

INCOME-TAX (SECOND AMENDMENT) RULES, 2015 - AMENDMENT IN RULES 10D, 10TA AND INSERTION OF RULES 10TH, 10THA, 10THB, 10THC, 10THD AND FORM 3CEFB

NOTIFICATION NO. 11/2015 [F.NO.142/7/2014-TPL]/SO 350(E), DATED 4-2-2015

In exercise of the powers conferred by sections 92CB and 92D 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 (2nd Amendment), Rules, 2015.

(2) They shall come into force from the date of their publication in the Official Gazette.

2. In the Income-tax Rules, 1962,—

(A) in Part-II, in sub-part D relating to special cases,—

(1) in rule 10 D,—

(a) after sub-rule (2), the following sub-rule shall be inserted, namely:—

"(2A) Nothing contained in sub-rule (1), insofar as it relates to an eligible specified domestic transaction referred to in rule 10 THB, shall apply in a case of an eligible assessee referred to in rule 10 THA and, the said eligible assessee, shall keep and maintain the following information and documents, namely:—

- (i) a description of the ownership structure of the assessee enterprise with details of shares or other ownership interest held therein by other enterprises;
- (ii) a broad description of the business of the assessee and the industry in which the assessee operates, and of the business of the associated enterprises with whom the assessee has transacted;
- (iii) the nature and terms (including prices) of specified domestic transactions entered into with each associated enterprise and the quantum and the value of each such transaction or class of such transaction;
- (iv) a record of proceedings if any before the regulatory commission and orders of such commission relating to the specified domestic transaction;
- (v) a record of the actual working carried out for determining the transfer price of the specified domestic transaction;
- (vi) the assumptions, policies and price negotiations, if any, which have critically affected the determination of the transfer price;
- (vii) any other information, data or document, including information or data relating to the associated enterprise, which may be relevant for determination of the transfer price.";
- (b) in sub-rule (3), for the word, brackets and figure "sub-rule (1)", the word, brackets, figures and letter "sub-rules (1) and (2A)" shall be substituted;
- (c) in sub-rule (4) and in the proviso to sub-rule (4), for the words, brackets and figures "sub-rules (1) and (2)", wherever they occur, the words , brackets, figures and letter "sub-rules (1), (2) and (2A)" shall be substituted;
- (d) in sub-rule (5), for the words, brackets and figures "sub-rules (1) and (2)", the words, brackets, figures and letter "sub-rules (1), (2) and (2A)" shall be substituted;

- (2) after rule 10T, in the heading, for the words "Safe Harbour Rules", the words " Safe Harbour Rules for International Transactions" shall be substituted;
- (3) after rule 10TG, the following rules shall be inserted, namely:—

""Safe Harbour Rules for Specified Domestic Transactions"

10TH. Definitions.—For the purposes of this rule and rules 10THA to 10THD,—

- (a) "Appropriate Commission" shall have the same meaning as assigned to it in sub-section (4) of section 2 of the Electricity Act, 2003 (36 of 2003);
- (b) "Government company" shall have the same meaning as assigned to it in sub-section (45) of section 2 of the Companies Act, 2013 (18 of 2013);

10THA. Eligible assessee.—The 'eligible assessee' means a person who has exercised a valid option for application of safe harbour rules in accordance with the provisions of rule 10THC, and is a Government company engaged in the business of generation, transmission or distribution of electricity.

10THB. Eligible specified domestic transaction.—The "Eligible specified domestic transaction" means a specified domestic transaction undertaken by an eligible assessee and which comprises of :—

- (i) supply of electricity by a generating company; or
- (ii) transmission of electricity; or
- (iii) wheeling of electricity.

Safe Harbour

10THC. (1) Where an eligible assessee has entered into an eligible specified domestic transaction in any previous year relevant to an assessment year and the option exercised by the said assessee is treated to be validly exercised under rule 10THD, the transfer price declared by the assessee in respect of such transaction for that assessment year shall be accepted by the income-tax authorities, if it is in accordance with the circumstances as specified in sub-rule (2).

(2) The circumstances referred to in sub-rule (1) in respect of the eligible specified domestic transaction specified in column (2) of the Table below shall be as specified in the corresponding entry in column (3) of the said Table:—

S. No.	Eligible specified domestic Transaction	Circumstances
1	2	3
1	Supply of electricity, transmission of electricity, wheeling of electricity referred to in items (i), (ii) or (iii) of rule THB, as the case may be.	The tariff in respect of supply of electricity, transmission of electricity, wheeling of electricity, as the case may be, is determined by the Appropriate Commission in accordance with the provisions of the Electricity Act, 2003 (36 of 2003).

(3) No comparability adjustment and allowance under the second proviso to sub-section (2) of section 92C shall be made to the transfer price declared by the eligible assessee and accepted under sub-rule (1).

(4) The provisions of sections 92D and 92E in respect of a specified domestic transaction shall apply irrespective of the fact that the assessee exercises his option for safe harbour in respect of such transaction.

