

TAX FLASH NEWS

9 October 2021

CBDT issues final rules for implementing the withdrawal of retrospective application of 'indirect transfer' related provisions

The Taxation Laws (Amendment) Act, 2021 amended the Income-tax Act, 1961 (the Act) to provide that no tax demand shall be raised in future on the basis of the amendment¹ to Section 9 made vide the Finance Act, 2012 for any offshore indirect transfer of Indian assets if the transaction was undertaken before 28 May 2012².

The Taxation Laws (Amendment) Act, 2021 also provides that the demand raised for offshore indirect transfer of Indian assets made before 28 May 2012 (including the validation of demand provided under Section 119 of the Finance Act 2012) shall be nullified on fulfillment of specified conditions such as withdrawal or furnishing of undertaking for withdrawal of pending litigation and furnishing of an undertaking to the effect that no claim for cost, damages, interest, etc. shall be filed and such other conditions are fulfilled as may be prescribed. The amount paid/collected in these cases shall be refunded, without any interest, on fulfillment of the said conditions.

The aim of the amendment made by the Taxation Laws (Amendment) Act, 2021 is to bring tax certainty and ensure that once specified conditions are fulfilled, the pending income-tax proceedings shall be withdrawn, demand, if any, raised shall be nullified, and amount, if any, collected shall be refunded to the taxpayer without any interest.

On 28 August 2021, the Central Board of Direct Taxes (CBDT) had issued a press release³ and a draft notification⁴ where draft rules have been proposed to implement the amendment made by the Taxation Laws (Amendment) Act, 2021.

After examining the stakeholder comments on draft rules, on 1 October 2021, the CBDT has notified⁵ the following final rules in the Income-tax Rules, 1962 (the Rules):

- Rule 11UE provides for the specified conditions in order to be eligible to claim relief under the Taxation Laws (Amendment) Act, 2021; and
- Rule 11UF provides Form and the manner of furnishing the undertaking for withdrawal of pending litigation, claiming no cost, damages, etc.

These rules shall come into effect from 1 October 2021.

CBDT Final Notification

Rule 11UE

- The undertaking⁶ shall be submitted by the declarant with the undertakings from all the interested parties) in Form No. 1.
- Relevant conditions are as follows:
 - The declarant and all the interested parties shall irrevocably withdraw, terminate or discontinue all the appeals or applications or petitions or proceedings, against the relevant order or orders. They shall furnish evidence and a declaration in the undertaking in Form No. 1 to the effect that it shall not, under any circumstances, reopen or file any such appeal, application, petition or proceeding in future against the relevant order or orders.

¹ Indirect Transfer related provisions

² i.e. the date on which the Finance Bill, 2012 received the assent of the President

³ CBDT press release, dated 28 August 2021

⁴ CBDT Draft Notification (F No. 370142/47/2021-TPL, dated 28 August 2021)

⁵ CBDT Notification No. 118/2021, dated 1 October 2021

⁶ For Clause (i), (ii) and (iii) of the Explanation to fifth and sixth proviso to Explanation 5 of clause (i) of Section 9(1)

