

CBDT proposes new time limit for repatriation of TP primary adjustment in APA and MAP proceedings

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Summary

The Central Board of Direct Taxes (CBDT) has issued a draft notification¹ proposing a time limit of 90 days for repatriation of Transfer Pricing (TP) primary adjustment arising from Advance Pricing Agreement (APA) or Mutual Agreement Procedure (MAP) proceedings from the date of conclusion of the APA or MAP proceedings. CBDT has invited stakeholders to share their comments in this regard by 9 July 2018.

Background

CBDT vide Finance Act 2017 had inserted Section 92CE, providing for secondary adjustment in respect of non-repatriation of primary adjustment within the specified time period². The time limit prescribed in this regard was as under:

Scenario – primary adjustment	Time limit for repatriation
Suo moto adjustment made by the assessee in the return of income	Within 90 days from the due date of filing return of income u/s 139(1) of the Act
Adjustment proposed by the Assessing Officer and accepted by the assessee	Within 90 days from the date of passing of the assessment order
Adjustment arising from the conclusion of APA	Within 90 days from the due date of filing return of income u/s 139(1) of the Act
Adjustment computed as per the safe harbour regulations	Within 90 days from the due date of filing return of income u/s 139(1) of the Act
Adjustment arising from the conclusion of MAP proceedings	Within 90 days from the due date of filing return of income u/s 139(1) of the Act

¹ Circular no. F. No. 370142/12/2017-TPL dated 19 June 2018

² Rule 10CB of Income-tax Rules, 1962

Salient features of draft notification

- APA and MAP proceedings are time-consuming; hence, repatriation of primary adjustment within a time limit based on the due date for filing the return of income had made compliance practically difficult for the taxpayers.
- With a view to address the aforesaid practical difficulties, CBDT has proposed to relax the time limit for repatriation of primary adjustments in cases involving APA or MAP proceedings.
- The time limit in these instances has been proposed to be 90 days from the date of signing of APA or the date of passing of 'giving effect to order' by the tax officer in MAP proceedings.

Our comments

The proposal for prospectively relaxing the time limit for repatriation of primary adjustment arising in the cases of APA or MAP proceedings and linking it to the finalisation of the proceedings is a welcome step from CBDT to reduce the undue hardships faced by the taxpayers.

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