Procedure

10THD. (1) For the purposes of exercise of the option for safe harbour, the assessee shall furnish a Form 3CEFB, complete in all respects, to the Assessing Officer on or before the due date specified in Explanation 2 to sub-section (1) of section 139 for furnishing the return of income for the relevant assessment year:

Provided that the return of income for the relevant assessment year is furnished by the assessee on or before the date of furnishing of Form 3CEFB:

Provided further that in respect of eligible specified domestic transactions undertaken during the previous year relevant to the assessment year beginning on the 1st day of April, 2013 or beginning on the 1st day of April, 2014, Form 3CEFB can be furnished by the assessee on or before the 31st day of March, 2015.

(2) On receipt of Form 3CEFB, the Assessing Officer shall verify whether—

- (i) the assessee exercising the option is an eligible assessee; and
- (ii) the transaction in respect of which the option is exercised is an eligible specified domestic transaction,

before the option for safe harbour by the assessee is treated to be validly exercised.

(3) Where the Assessing Officer doubts the valid exercise of the option for the safe harbour by an assessee, he may require the assessee, by notice in writing, to furnish such information or documents or other evidence as he may consider necessary, and the assessee shall furnish the same within the time specified in such notice.

(4) Where—

- (a) the assessee does not furnish the information or documents or other evidence required by the Assessing Officer; or
- (b) the Assessing Officer finds that the assessee is not an eligible assessee; or
- (c) the Assessing Officer finds that the specified domestic transaction in respect of which the option referred to in sub-rule (1) has been exercised is not an eligible specified domestic transaction; or
- (d) the tariff is not in accordance with the circumstances specified in sub-rule (2) of rule 10 THC,

the Assessing Officer shall, by order in writing, declare the option exercised by the assessee under sub-rule (1) to be invalid and cause a copy of the said order to be served on the assessee:

Provided that no order declaring the option exercised by the assessee to be invalid shall be passed without giving an opportunity of being heard to the assessee.

(5) If the assessee objects to the order of the Assessing Officer under sub-rule (4) declaring the option to be invalid, he may file his objections with the Principal Commissioner or the Commissioner or the Principal Director or the Director, as the case may be, to whom the Assessing Officer is subordinate, within fifteen days of receipt of the order of the Assessing Officer.

(6) On receipt of the objection referred to in sub-rule (5), the Principal Commissioner or the Commissioner or the Principal Director or the Director, as the case may be, shall after providing an opportunity of being heard to the assessee, pass appropriate orders in respect of the validity or otherwise of the option exercised by the assessee and cause a copy of the said order to be served on the assessee and

the Assessing Officer.

(7) For the purposes of this rule,—

- (i) no order under sub-rule(4) shall be made by an Assessing Officer after expiry of a period of three months from the end of the month in which Form 3CEFB is received by him;
- (ii) the order under sub-rule (6) shall be passed by the Principal Commissioner or Commissioner or Principal Director or Director, as the case may be, within a period of two months from the end of the month in which the objection filed by the assessee under sub-rule(5) is received by him.

(8) If the Assessing Officer or the Principal Commissioner or the Commissioner or the Principal Director or the Director, as the case may be, does not pass an order within the time specified in sub-rule (7), then the option for safe harbour exercised by the assessee shall be treated as valid.;

(B) in Appendix II, after Form No. 3CEFA, the following Form shall be inserted, namely:—

"Form No. 3CEFB

(See sub-rule (1) of rule 10THD)

Application for Opting for Safe Harbour in respect of Specified Domestic Transactions

To,

The Assessing Officer

.....

Sir/Madam,

I propose to opt for the safe harbour rules under section 92CB of the Income-tax Act, 1961 read with rules 10TH to 10THD of the Income-tax Rules, 1962. In this regard the particulars are as under:

1. General:

- (a) Full name of the assessee:
- (b) Permanent Account Number:
- (c) Address of the assessee:
- (d) Nature of business or activities of the assessee:
- (e) Status
- (f) Assessment Year

2. Eligible Specified Domestic Transaction:

Sl. No.	Particulars in respect of eligible specified domestic transaction	Remarks
1.	Has the eligible assessee entered into any specified domestic transaction in respect of supply of electricity, transmission of electricity or wheeling of electricity referred in items (i), (ii) or (iii) of Rule 10THB?	Yes/No

If Yes, provide the following details:

- (a) Name and address of the associated enterprises(AE) with whom the eligible specified domestic transaction has been entered into.
- (b) Description of the eligible specified domestic transaction.
- (c) Details of relevant order of the Appropriate Commission determining the tariff.
- (d) Amount received or receivable/paid or payable in respect of the eligible specified domestic transaction.
- (e) Whether transfer price is in accordance with the circumstances specified under rule 10THC.

Yes/No

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

Yours faithfully,

Place:

Date:

Signature

Name

Designation/Capacity

Address

Note 1.-Associated enterprise shall have the same meaning as provided in clause (a) of rule 10A.

Note 2.-The application shall be verified by the person authorised to verify the return of income under section 140."