

MINISTRY OF FINANCE
(Department of Revenue)
(CENTRAL BOARD OF DIRECT TAXES)

NOTIFICATION

New Delhi, the 7th June, 2017

INCOME-TAX

G.S.R. 557(E).— In exercise of the powers conferred by section 295 read with sub-section (2) of section 92CB 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 (12th Amendment) Rules, 2017.
- (2) They shall come into force and shall be deemed to have come into force from the 1st day of April, 2017.
2. In the Income-tax Rules, 1962, —
 - (I) in rule 10TA, —
 - (i) for clause (a), following clause shall be substituted, namely:—

“(a) “accountant” means an accountant referred to in the *Explanation* below sub-section (2) of section 288 of the Act and includes any person recognised for undertaking cost certification by the Government of the country where the associated enterprise is registered or incorporated or any of its agencies, who fulfills the following conditions, namely:—

(I) if he is a member or partner in any entity engaged in rendering accountancy or valuation services then,—

 - (i) the entity or its affiliates have presence in more than two countries; and
 - (ii) the annual receipt of the entity in the year preceding the year in which cost certification is undertaken exceeds ten crore rupees;

(II) if he is pursuing the profession of accountancy individually or is a valuer then,—

 - (i) his annual receipt in the year preceding the year in which cost certification is undertaken, from the exercise of profession, exceeds one crore rupees; and
 - (ii) he has professional experience of not less than ten years.”

(ii) the existing clause (a) shall be read as clause (aa);

(iii) in clause (aa) so amended, in sub-clause (viii), after the word “principal” the words “, except where the source code has been made available to carry out routine functions like debugging of the software” shall be inserted;

(iv) after clause (c), the following clause shall be inserted, namely:—

“(ca) “employee cost” includes,—

 - (i) salaries and wages;
 - (ii) gratuities;
 - (iii) contribution to Provident Fund and other funds;
 - (iv) the value of perquisites as specified in clause (2) of section 17 of the Act;
 - (v) employment related allowances, like medical allowance, dearness allowance, travel allowance and any other allowance;
 - (vi) bonus or commission by whatever name called;
 - (vii) lumpsum payments received at the time of termination of service or superannuation or voluntary retirement, such as gratuity, severance pay, leave encashment, voluntary retrenchment benefits, commutation of pension and similar payments;
 - (viii) expenses incurred on contractual employment of persons performing tasks similar to those performed by the regular employees;

(ix) outsourcing expenses, to the extent of employee cost, wherever ascertainable, embedded in the total outsourcing expenses:

Provided that where the extent of employee cost embedded in the total outsourcing expenses is not ascertainable, eighty per cent. of the total outsourcing expenses shall be deemed to be the employee cost embedded in the total outsourcing expenses;

(x) recruitment expenses;

(xi) relocation expenses;

(xii) training expenses;

(xiii) staff welfare expenses; and

(xiv) any other expenses related to employees or the employment;’;

(v) after clause (g), the following clause shall be inserted, namely:—

“(ga) “low value-adding intra-group services” means services that are performed by one or more members of a multinational enterprise group on behalf of one or more other members of the same multinational enterprise group and which,—

(i) are in the nature of support services;

(ii) are not part of the core business of the multinational enterprise group, i.e., such services neither constitute the profit-earning activities nor contribute to the economically significant activities of the multinational enterprise group;

(iii) are not in the nature of shareholder services or duplicate services;

(iv) neither require the use of unique and valuable intangibles nor lead to the creation of unique and valuable intangibles;

(v) neither involve the assumption or control of significant risk by the service provider nor give rise to the creation of significant risk for the service provider; and

(vi) do not have reliable external comparable services that can be used for determining their arm’s length price, but does not include the following services, namely:—

(i) research and development services;

(ii) manufacturing and production services;

(iii) information technology (software development) services;

(iv) knowledge process outsourcing services;

(v) business process outsourcing services;

(vi) purchasing activities of raw materials or other materials that are used in the manufacturing or production process;

(vii) sales, marketing and distribution activities;

(viii) financial transactions;

(ix) extraction, exploration, or processing of natural resources; and

(x) insurance and reinsurance;”

