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TAX FLASH NEWS

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CBDT notifies rules and form with respect to the patent box regime under Section 115BBF of the Income-tax Act

The Finance Act, 2016 introduced Section 115BBF in the Income-tax Act, 1961 (the Act) to provide that where the total income of the eligible assessee includes any income by way of royalty in respect of a patent developed and registered in India, then such royalty shall be taxable at the rate of ten per cent[1] on the gross amount of royalty. No expenditure or allowance in respect of such royalty income shall be allowed under the Act. Recently, the Central Board of Direct Taxes (CBDT) has notified[2] Rule 5G of the Income-tax Rules, 1962 (the Rules) and Form 3CFA with respect to the patent box regime under Section 115BBF of the Act. The Rules and form are summarised as follows:

- Rules 5G of the Rules provides that the eligible assessee shall furnish Form No. 3CFA for the purposes of exercising the option for taxation of income under Section 115BBF of the Act by way of royalty in respect of a patent developed and registered in India by such assessee. Form no. 3CFA shall be furnished in the following manner:
  - (i) electronically under digital signature; or
  - (ii) electronically through electronic verification code
- Form 3CFA shall be complete in all respects and furnished on or before the due date specified in Section 139(1) of the Act for furnishing the return of income for the relevant assessment year, in case the option is exercised for that assessment year.
- The Director General of Income-tax (Systems) shall specify the procedures, formats and standards for the purposes for ensuring secure capture and transmission of data and shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to furnishing and verification of the form.
- In form 3CFA, the 'eligible assessee', needs to provide general details as well as 'eligible patent' details such as description of patent, date of grant of patent, whether patent granted to single persons. Similarly, the eligible assessee needs to provide details of royalty income from eligible patent and details of expenditure incurred in India and outside India on eligible patent.

Our comments

In order to encourage indigenous research and development (R&D) activities and to make India a global R&D hub, the government has put in place a concessional taxation regime for income from patents. The aim of the concessional taxation regime is to provide an additional incentive for companies to retain and commercialise existing patents and to develop new innovative patented products. This will encourage companies to locate high-value jobs associated with the development, manufacture and exploitation of patents in India.

The above developments are in line with the Organization for Economic Cooperation and Development recommendations, in Base Erosion and Profit Shifting project under Action Plan 5, where the nexus approach prescribes that income arising from exploitation of Intellectual Property should be attributed and taxed in the jurisdiction where substantial R&D activities are undertaken rather than the jurisdiction of legal ownership only.

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[1] Plus applicable surcharge and cess

[2] CBDT Notification No. 25/2017, 3 April 2017

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