.

(3) The fee paid shall not be refunded on withdrawal of application by the applicant.

Preliminary processing of application

10 K (1) Every application filed in Form No. 3CED shall be complete in all respects and accompanied by requisite documents.

(2) If any defect is noticed in the application in Form No. 3CED or if any relevant document is not attached thereto or the application is not in accordance with understanding reached in pre-filing consultation referred to in rule 10H, the Director General of Income-tax (International Taxation) (for unilateral agreement) and competent authority in India (for bilateral or multilateral agreement) shall serve a deficiency letter on the applicant before the expiry of one month from the date of receipt of the application.

(3) The applicant shall remove the deficiency or modify the application within a period of fifteen days from the date of service of the deficiency letter or within such further period which, on an application made in this behalf, may be extended, so however, that the total period of removal of deficiency or modification does not exceed thirty days.

(4) The Director General of Income Tax (International Taxation) or the competent authority in India, as the case may be, on being satisfied, may pass an order providing that application shall not be allowed to be proceeded with if the application is defective and defect is not removed by applicant in accordance with sub-rule (3).

(5) No order under sub-rule (4) shall be passed without providing an opportunity of being heard to the applicant and if an application is not allowed to be proceeded with, the fee paid by the applicant shall be refunded.

Procedure

10 L (1) If the application referred to in rule 10K has been allowed to be proceeded with, the team or the competent authority in India or his representative shall process the same in consultation and discussion with the applicant in accordance with provisions of this rule.

- (2) For the purpose of sub-rule (1), it shall be competent for the team or the competent authority in India or its representative to–
 - (i) hold meetings with the applicant on such time and date as it deem fit;
 - (ii) call for additional document or information or material from the applicant;
 - (iii) visit the applicant's business premises; or
 - (iv) make such inquiries as it deems fit in the circumstances of the case.
- (3) For the purpose of sub-rule (1), the applicant may, if he considers it necessary, provide further document and information for consideration of the team or the competent authority in India or his representative.
- (4) For bilateral or multilateral agreement, the competent authority shall forward the application to Director General of Income Tax (International Taxation) who shall assign it to one of the teams.
- (5) The team, to whom the application has been assigned under sub-rule (4), shall carry out the enquiry and prepare a draft report which shall be forwarded by the Director General of Income Tax (International Taxation) to the competent authority in India.
- (6) If the Applicant makes a request for bilateral or multilateral agreement in its application, the competent authority in India shall in addition to the procedure provided in this rule invoke the procedure provided in the rule 44 GA.
- (7) The Director General of Income Tax (International Taxation) (for unilateral agreement) or the competent authority in India (for bilateral or multilateral agreement) and the applicant shall prepare a proposed mutually agreed draft agreement enumerating the result of the process referred to in sub-rule (1) including the effect of the arrangement referred to in sub-rule (5) of rule 44GA which has been accepted by the applicant in accordance with sub-rule (8) of the said rule.

- (8) The agreement shall be entered into by the Board with the applicant after its approval by the Central Government.
- (9) Once an agreement has been entered into the Director General of Income Tax (International Taxation) or the competent authority in India, as the case may be, shall cause a copy of the agreement to be sent to the Commissioner of Income Tax having jurisdiction over the assessee.

Terms of the agreement

- 10 M (1) An agreement may among other things, include –
- (i) the international transactions covered by the agreement;
 - (ii) the agreed transfer pricing methodology, if any;
 - (iii) determination of arm's length price, if any;
 - (iv) definition of any relevant term to be used in items (ii) or (iii);
 - (v) critical assumptions;
 - (vi) the conditions if any other than provided in the Act or these rules.
- (2) The agreement shall not be binding on the Board or the assessee if there is a change in any of critical assumptions or failure to meet conditions subject to which the agreement has been entered into.
 - (3) The binding effect of agreement shall cease only if any party has given due notice of the concerned other party or parties.
 - (4) In case there is a change in any of the critical assumptions or failure to meet the conditions subject to which the agreement has been entered into, the agreement can be revised or cancelled, as the case may be.
 - (5) The assessee which has entered into an agreement shall give a notice in writing of such change in any of the critical assumptions or failure to meet conditions to the Director General of Income Tax (International Taxation) as soon as it is practicable to do so.

