

[TO BE PUBLISHED IN THE GAZETTE OF INDIA EXTRAORDINARY, PART II,
SECTION 3, SUB-SECTION (ii)]

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

Notification

New Delhi, the 23rd day of September, 2013

INCOME-TAX

S.O. 2887(E).- In exercise of the powers conferred by sections 101 and 144BA 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 (17th Amendment) Rules, 2013.
(2) They shall come into force on the 1st day of April, 2016.
2. In the Income-tax Rules, 1962, –
 - (a) after rule 10T, the following rules shall be inserted, namely: -

“ DA. Application of General Anti Avoidance Rule

Chapter X-A not to apply in certain cases

10U. (1) The provisions of Chapter X-A shall not apply to -

- (a) an arrangement where the tax benefit in the relevant assessment year arising, in aggregate, to all the parties to the arrangement does not exceed a sum of rupees three crore;

- (b) a Foreign Institutional Investor, –
 - (i) who is an assessee under the Act;
 - (ii) who has not taken benefit of an agreement referred to in section 90 or section 90A as the case may be; and
 - (iii) who has invested in listed securities, or unlisted securities, with the prior permission of the competent authority, in accordance with the Securities and Exchange Board of India (Foreign Institutional Investor) Regulations, 1995 and such other regulations as may be applicable, in relation to such investments;
 - (c) a person, being a non-resident, in relation to investment made by him by way of offshore derivative instruments or otherwise, directly or indirectly, in a Foreign Institutional Investor;
 - (d) any income accruing or arising to, or deemed to accrue or arise to, or received or deemed to be received by, any person from transfer of investments made before the 30th day of August, 2010 by such person.
- (2) Without prejudice to the provisions of clause (d) of sub-rule (1), the provisions of Chapter X-A shall apply to any arrangement, irrespective of the date on which it has been entered into, in respect of the tax benefit obtained from the arrangement on or after the 1st day of April, 2015.
- (3) For the purposes of this rule, -
- (i) “Foreign Institutional Investor” shall have the same meaning as assigned to it in the Explanation to section 115AD;
 - (ii) “off shore derivative instrument” shall have the same meaning as assigned to it in the Securities and Exchange Board of India (Foreign Institutional

Investor) Regulations, 1995 issued under Securities and Exchange Board of India Act, 1992 (15 of 1992) ;

- (iii) “Securities and Exchange Board of India” shall have the same meaning as assigned to it in clause (a) of sub-section (1) of section 2 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);
- (iv) “tax benefit” as defined in clause (10) of section 102 and computed in accordance with Chapter X-A shall be with reference to-
 - (a) sub-clauses (a) to (e) of the said clause , the amount of tax; and
 - (b) sub-clause (f) of the said clause, the tax that would have been chargeable had the increase in loss referred to therein been the total income.

Determination of consequences of impermissible avoidance arrangement.

10UA . For the purposes of sub-section (1) of section 98, where a part of an arrangement is declared to be an impermissible avoidance arrangement, the consequences in relation to tax shall be determined with reference to such part only.

Notice, Forms for reference under section 144BA

10UB. (1)For the purposes of sub-section (1) of section 144BA, the Assessing Officer shall, before making a reference to the Commissioner, issue a notice in writing to the assessee seeking objections, if any, to the applicability of provisions of Chapter X-A in his case.

- (2) The notice referred to in sub-rule (1) shall contain the following: -
 - (i) details of the arrangement to which the provisions of Chapter X-A are proposed to be applied;
 - (ii) the tax benefit arising under the arrangement;

- (iii) the basis and reason for considering that the main purpose of the identified arrangement is to obtain tax benefit;
- (iv) the basis and the reasons why the arrangement satisfies the condition provided in clause (a), (b), (c) or (d) of sub-section (1) of section 96; and
- (v) the list of documents and evidence relied upon in respect of (iii) and (iv) above.

(3) The reference by the Assessing Officer to the Commissioner under sub-section (1) of section 144BA shall be in Form No.3CEG.

(4) Where the Commissioner is satisfied that the provisions of Chapter X-A are not required to be invoked with reference to an arrangement after considering –

- (i) the reference received from the Assessing Officer under sub-section (1) of section 144BA; or
- (ii) the reply of the assessee in response to the notice issued under sub-section (2) of section 144BA,

he shall issue directions to the Assessing Officer in Form No. 3CEH.

(5) Before a reference is made by the Commissioner to the Approving Panel under sub-section (4) of section 144BA, he shall record his satisfaction regarding the applicability of the provisions of Chapter X-A in Form No. 3CEI and enclose the same with the reference.

Time limits.