(vi) in clause (j),—

(A) in the long line, after the words “operations including” the words “costs relating to Employee Stock Option Plan or similar stock-based compensation provided for by the associated enterprises of the assessee to the employees of the assessee, reimbursement to associated enterprises of expenses incurred by the associated enterprises on behalf of the assessee, amounts recovered from associated enterprises on account of expenses

incurred by the assessee on behalf of those associated enterprises and which relate to normal operations of the assessee and” shall be inserted;

(B) after item (viii), the following provisos shall be inserted, namely:—

“Provided that reimbursement to associated enterprises of expenses incurred by the associated enterprises on behalf of the assessee shall be at cost.”;

“Provided further that amounts recovered from associated enterprises on account of expenses incurred by the assessee on behalf of the associated enterprises and which relate to normal operations of the assessee shall be at cost.”

(vii) in clause (k), in the long line, after the words “normal operation” the words “including costs relating to Employee Stock Option Plan or similar stock-based compensation provided for by the associated enterprises of the assessee to the employees of the assessee” shall be inserted;

(viii) after clause (l), the following clause shall be inserted, namely:—

“(la) “relevant previous year” means the previous year relevant to the assessment year in which the option for safe harbour is validly exercised.”.

(II) in rule 10TB, in sub-rule (1), —

(i) in clause (v), the word “or” shall be omitted;

(ii) in clause (vi), after the word “sales” the word “; or” shall be inserted;

(iii) after clause (vi), the following clause shall be inserted, namely:—

“(vii) is in receipt of low value-adding intra-group services from one or more members of its group.”.

(III) in rule 10TC, —

(i) in clause (viii), the word “or” shall be omitted;

(ii) in clause (ix), after the word “components” the word “; or” shall be inserted;

(iii) after clause (ix), the following clause shall be inserted, namely:—

“(x) receipt of low value-adding intra-group services from one or more members of its group.”.

(IV) in rule 10TD, —

(i) in sub-rule (1), after the words, brackets and number “sub-rule (2)” the words, brackets, numbers and letter “or, as the case may be, sub-rule (2A)” shall be inserted;

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

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

Sl. No.	Eligible International Transaction	Circumstances
(1)	(2)	(3)
1.	Provision of software development services referred to in item (i) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense incurred is –

		<p>(i) not less than 17 per cent., where the value of international transaction does not exceed a sum of one hundred crore rupees;</p> <p>or</p> <p>(ii) not less than 18 per cent., where the value of international transaction exceeds a sum of one hundred crore rupees but does not exceed a sum of two hundred crore rupees.</p>
2.	Provision of information technology enabled services referred to in item (ii) of rule 10TC.	<p>The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is –</p> <p>(i) not less than 17 per cent., where the aggregate value of such transactions entered into during the previous year does not exceed a sum of one hundred crore rupees; or</p> <p>(ii) not less than 18 per cent., where the aggregate value of such transactions entered into during the previous year exceeds a sum of one hundred crore rupees but does not exceed a sum of two hundred crore rupees.</p>
3.	Provision of knowledge process outsourcing services referred to in item (iii) of rule 10TC.	<p>The value of international transaction does not exceed a sum of two hundred crore rupees and the operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is –</p> <p>(i) not less than 24 per cent. and the Employee Cost in relation to the Operating Expense is at least sixty per cent.;</p> <p>(ii) not less than 21 per cent. and the Employee Cost in relation to the Operating Expense is forty per cent. or more but less than sixty per cent.; or</p> <p>(iii) not less than 18 per cent. and the Employee Cost in relation to the Operating Expense does not exceed forty per cent.</p>
4.	Advancing of intra-group loans referred to in item (iv) of rule 10TC where the amount of loan is denominated in Indian Rupees (INR).	<p>The interest rate declared in relation to the eligible international transaction is not less than the one-year marginal cost of funds lending rate of State Bank of India as on 1st April of the relevant previous year plus, –</p> <p>(i) 175 basis points, where the associated enterprise has CRISIL credit rating between AAA to A or its equivalent;</p> <p>(ii) 325 basis points, where the associated enterprise has CRISIL credit rating of BBB-, BBB or BBB+ or its equivalent;</p> <p>(iii) 475 basis points, where the associated enterprise has CRISIL credit rating between BB to B or its equivalent;</p> <p>(iv) 625 basis points, where the associated enterprise has CRISIL credit rating between C to D or its equivalent; or</p> <p>(v) 425 basis points, where credit rating of the associated</p>

