CBDT eases doing business for Non-Residents and foreigners vide APAs and digitization of Form 15C and 15D [Sec 92CC of ITA'61 – Sec 168 of ITA'25]

By: Vivek Jalan
FCA, LL.M (Constitutional Law), LL. B, MBA (International Trade), B. Com (H)
Team Tax Connect

The CBDT has entered into records no:of APAs and digitized Form 15C and 15D, thus sending out message to Non Residents and foreigners that it wishes to usher an era of tax certainty and ease of doing business in India.

APA Scheme endeavours to provide taxpayers with transfer pricing certainty by specifying the pricing methods and determining the ALP of international transactions in advance for a maximum of five future years. Further, the taxpayer has the option to rollback the APA for four preceding years, as a result of which, tax certainty is provided for nine years.

Section 92CC of the Act provides for Advance Pricing Agreement. Section 92CD of the Act provides for Effect to Advance Pricing Agreement. It states that where taxpayer has entered into an agreement and prior to the date of entering into the agreement, any return of income has been furnished under the provisions of section 139 of Income Tax Act, 1961, such person shall furnish within a period of 3 months from the end of the month in which the said agreement was entered into, a modified return in accordance with the agreement. In case of assessment proceedings for an assessment year relevant to a previous year to which the agreement applies have been completed before the expiry of period allowed for furnishing of modified return, Assessing Officer shall, in case a modified return is filed within the abovesaid period of 3 months, pass an order modifying the total income determined in such assessment or reassessment in accordance with the agreement.

The CBDT entered a record 95 Advance Pricing Agreements (APAs) in FY 2022-23 with Indian taxpayers. The Bil-Lateral APAs were signed as a consequence of entering into Mutual Agreements with India's treaty partners namely Finland, the UK, the US, Denmark, Singapore, and Japan. This is the highest-ever APA signings in any financial year since the board's launch of the APA programme.

Foreign Taxpayers who foresee Transfer Pricing disputes, thus have a bright chance of entering into APAs for achieving Tax Certainity.

In another move, from 1st April 2023, Form No. 15C and Form No. 15D prescribed under Rule 29B(3) of the Income Tax Rules, 1962 shall be filed electronically at TRACES website under digital signature or through electronic verification code. The procedure, format and standards for the purpose of electronic filing of Form No. 15C and Form No. 15D and generation of certificate under Section 195(3) of Income-tax Act, 1961, through TRACES have been notified vide N No 1/2023 by CBDT.

Applicants accessing TRACES from outside India shall submit the application along with supporting documents using a digital signature only. The application will be assigned to TDS AO in the International Taxation charges. AO can process the application through TRACES and can obtain the data from CPC(TDS). By default, the applications shall be assigned to the DCIT/ACIT (Intl. Taxn.) exercising jurisdiction over TDS matters. However, if the jurisdiction orders are otherwise, the assigned AO can transfer the applications to the AO concerned on AO Portal. AO shall approve/reject the application based on the parameters defined in rule 29B and any other instructions/guidelines in this regard.

These are steps in the right direction by the CBDT as India invites the world to do business in India.

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OUR OFFICES:

MUMBAI

1st Floor, AJ House, Marol Maroshi Rd, Gamdevi, Marol, Andheri East, Mumbai, Maharashtra 400059

Contact Person: Prashant Kumar Jha
Email: prashant.jha@taxconnect.co.in

BENGALURU

Go Spaze, B Narayana Pura, Pura, Mahadevapura, Outer Ring Road, Near HDFC Bank, Karnataka -560016

Contact Person: Tarun Singh Bhadouria
Email: tarun.bhadouria@taxconnect.co.in

DELHI

D-32, Second Floor, Main Vikas Marg, Laxmi Nagar, Delhi – 110092

Contact Person: Poonam Khemka
Email: Poonam.khemka@taxconnect.co.in

KOLKATA

6, Netaji Subhas Road, 3rd Floor, Royal Exchange Building, Kolkata – 700001

Contact Person: Sandeep Mandal
Email: Sandeep.mandal@taxconnect.co.in

KOLKATA

R No 119; 1st Floor; Diamond Arcade; 1/72, Cal Jessore Road, Kolkata – 700055

Contact Person: Uttam Kumar Singh
Email: uttam.singh@taxconnect.co.in

DUBAI

Azizi Feirouz, 803, 8th Floor, AL Furjan, Opposite Discovery Pavillion, Dubai

Contact Person: Rohit Sharma
Email: rohit.sharma@taxconnect.co.in

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