- The Declarant and all the interested parties shall irrevocably withdraw, terminate or discontinue all the proceedings for arbitration, conciliation or mediation, or notices thereof against the relevant order or orders. Further they shall furnish evidence and a declaration in the undertaking in Form No. 1 to the effect that it shall not, under any circumstances, reopen or file any such proceeding or initiate any such arbitration, conciliation or mediation in future against the relevant order or orders.
- The declarant and all the interested parties shall irrevocably withdraw, terminate or discontinue all the proceedings to enforce or pursue attachments in respect of any award, order or judgement or any other relief against India or Indian affiliates with respect to the relevant order or orders. Further they shall furnish evidence and a declaration in the undertaking in Form No. 1 to the effect that it shall not, under any circumstances, reopen or file any such proceeding in future against India or Indian affiliates with respect to the relevant order or orders.
- The declarant and all the interested parties shall irrevocably terminate, release, discharge, and forever irrevocably waive all rights, whether direct or indirect, and any claims, demands, liens, actions, suits, causes of action, obligations, controversies, debts, costs, attorneys' fees, court's fees, expenses, damages, judgments, orders, declaratory relief, and liabilities of whatever kind or nature at law, in equity, or otherwise, whether now known or unknown previously (or in future discovered), suspected or unsuspected, and whether or not concealed or hidden, which have existed or may have existed, or do exist or which hereafter can, shall or may exist in relation to any award, order, judgment, or any other relief against the Republic of India or Indian affiliates in connection with the relevant order or orders. Further they shall furnish evidence and a declaration in the undertaking in Form No. 1 to the effect that it shall not, under any circumstances, reopen or file any such proceeding or initiate any such arbitration, conciliation or mediation in future against the relevant order or orders.
- The declarant and all the interested parties shall irrevocably waive any right to seek or pursue any claim for costs in respect of any proceeding referred above, including but not limited to any proceeding initiated by the Republic of India to set aside the award, order or judgement, or any other relief, referred above, issued in favour of the declarant or any of the interested parties.
- The declarant and all the interested parties shall terminate, release, discharge, and forever irrevocably waive any right, whether direct or indirect, any remedies, claims, demands, liens, actions, suits, causes of action, obligations, controversies, debts, costs, attorneys' fees, court's fees, expenses, damages, judgments, orders, compensation, and liabilities of whatever kind or nature at law, in equity, or otherwise, whether now known or unknown, suspected or unsuspected, and whether or not concealed or hidden, which have existed or may have existed, or do exist or which hereafter can, shall or may exist, based on pursuit of any remedy or any and all claims, demands, damages, judgments, awards, costs, expenses, compensation or liabilities of any kind (whether asserted or unasserted), in relation to any facts, events, or omissions occurring at any time in relation to taxation of income referred to in the fifth and sixth proviso to Explanation 5 to clause (i) of sub-section (1) of Section 9 or relevant order or orders, or any related award, judgment or court order, which may otherwise be available to the declarant or any of its interested parties.
- The Declarant and all the Interested parties shall indemnify, defend and hold harmless the Republic of India and Indian affiliates from and against any and all costs, expenses (including attorneys' fees and court's fees), interest, damages, and liabilities of any nature arising out of or in any way relating to the assertion or, bringing, filing or maintaining of any claim, at any time after the date of furnishing the undertaking in Form No. 1 by the declarant, by any person and the declarant and all the interested parties shall furnish an indemnity bond to this effect, such that the declarant and the interested parties fully assume the risk of any omission or mistake with respect to identification and procurement of authorisations and undertakings from any related parties or interested parties as provided in the undertaking, and secures the Republic of India and Indian affiliates from any claim related to any relevant order or orders, or in relation to any award, order, judgment, or any other relief against the Republic of India and Indian affiliates in connection with any relevant order or orders.
- The Declarant and all the Interested parties shall refrain from facilitating, procuring, encouraging or otherwise assisting any person (including but not limited to any related party or interested party) from bringing any proceeding or claims of any kind related to any relevant order or orders, or in relation to any award, order, judgment, or any other relief against the Republic of India or Indian affiliates in connection with any relevant order or orders.

- The Declarant and all the Interested parties shall notify by a public notice or press release that, by signing the undertaking in Form No. 1 or Part M of the Annexure to the undertaking in Form No. 1, as the case may be, any claims arising out of or relating to the relevant orders or any related award, judgment or court order, no longer subsist, and that such person or entity issuing the public notice has signed the undertaking, and that such undertaking includes an indemnity against any claims brought against the Republic of India or any India affiliate contrary to the undertaking, and that the declarant and all the interested parties shall furnish a copy of such public notice to the Republic of India..
- The execution, delivery and performance of the undertaking in Form No. 1 submitted by the declarant, undertakings from all the interested parties in Part M of the Annexure to the undertaking in Form No. 1 and indemnity bond by the declarant and interested parties in Part N of the Annexure to the undertaking in Form No. 1 shall be duly authorised by all necessary corporate action, including but not limited to any board resolution or similar authorisation under applicable law and a copy of such board resolution and legal authorisation shall be furnished by the declarant.
- The jurisdictional Principal Commissioner or Commissioner may, on an application made by the Declarant, extend the period of 60 days by a further period not exceeding 60 days [Rule 11UF(4)].
- Where the intimation in Form No. 3 is filed after the period of 60 days or further period extended then, notwithstanding anything contained in any other provision of Rule 11UE and Rule 11UF, such intimation in Form No. 3 shall be treated as invalid and the provisions of Rule 11UF shall apply as if such person had never furnished the intimation in Form No. 3 [Rule 11UF(5)].
- No intimation in Form No.3 shall be required to be furnished by the declarant if the following conditions are satisfied [Rule 11UF(6)]:
 - The declarant or any of the interested parties has not filed, with respect to all the relevant order or orders, any –
 - ❖ Appeal or application or petition or proceeding
 - ❖ Arbitration, conciliation or mediation and no notices have been given thereof; or
 - ❖ Proceeding to enforce or pursue attachments in respect of any award, order or judgement or any other relief against the Republic of India or Indian affiliates; and