		enterprise is not available and the amount of loan advanced to the associated enterprise including loans to all associated enterprises in Indian Rupees does not exceed a sum of one hundred crore rupees in the aggregate as on 31st March of the relevant previous year.
5.	Advancing of intra-group loans referred to in item (iv) of rule 10TC where the amount of loan is denominated in foreign currency.	The interest rate declared in relation to the eligible international transaction is not less than the six-month London Inter-Bank Offer Rate of the relevant foreign currency as on 30th September of the relevant previous year plus, – (i) 150 basis points, where the associated enterprise has CRISIL credit rating between AAA to A or its equivalent; (ii) 300 basis points, where the associated enterprise has CRISIL credit rating of BBB-, BBB or BBB+ or its equivalent; (iii) 450 basis points, where the associated enterprise has CRISIL credit rating between BB to B or its equivalent; (iv) 600 basis points, where the associated enterprise has CRISIL credit rating between C to D or its equivalent; or (v) 400 basis points, where credit rating of the associated enterprise is not available and the amount of loan advanced to the associated enterprise including loans to all associated enterprises does not exceed a sum equivalent to one hundred crore Indian rupees in the aggregate as on 31st March of the relevant previous year.
6.	Providing corporate guarantee referred to in sub-item (a) or sub-item (b) of item (v) of rule 10TC.	The commission or fee declared in relation to the eligible international transaction is at the rate not less than one per cent. per annum on the amount guaranteed.
7.	Provision of contract research and development services wholly or partly relating to software development referred to in item (vi) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense incurred is not less than 24 per cent., where the value of the international transaction does not exceed a sum of two hundred crore rupees.
8.	Provision of contract research and development services wholly or partly relating to generic pharmaceutical drugs referred to in item (vii) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense incurred is not less than 24 per cent., where the value of the international transaction does not exceed a sum of two hundred crore rupees.
9.	Manufacture and export of core auto components referred to in item (viii) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is not less than 12 per cent.

10.	Manufacture and export of non-core auto components referred to in item (ix) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is not less than 8.5 per cent.
11.	Receipt of low value-adding intra-group services in item (x) of rule 10TC.	The entire value of the international transaction, including a mark-up not exceeding 5 per cent., does not exceed a sum of ten crore rupees: Provided that the method of cost pooling, the exclusion of shareholder costs and duplicate costs from the cost pool and the reasonableness of the allocation keys used for allocation of costs to the assessee by the overseas associated enterprise, is certified by an accountant.”;

(iii) after sub-rule (3), the following sub-rule shall be inserted, namely:—

“(3A) The provisions of sub-rules (1) and (2A) shall apply for the assessment year 2017-18 and two assessment years immediately following that assessment year:

Provided that where an eligible assessee is eligible to exercise option under sub-rule (2) or, as the case may be, sub-rule (2A) above, the assessee shall have the right to choose the option which is most beneficial to him.”

(iv) in sub-rule (4), after the words, brackets and number “and (2)” the words, brackets, numbers and letter “or, as the case may be, (2A)” shall be inserted.

(V) in rule 10TE, —

(i) in sub-rule (2), after the second proviso, the following proviso shall be inserted, namely:—

‘Provided also that in case of the option for safe harbour validly exercised under sub-rule (2A) of rule 10TD, the word “three” shall be substituted for “five”.’;

(ii) in sub-rule (9), after the words, brackets and number “sub-rule (2)”, wherever they may occur, the words, brackets, number and letter “or, as the case may be, sub-rule (2A)” shall be inserted;

(iii) in sub-rule (13), after the words, brackets and number “sub-rule (2)” the words, brackets, number and letter “or, as the case may be, sub-rule (2A)” shall be inserted.

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Note : The principal rules were published in the Gazette of India, Extraordinary, Part-II, Section-3, Sub-section (ii) *vide* number S.O. 969 (E) dated the 26th March, 1962 and were last amended *vide* notification number G.S.R.554(E), dated the 5th June, 2017.