- (6) The Board shall give a notice in writing of such change in critical assumptions or failure to meet conditions to the assessee, as soon as it comes to the knowledge of the Board.
- (7) The revision or the cancellation of the agreement shall be in accordance with rules 10Q and 10R respectively.

Amendments to Application

- 10 N
- (1) An applicant may request in writing for an amendment to an application at any stage, before the finalisation of the terms of the agreement.
 - (2) The Director General of Income Tax (International Taxation) (for unilateral agreement) or the competent authority in India (for bilateral or multilateral agreement) may, allow the amendment to the application, if such an amendment does not have effect of altering the nature of the application as originally filed.
 - (3) The amendment shall be given effect only if it is accompanied by the additional fee, if any, necessitated by such amendment in accordance with fee as provided in rule 10 I.

Furnishing of Annual Compliance Report

- 10 O
- (1) The assessee shall furnish an annual compliance report to Director General of Income Tax (international Taxation) for each year covered in the agreement.
 - (2) The annual compliance report shall be in Form 3CEF.
 - (3) The annual compliance report shall be furnished in quadruplicate, for each of the years covered in the agreement, within thirty days of the due date of filing the income tax return for that year, or within ninety days of entering into an agreement, whichever is later.
 - (4) The Director General of Income Tax (International Taxation) shall send one copy of annual compliance report to the competent authority in India, one copy to the Commissioner of Income Tax who has the jurisdiction over the income-tax assessment of the assessee and one copy to the Transfer Pricing Officer having the jurisdiction over the assessee.

Compliance Audit of the agreement

- 10 P (1) The Transfer Pricing Officer having the jurisdiction over the assessee shall carry out the compliance audit of the agreement for each of the year covered in the agreement.
- (2) For the purposes of sub-rule(1), the Transfer Pricing Officer may require –
- (i) the assessee to substantiate compliance with the terms of the agreement, including satisfaction of the critical assumptions, correctness of the supporting data or information and consistency of the application of the transfer pricing method;
 - (ii) the assessee to submit any information, or document, to establish that the terms of the agreement has been complied with.
- (3) The Transfer Pricing Officer shall submit the compliance audit report, for each year covered in the agreement, to the Director General of Income Tax (International Taxation) in case of unilateral agreement and to the competent authority in India, in case of bilateral or multilateral agreement, mentioning therein his findings as regards compliance by the assessee with terms of the agreement.
- (4) The Director General of Income Tax (International Taxation) shall forward the report to the Board in a case where there is finding of failure on part of assessee to comply with terms of agreement and cancellation of the agreement is required.
- (5) The compliance audit report shall be furnished by the Transfer Pricing Officer within six months from the end of the month in which the Annual Compliance Report referred to in rule 10 O is received by the Transfer Pricing Officer.
- (6) The regular audit of the covered transactions shall not be undertaken by the Transfer Pricing Officer if an agreement has been entered into under rule 10L except where the agreement has been cancelled under rule 10R.

Revision of an agreement

10 Q (1) An agreement, subsequent to it having been entered into, may be revised by the Board, if.-

- (a) there is a change in critical assumptions or failure to meet a condition subject to which the agreement has been entered into;
 - (b) there is a change in law that modifies any matter covered by the agreement but is not of the nature which renders the agreement to be non binding ; or
 - (c) there is a request from competent authority in the other country requesting revision of agreement, in case of bilateral or multilateral agreement.
- (2) An agreement may be revised by the Board either *suo-moto* or on request of the assessee or the competent authority in India or the Director General of Income Tax (International Taxation).
- (3) Except when the agreement is proposed to be revised on the request of the assessee, the agreement shall not be revised unless an opportunity of being heard has been provided to the assessee and the assessee is in agreement with the proposed revision.
- (4) In case the assessee is not in agreement with the proposed revision the agreement may be cancelled in accordance with rule-10R.
- (5) In case the Board is not in agreement with the request of the assessee for revision of the agreement, the Board shall reject the request in writing giving reason for such rejection.
- (6) For the purpose of arriving at the agreement for the proposed revision, the procedure provided in rule 10 L may be followed so far as they apply.
- (7) The revised agreement shall include the date till which the original agreement is to apply and the date from which the revised agreement is to apply.