Rule 11UF - Manner of furnishing undertaking under Rule 11UE

- The undertaking in Form No 1 shall be submitted by the declarant to Jurisdictional commissioner or commissioner within 45 days from the date of commencement of these Rules i.e. 1 October 2021 - [Rule 11UF(1)].
- After the undertaking in Form 1 is filed by the declarant, the Jurisdictional Commissioner or Commissioner shall grant a certificate in Form 2 accepting such undertaking or after giving opportunity of being heard to the declarant, pass an order not accepting such undertaking within a period of 15 days from receipt of the said undertaking [Rule 11UF(2)].
- After the grant of certificate in Form No. 2, the above specified conditions⁷ shall be fulfilled by the Declarant and Interested Parties, an intimation shall be filed by the Declarant in Form No. 3 within 60 days of the date of receipt of certificate in Form No. 2 with the jurisdictional Principal Commissioner or Commissioner [Rule 11UF(3)].

- Where with respect to the relevant order or orders, any –
 - ❖ Appeals or applications or petitions or proceeding
 - ❖ Arbitration, conciliation or mediation or
 - ❖ Proceeding to enforce or pursue attachments in respect of any award, order or judgement or any other relief against the Republic of India or Indian affiliates

has been filed or notice thereof has been given by the Declarant or any Interested parties, the declarant and all such interested parties have irrevocably withdrawn all such appeals, applications, petitions, proceeding, arbitration, conciliation and mediation and no further appeal or application or petition or proceeding or arbitration or conciliation or mediation has been filed by the declarant or any such interested party against the Republic of India or any of the Indian Affiliates before the withdrawal of such arbitration, conciliation or mediation and evidence thereof has been furnished at the time of furnishing the undertaking in Form No. 1.

⁷ Under Rule 11UE of the Income-tax Rules, 1962

- Where with respect to the relevant order or orders, any –
 - ❖ Appeals or applications or petitions or proceeding
 - ❖ The arbitration, conciliation or mediation
 - ❖ The proceeding to enforce or pursue attachments in respect of any award, order or judgement or any other relief against the Republic of India or Indian affiliates;

had been filed by the declarant or any of the interested parties and have been disposed of, no further appeal or application or petition or proceeding or arbitration or conciliation or mediation has been filed by the declarant or any such interested party against the Republic of India or any of the Indian Affiliates on or before the disposal of such arbitration, conciliation or mediation and evidence thereof has been furnished at the time of furnishing the undertaking in Form No. 1 referred to in Rule 11UE(1) of the Rules.

- After the receipt of intimation in Form No. 3 or grant of certificate in Form 2 in specified cases⁸, the Jurisdictional Principal Commissioner or Commissioner shall pass an order granting relief in Form No. 4 or decline to grant relief in accordance with the prescribed procedure⁹ [Rule 11UF(7)].
- The jurisdictional Principal Commissioner or Commissioner may, after giving an opportunity of being heard to the declarant, decline to grant relief under Rule 11UF(7) where:
 - The declarant has not fulfilled any of the conditions stipulated under Rule 11UE
 - The intimation in Form No. 3 or any part thereof is incorrect or incomplete
 - The intimation in Form No. 3 has not been filed in a case other than that covered under Rule 11UF(6)
 - Any of the attachments provided in Form No. 3 is incorrect or incomplete or has not been furnished
 - Any of the evidence required to be furnished along with Form No. 3 is incorrect or incomplete or has not been furnished