10UC. (1)For the purposes of section 144BA,–

- (i) no directions under sub-section (3) of section 144BA shall be issued by the Commissioner after the expiry of one month from the end of

the month in which the date of compliance of the notice issued under sub-section (2) of section 144BA falls;

- (ii) no reference shall be made by the Commissioner to the Approving Panel under sub-section (4) of section 144BA after the expiry of two months from the end of the month in which the final submission of the assessee in response to the notice issued under the sub-section(2) of section 144BA is received;
- (iii) the Commissioner shall issue directions to the assessing officer in Form No.3CEH, -
 - (a) in the case referred to in clause (i) of sub-rule (4) of rule 10UB, within a period of one month from the end of month in which the reference is received by him; and
 - (b) in the case referred to in clause (ii) of sub-rule (4) of rule 10UB, within a period of two months from the end of month in which the final submission of the assessee in response to the notice issued under sub-section (2) of section 144BA is received by him.”;

(b) in Appendix-II, after Form No. 3CEF, the following Forms shall be inserted, namely:-

“FORM NO. 3CEG

[See sub-rule (3) of rule 10UB]

Form for making the reference to the Commissioner by the Assessing Officer

u/s 144BA(1)

1	Name and address of the assessee	
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2	PAN	
3	Status (Individual/ Company etc)	
4	Residential status	
5	Assessment year(s) in respect of which the proceedings under section 144BA are proposed to be invoked : (a) Assessment years for which proceedings are pending (b) Other assessment years proposed to be covered	
6	Factual matrix of the arrangement entered into by the assessee including details of other parties.	
7	Details of tax benefit (assessment year wise) arising under the arrangement: - (i) to the assessee (ii) to all parties to the arrangement	
8	Brief facts in respect of computation of tax benefit	
9	Whether obtaining the tax benefit is the main purpose of the arrangement or part of the arrangement?	
10	Whether notice under sub-rule (1) of rule 10UB has been served on the assessee , if yes date of service of the notice .	
11	Summary of the reply of the assessee in response to the notice.	
12	Indicate which of the following conditions is satisfied by the arrangement (along with basis of such conclusion). (a) creates rights, or obligations, which are not ordinarily created between persons dealing at arm's length; (b) results, directly or indirectly, in the misuse, or abuse, of the provisions of this Act; (c) lacks commercial substance or is deemed to lack commercial substance under section 97, in whole or in part; or (d) is entered into, or carried out, by means, or in manner, which are not ordinarily employed for bonafide purposes.	

13	Brief reasons for seeking declaration of the arrangement as impermissible avoidance arrangement.	
14	Consequences in relation to tax likely to arise if the arrangement is declared as an impermissible avoidance arrangement	
15	The last date for completion of assessment or reassessment proceedings.	

Date:
Place:

Name and Designation of
Assessing Officer

1. Commissioner of Income-tax

FORM NO.3CEH

[See sub-rule (4) of rule 10UB]

Form for returning the reference made under section 144BA

1	Name and address of the assessee	
2	PAN	
3	Status (Individual/ Company etc)	
4	Residential status	
5	Assessment year(s) in respect of which the proceedings under section 144BA were proposed to be invoked.	

6	Date of receipt of reference in Form No. 3CEG from the Assessing Officer.	
7	The basis of finding that Chapter X-A is not applicable for assessment year (s).	

Date:
Place:

Name & Designation of
Commissioner

1. Assessing Officer
2. Assessee

FORM NO.3CEI

[See sub-rule (5) of rule 10UB]

Form for recording the satisfaction by the Commissioner before making a reference to the Approving Panel under sub-section (4) of section 144BA

1	Name and address of the assessee	
2	PAN	
3	Status (Individual/ Company etc)	
4	Residential status	
5	Assessment year(s) in respect of which the proceedings under section 144BA are proposed to be invoked : (a) Assessment years for which proceedings are pending (b) Other assessment years proposed to be covered	

6	Date of receipt of Form No.3CEG from the Assessing Officer.	
7	Date of issuance of notice, setting out reasons, by the CIT to the assessee under sub-section (2) of section 144BA (copy thereof to be enclosed)	
8	Date of receipt of final submission from the assessee and dates of hearing provided to the assessee (copy of final submission of the assessee to be enclosed).	
9	Factual matrix of the arrangement in respect of which the reference is being made.	
10	Details of tax benefit (assessment year wise) arising under the arrangement: – (i) to the assessee (ii) to all parties to the arrangement	
11	Brief facts in respect of computation of tax benefit	
12	Whether obtaining the tax benefit is the main purpose of the arrangement or the part of the arrangement?	
13	Indicate which of the following conditions is satisfied by the arrangement (along with basis of such conclusion). (a) creates rights, or obligations, which are not ordinarily created between persons dealing at arm's length; (b) results, directly or indirectly, in the misuse, or abuse, of the provisions of this Act; (c) lacks commercial substance or is deemed to lack commercial substance under section 97, in whole or in part; or (d) is entered into, or carried out, by means, or in manner, which are not ordinarily employed for bonafide purposes.	
14	Has the assessee been given an opportunity of being heard with regard to the findings given in columns 11, 12 and 13 ? If yes, provide the gist of the reply furnished by the assessee.	
15	Detailed reasons for being satisfied that the arrangement is an impermissible avoidance arrangement.	
16	Consequences in relation to tax likely to arise if arrangement is declared as an impermissible avoidance arrangement.	

17	The last date for completion of assessment or reassessment proceedings.	
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Date:
Place:

Name and Designation of
Commissioner ” .

[Notification No. 75/2013/ F.No.142/19/2013-TPL]

(Amit Katoch)
Under Secretary to the Government of India

Note. - The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) *vide* notification number S.O. 969 (E), dated the 26th March, 1962 and last amended by Income-tax (16th Amendment) Rules, 2013 *vide* notification number S.O. 2810 (E) dated 18-09-2013.