Cancellation of an agreement

10 R (1) An agreement shall be cancelled by the Board for any of the following reasons:

- (i) the compliance audit referred to in rule 10P has resulted in the finding of failure on the part of the assessee to comply with the terms of the agreement;
 - (ii) the assessee has failed to file the annual compliance report in time;
 - (iii) the annual compliance report furnished by the assessee contains material errors; or
 - (iv) the agreement is to be cancelled under sub-rule (4) of rule 10Q.
- (2) The Board shall give an opportunity of being heard to the assessee, before proceeding to cancel an application.
- (3) The competent authority in India shall communicate with the competent authority in the other country or countries and provide reason for the proposed cancellation of the agreement in case of bilateral or multilateral agreement.
- (4) The order of cancellation of the agreement shall be in writing and shall provide reasons for cancellation and for non acceptance of assessee's submission, if any.
- (5) The order of cancellation shall also specify the effective date of cancellation of the agreement, where applicable.
- (6) The order under the Act, declaring the agreement as *void ab initio*, on account of fraud or misrepresentation of facts, shall be in writing and shall provide reason for such declaration and for non acceptance of assessee's submission, if any.
- (7) The order of cancellation shall be intimated to the Assessing Officer and the Transfer Pricing Officer, having jurisdiction over the assessee.

Renewing an agreement

- 10 S Request for renewal of an agreement may be made as a new application for agreement, using the same procedure as outlined in these rules except pre filing consultation as referred to in rule 10H.

Miscellaneous

- 10 T (1) Mere filing of a application for an agreement under these rules shall not prevent the operation of Chapter X of the Act for determination of arms' length price under that Chapter till the agreement is entered into.
- (2) The negotiation between the competent authority in India and the competent authority in the other country or countries, in case of bilateral or multilateral agreement, shall be carried out in accordance with the provisions of the tax treaty between India and the other country or countries.".

(b) after rule 44G of the principal rules, the following rule shall be inserted, namely.-

“Procedure to deal with requests for bilateral or multilateral advance pricing agreements.

- 44GA(1)** Where a person has made request for a bilateral or multilateral advance pricing agreement in an application filed in Form No. 3 CED in accordance with rule 10 I, the request shall be dealt with subject to provisions of this rule.
- (2) The process for bilateral or multilateral advance pricing agreement shall not be initiated unless the associated enterprise situated outside India has initiated process of advance pricing agreement with the competent authority in the other country.
- (3) The competent authority in India shall, on intimation of request of the applicant for a bilateral or multilateral agreement, consult and ascertain willingness of the competent authority in other country or countries, as the case may be, for initiation of negotiation for this purpose.
- (4) In case of willingness of the competent authority in other country or countries, as the case may be, the competent authority in India shall enter into negotiation in this behalf and endeavour to reach a set of terms which are acceptable to the competent authority in India and the competent authority in the other country or countries, as the case may be.
- (5) In case of an agreement after consultation, the competent authority in India shall formalise a mutual agreement procedure arrangement

with the competent authority in other country or countries, as the case may be, and intimate the same to the applicant.

- (6) In case of failure to reach agreement on such terms as are mutually acceptable to parties mentioned in sub-rule 4, the applicant shall be informed of the failure to reach an agreement with the competent authority in other country or countries.
- (7) The applicant shall not be entitled to be part of discussion between competent authority in India and the competent authority in the other country or countries, as the case may be; however the applicant can communicate or meet the competent authority in India for the purpose of entering into an advance pricing agreement.
- (8) The applicant shall convey acceptance or otherwise of the agreement within thirty days of it being communicated.
- (9) The applicant, in case the agreement is not acceptable may at its option continue with process of entering into an advance pricing agreement without benefit of mutual agreement process or withdraw application in accordance with rule 10J."

(c) In Appendix-II of the principal rules, after Form No. 3 CEB, the following Forms shall be inserted, namely: -

**"Form No. 3CEC
(See sub-rule (2) of rule 10 H)
Application for a pre-filing meeting**

To,
The Director General of Income Tax (International Taxation)
New Delhi.