- The intimation in Form No. 3 submitted by the declarant is not duly authorised by all necessary corporate action, including but not limited to any board resolution or similar authorisation under applicable law or a copy of such board resolution or legal authorisation is incorrect or incomplete or not furnished by the declarant [Rule 11UF(8)]

- The order granting the relief or declining to grant relief shall be passed [Rule 11UF(9)]:
 - Within a period of 30 days from the date of receipt of Form No. 3 by the Principal Commissioner or Commissioner, in cases where intimation in Form No. 3 has been furnished to the Principal Commissioner or Commissioner¹⁰
 - Within 30 days of the issue of Form No. 2, in cases covered¹¹.
- No order rejecting the undertaking in Form No. 1 or declining relief, shall be passed by the Principal Commissioner or Commissioner without the approval of the Chief Commissioner [Rule 11UF(10)].
- For the purpose of rejecting the undertaking or declining to grant relief, the Principal Commissioner or Commissioner shall intimate the reasons thereof to the declarant and give him an opportunity of submitting a renewed undertaking in Form No. 1 or renewed intimation in Form No. 3 within a further period not exceeding 30 days [Rule 11UF(11)].
- Where the renewed undertaking or renewed intimation is not filed within such further period under Rule 11UF(11), then, notwithstanding anything contained in any other provision of the Rule 11UE and Rule 11UF, such undertaking or intimation shall be treated as invalid and the provisions of this rule shall apply as if such person had never furnished the undertaking in Form No. 1 or intimation in Form No. 3 [Rule 11UF(12)].
- The extended period allowed under Rule 11UF(11) for submitting a renewed undertaking in Form 11 or a renewed intimation in Form No. 3 shall be excluded from [Rule 11UF(13)]–
 - The period of fifteen days under Rule 11UF(2) for granting a certificate in Form No. 2 or passing an order rejecting such undertaking by the jurisdictional Principal Commissioner or Commissioner.

⁸ Under Rule 11UF(6)

⁹ Under Rule 11UF(8)

¹⁰ Under Rule 11UF(3)

¹¹ Under Rule 11UF(6)

- 30 days¹² for passing an order granting relief under sub-rule (7) or declining relief under sub-rule (8), as the case may be, by the jurisdictional Principal Commissioner or Commissioner.
- For the purposes of computing the period of limitation¹³, where immediately after the exclusion of the period or extended period allowed to the declarant, the period of limitation available to the Principal Commissioner or Commissioner, for granting certificate or passing or issuing an order¹⁴, is less than 15 days, such remaining period shall be extended to 15 days and the period of limitation under said sub-rules shall be deemed to be extended accordingly [Rule 11UF(14)].
- The undertaking in Form No. 1 shall be deemed to have never been filed if the Principal Commissioner or Commissioner has passed an order rejecting the undertaking in Form No. 1¹⁵ or declined to grant relief to the declarant¹⁶ [Rule 11UF(15)].
- The directions of the jurisdictional Principal Commissioner or Commissioner, in Form No. 4, shall be binding on the Assessing Officer (AO) who shall [Rule 11UF(16)]:
 - Give effect to such directions and pass an order and issue the refund, if any, and revoke attachments, if any, within a period of fifteen days from the date of the receipt of such directions; and
 - File an application to withdraw any appeal or application or petition or proceeding filed by any Income-tax Authority or intimate the concerned person, where appeals or applications or petitions or proceeding has been filed by any other person representing the Republic of India, with respect to the specified orders covered under Form No. 4, within 60 days from the date of receipt of such directions.
- Any dispute with respect to the undertaking or part of the undertaking or indemnity bond specified Forms prescribed under these rules or in respect of any direction or order issued thereunder shall be governed by the relevant Indian laws and be decided in accordance with the procedures specified under the Act, under the exclusive jurisdiction of the relevant income-tax authorities, tribunals or courts in India, as the case may be, which are empowered to decide disputes under the Act [Rule 11UF(17)].

- Forms (Form No. 1 to Form No. 4) have been introduced for the above procedure.



¹² under Rule 11UF(9)

¹³ under sub-rules (2) or (9) of Rule 11UF

¹⁴ under sub-rules (2) or (9) of Rule 11UF

¹⁵ under clause (b) of sub-rule (2) of Rule 11UF

¹⁶ under sub-rule (8) of Rule 11UF

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