Sir/Madam,

I propose to apply for an Advance Pricing Agreement. In this regard I give below the necessary particulars for a pre-filing meeting:

1. Particulars of the applicant:
 - a. Full name of the applicant:
 - b. Permanent account number:
 - c. Address of the applicant:

- d. Location(s) of the business enterprises in India:
 - e. Details of applicant authorized representative:
 - f. Address for communication:
 - g. Email id and the contact numbers of the person with whom correspondence is required to be made:
2. The global structure of the applicant's group and the industry in which it operates:
 3. Names of all the associated enterprises (AE's) with which international transactions have been either undertaken or proposed to be undertaken:
 4. Name of country(s) in which (AE's) is located:
 5. Business model and overview of the applicant's business operations in prior 3 years:
 6. Functional and Risk Profile of the applicant and associated enterprises:
 7. a. Details of all the international transactions proposed to be covered in the APA:

b. Value of such international transactions covered under Transfer Pricing audit in prior 3 years:

8. Details of all other international transactions not proposed to be covered in the APA:
9. Type of APA proposed:
 - a. Are you proposing a unilateral APA? Yes/ No
 - b. If yes the reasons for the same:
 - c. Are you proposing a Bilateral or Multilateral APA? Yes/ No
 - d. If yes, provide the names of the country (ies) in which the associated enterprises are located:
10. Number of years for which APA is proposed to be applied:
11. Proposed transfer pricing methodology to be used with supporting documentation:
12. Identification of third party comparable:
13. Details of arm's length price or profit level indicator:
14. Details of critical assumptions, that the applicant considers, may affect the business or the transfer pricing methodology:
15. The history of the Competent Authority issues, requests, and settlements:
16. History of transfer pricing audits, assessments and present status of appeals:
17. Names and designation of the representatives who would be appearing before the authorities for pre-filing discussions:

Any other relevant information:

I declare that to the best of my knowledge and belief, the information furnished in the application is correct and truly stated.

Yours faithfully,

Place:

Date:

Applicant

Notes:

1. The application must be filed in triplicate.
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.
3. In case the pre-filing meeting is requested on an anonymous basis, no names of the applicant or associated enterprises are to be given.
4. With regard to details of all the international transactions proposed to be covered in the APA, please furnish agreements with associated enterprises, if any, relating to the international transactions along with the reasons for covering these transactions in APA.
5. In case the applicant is applying for a Bilateral or Multilateral APA, the applicant must state whether India has an existing comprehensive DTAA with such country (ies). It may also be verified whether such country (ies) has APA program in place?
6. In case the pre-filing request is on anonymous basis, details of the representatives of the applicant who would be appearing before the authorities for pre-filing discussions must be furnished.

Form No. 3 CED
(See sub-rule (1) of rule 10 I)
Application for 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. I am submitting herewith the necessary particulars hereunder:

I. General

1. Particulars of the applicant:
 - a. Full name of the applicant:
 - b. Permanent Account Number:
 - c. Address of the applicant:

 - d. Address for communication:

 - e. Location(s) of the business enterprises in India:

 - f. Email id and the contact numbers of the person with whom correspondence is required to be made:

 - g. Names and designation of the authorised representatives who would be appearing before the authorities for negotiations of the APA:

2. Whether pre-filing discussions 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. Name(s) of the Associated Enterprises with whom the APA is requested for:

4. Name of the country(ies) in which the associated enterprises mentioned in (3) above are located:
5. a. Are you applying for a Unilateral, Bilateral or Multilateral APA: Unilateral/Bilateral/Multilateral
- b. If you are applying for a Bilateral or Multilateral APA, have the Associated Enterprises applied for APA with the Competent Authority in the country of its residence?: Yes/ No
- c. If yes, enclose evidence of furnishing such application with the other Competent Authority:
- d. If no, by what date the application is proposed to be furnished to the other Competent Authority:
- e. If the application is for Unilateral APA and it involves international transactions with an entity located in a jurisdiction with which India has an agreement under section 90 or 90A of the Act for avoidance of double taxation, kindly provide explanation for why the request is not for bilateral or multilateral APA.
6. Particulars of Fee paid by the applicant: Amount in Rs.
Challan No:
Dated:
7. Period of APA proposed along with the date from which APA is sought to be applicable:
8. Details of the international transactions proposed to be covered in the APA (Description of the property or services to which the proposed APA relates):

9. Proposed Transfer Pricing Method(s):
10. Proposed terms and conditions, and critical assumptions, for the APA:
11. History and background of the applicant and the associated enterprise:
12. General description of business and products/services:
13. Multinational structure, organizational arrangement, operational set-up, including major transaction flows:
14. Identify all other transaction flows of the multinational enterprise (volumes, directions and amounts) that may have an impact on the pricing of the covered transactions:
15. Functional currency for each entity and the currency which is used for the proposed transactions to be covered under the APA:
16. Accounting and costing system, policies, procedures, and practices, including any significant financial and tax accounting differences that may affect the TPMs:

II. Functional analysis

17. Detailed functional analysis of the applicant and all relevant entities with respect to the covered transactions:
18. Business strategies – current and future Budget statements, projections and business plans for future period covered by proposed APA, general business and industry trends, future direction/business

strategy including R&D, production, and marketing:

19. Financial and operating information, including corporate annual reports: (Please enclose copies)

- a. Financial statements on a consolidated and unconsolidated basis for the prior five years, or the most recent business cycle as appropriate (Also provide interim statements for the most recent period prior to the date of the submission):
- b. Income tax returns and related supporting schedules for the prior three years including Form 3CEB:
- c. Operating data (gross and net) segmented by product line, division, unit, and geographic region for the prior five years, or the most recent business cycle as appropriate:

20. Relevant marketing and financial studies: (Please enclose copies)

21. Copies of all relevant intercompany agreements (pricing, cost sharing, licensing, distributorship etc.): (Please enclose copies)

III. Industry and market analyses

22. Detailed industry analysis:

- a. Comprehensive description of industry as well as generally accepted industrial and commercial practices:

- b. Identification and general profile of competitors, including respective market shares:
 - c. Industry and general business statistics, financial ratios, and analyses/studies:
 - d. Critical success factors:
23. Detailed analysis of the markets for all countries involved:

IV. Transfer pricing background

24. Discussion of relevant legal considerations and requirements as per:
- a. Indian law
 - b. Foreign law
 - c. Income tax treaty between India and the foreign country
25. Discussion of transfer pricing methodologies, policies, and practices used by the applicant and associated enterprises for the covered transactions during the past three years, or business cycle as appropriate:
26. Discussion of relevant rulings, APAs/BAPAs/MAPAs, and other similar arrangements entered into with foreign tax administrations, for transfer pricing or other valuation bases, or other taxation matters entered into by the applicant (or its associated enterprises) and Indian or foreign tax administrations:
27. Discussion of relevant Indian income tax audit, appeals, judicial and competent authority history:

28. Discussion of relevant foreign income tax audit, appeals, judicial and competent authority history:

29. Discussion of un-assessed taxation years (Indian and foreign) and related outstanding tax, legal, and other pertinent issues:

V. Transfer Pricing Methodology analysis:

30. Provide all information, including detailed analyses and explanations needed to establish the appropriateness of a proposed TPM, in accordance with transfer pricing regulations as contained in the Indian Income Tax law:

31. Discussion and analysis of each transfer pricing method, applied or rejected, for each covered transaction. In particular provide details on accepted or rejected internal comparables. (Indicate assumptions, strategies, and policies that may have influenced the acceptance or rejection of each TPM):

32. Summary of selected TPMs and secondary TPMs, if used as a sanity check:

VI. Impact of proposed TPMs

33. Application of the proposed TPMs to the covered transactions for the three prior years' operations or the most recent business cycle, and discuss results:

34. Application of the proposed TPMs to the time period applicant wants the APA to cover and discuss results:

35. Discussion and quantification of the variance, if any, from the methodology applied in section IV:

I declare that to the best of my knowledge and belief, the information furnished in the application is correct and truly stated.

Yours faithfully,

Place:

Date:

Applicant

Notes:

1. Bilateral or multilateral APA application shall be filed with the Competent Authority i.e. the Joint Secretary FT&TR-I, New Delhi in triplicate.
2. Unilateral APA application shall be filed with the Director General of Income Tax (International Taxation), New Delhi in triplicate.
3. 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.
4. The fee shall be computed in accordance with the sub-rule (5) of Rule 10 I.
5. The application shall accompany with all the relevant documents.

Form No. 3 CEE
(See sub-rule (2) of rule 10 J)
Application for withdrawal of APA request

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

Sir/Madam,

This is to state that(Name of the Taxpayer) had filed an application for Unilateral/Bilateral/Multilateral APA on ...dd/mm/yyyy. For the reasons stated below, the application is hereby withdrawn:

I declare that to the best of my knowledge and belief, the information furnished with regard to the withdrawal of the application is correct and truly stated and I fully understand that the fee paid by me under Rule 10 I of Income-tax Rules shall not be refunded.

Yours faithfully,

Place:

Date:

Applicant

Notes:

1. The Withdrawal Application must be filed in triplicate.
2. The Withdrawal Application shall be filed before the authority, before whom the application for APA was made.
3. 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.

Form No. 3 CEF
(See sub-rule 2 of rule 10 O)
Annual Compliance Report on Advance Pricing Agreement

To,
The Director General of Income Tax (International Taxation)
New Delhi

Sir/Madam,

I am submitting herewith Annual Compliance Report for the period beginning from dd/mm/yyyy to dd/mm/yyyy for Advance Pricing Agreement entered into between(Name of the taxpayer)and the Central Board of Direct Taxes, vide APA Reference No. -----dated -----. In this regard I give below the necessary information:

1. Particulars of the taxpayer:
 - a. Full name of the Taxpayer:
 - b. Permanent Account Number:
 - c. Address of the Taxpayer:

 - d. Address for communication:

 - e. Email id and the contact numbers of the person for correspondence:

2. Type of APA entered into:
 - a. Have you entered into a unilateral APA or Bilateral APA or Multilateral APA?
Unilateral/Bilateral/Multilateral

 - b. If you have entered into a Bilateral APA or Multilateral APA, provide the names of the country (ies) with which the APA has been entered into.

3. Name(s) of the associated enterprise(s) with which international transactions have been undertaken during the year.

4. Details of Covered Transactions:
 - a. Nature of Covered Transaction:
 - b. Amount of Covered Transaction:
 - c. Country(ies) involved:
 - d. Agreed transfer pricing method:
 - e. Agreed profit level indicator:
 - f. Actual result achieved:
 - g. Adjustment required:
 - h. How the adjustment if any is reflected in the income tax return:

5. Are there any changes in the **business model** of the taxpayer in the current financial year as compared to:
 - a. Immediately preceding year:
 - b. Year immediately preceding to the first year to which APA is applicable:

6. Are there any changes in the **Functional and Risk Profile** of the taxpayer and the associated enterprises in the current financial year as compared to:
 - a. Immediately preceding year:

 - b. Year immediately preceding to the first year to which APA is applicable:

7. Transfer pricing methodology:

- a. Agreed upon in the APA:

- b. Followed during the year to justify the arm's length price of the international transactions covered by APA:

- c. Variations between (a) and (b) above, if any:

- d. Reasons for variations:

8. Critical assumptions:

- a. Agreed upon in the APA:

- b. Whether the critical assumptions have been met during the year or there has been a change in critical assumptions:

c. Reasons for not meeting the critical assumptions or change in critical assumptions:

9. Are there any changes in the organisational structure of the taxpayer group by way of amalgamation, acquisition, merger, demerger or sale of business or by any other methods? If yes, please furnish complete details thereof and show its impact on the critical assumptions agreed upon in the APA:

10. Specify all other terms and conditions agreed upon in the APA and show whether they have been complied with. In case of non compliance, furnish the reasons thereof:

I declare that I have examined the information contained in this APA Annual Compliance Report, including the accompanying documents, and to the best of my knowledge and belief, the facts presented within this report and accompanying documents are true, comprehensive and accurate.

Yours faithfully,

Place:

Date:

(Name of the Taxpayer)

Notes:

1. The Annual Compliance Report shall be filed quadruplicate.
2. The Annual Compliance Report shall be filed for every year covered in the APA Separate report shall be filed for each year.
3. The information relating to "Covered Transaction" in item No. 4 above is required to be furnished for each covered transaction separately.
4. Please attach all documents as agreed upon in the APA to justify the transfer pricing methodology and computation of arm's length price."

[Notification No. 36/2012/ F.No.133 /5/2012–SO (TPL)]

(ASHISH KUMAR)
Director (Tax Policy and Legislation)