

TAX FLASH NEWS

31 August 2021

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

Executive summary

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tax certainty and ensure that once specified conditions are fulfilled, the pending income-tax proceedings shall be withdrawn, demand, if any, raised shall be nullified, and amount, if any, collected shall be refunded to the taxpayer without any interest.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) has 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.

Draft rules

It is proposed to introduce Rule 11UE as well as forms/undertakings along with specified conditions:

- The undertaking⁵ shall be submitted by the declarant to Jurisdictional commissioner or commissioner in Form 1 within 45 days from the publication of these rules in the official gazette [Rule 11UE(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 11UE(2)].
- Relevant conditions⁶ are as follows:
 - The declarant shall furnish undertaking in Form No. 1 [Rule 11UE(3)(a)].
 - Where the **Declarant** or **any of the Interested Party** has furnished undertaking in Form 1 to [Rule 11UE(3)(b)]:
 - Irrevocably withdraw, discontinue and not to pursue,
 - ❖ Any appeal(s), application(s) or petition(s) or proceedings(s) before any tax authority or appellate forum or any High Court or Supreme Court under Form 1.

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

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

- ❖ Any proceedings(s) for arbitration, conciliation or mediation, or notice(s) thereof which has been given under any law for the time being in force or any agreement entered into by India with any other country, or territory outside India whether for protection of investment or otherwise in Form No. 1.
- ❖ Any proceedings to enforce or pursue attachments in respect of any award, order or judgement or any other relief that may have been ordered or issued or passed by any arbitral tribunal or court or other judicial or quasi-judicial or administrative authority in relation to the said arbitration, conciliation or mediation proceedings in favour of the interested Party against the Republic and/or all Indian affiliates in Form 1.
- Irrevocably terminate, release, discharge, and forever and irrevocably waive any rights, whether direct or indirect and any claims, demands, liens, actions, suits causes of actions, obligations, controversies, debts, costs, attorneys, fees, court fee expenses, damages, judgements, orders, declaratory relief, and liabilities of whatever kind or nature at law, in equity, or otherwise, whether not known or unknown previously (or in the future discovered), suspected or unsuspected and whether or not conceded 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 judgement, or any other relief, arising out of or in any way relating to the imposition of tax, interest and/or penalty based on the specified order(s), in respect of income accruing or arising through or from the transfer of an asset or a capital asset situated in India in consequence of the transfer of a share or interest in a company or entity registered or incorporated outside Indian made before the 28 May 2012, under any agreement entered into by India with any other country or territory outside India under Form 1;

all such appeal(s) or application(s) or petition(s) or proceeding(s) or award(s), order(s), judgement(s) or any other relief(s) shall be withdrawn, discontinued or waived within a period of 60 days of the date of receipt of certificate in Form 2 and an intimation to this effect shall be filed by the Declarant in Form 3 within 60 days of the date of receipt of certificate in Form No. 2.
- Where the **Declarant** has submitted an Undertaking in Form 1 or there is no **Interested Party**, as per part K and Part L of the undertaking in Form 1 filed by the Declarant or there are one or more **Interested Parties** and each of the Interested Party has submitted an Undertaking in Form 1 to the effect that it has [Rule 11UE(3)(c)].:
 - Not filed any appeal or application or petition or proceeding before any Income-tax authority or any appellate forum or any High Court or the Supreme Court and undertakes not to file in the future any such appeal, application, petition or proceeding as declared under the Undertaking in Form No. 1
 - Filed appeal(s) or application(s) or petition(s) or proceeding(s) before any Income-tax authority or any appellate forum or any High Court or the Supreme Court and has irrevocably withdrawn all such appeal(s) or application(s) or petition(w) or proceeding(s) and undertakes not to file any such appeal, application, petition or proceeding in the future as declared under the Undertaking in Form No. 1
 - Not initiated any proceeding for arbitration, conciliation or mediation, and no notice has been given thereof under any law for the time being in force or under any agreement entered into by India with any other country or territory outside India, whether for protection of investment or otherwise and undertakes not to file any such arbitration, conciliation or mediation in the future, as declared under the Undertaking in Form No. 1
 - Initiated proceeding(s) for arbitration, conciliation or mediation, or notice(s) thereof has/have been given, under any law for the time being in force or under any agreement entered into by India with any other country or territory outside India, whether for protection of investment or otherwise, has irrevocably withdrawn all such proceeding(s) for arbitration, conciliation or mediation, and notice(s) given thereof and undertakes not to file any such arbitration, conciliation in the future, as declared under the Undertaking in Form No. 1
 - Not initiated any proceeding(s) to enforce or pursue attachments in respect of any award, order, judgement or any other relief that have been ordered or issued or passed by any tribunal or court or other judicial or quasi-judicial or administrative authority in relation to arbitration, conciliation or mediation

proceedings in favour of **the Declarant/ Interested Party** against the Republic and/or any of Indian affiliates, and undertakes not to file any such proceedings in the future, as declared under the Undertaking in Form No. 1

- Initiated proceeding(s) to enforce or pursue attachments in respect of any award, order, judgement or any other relief that have been ordered or issued or passed by any tribunal or court or other judicial or quasi-judicial or administrative authority in relation to arbitration, conciliation or mediation proceedings in favour of **the Declarant/Interested Party** against the Republic and/or any of Indian affiliates, and has irrevocably withdrawn or discontinued all such proceeding(s), and undertakes not to file any such proceedings in the future, as declared under the Undertaking in Form 1

The Declarant shall not be required to file intimation in Form No. 3⁷.

- The Jurisdictional Principal Commissioner or Commissioner shall issue order giving direction to the Assessing Officer (AO) to grant relief⁸ in Form 4 or not to grant relief to the Declarant after giving an opportunity of being heard with respect to the specified order(s) to the extent it is related to income accruing or arising through or from the indirect transfer:
 - Within 30 days of the receipt of Form 3 [in case of Rule 11UE(3)(b) discussed above].
 - Within 30 days of the receipt of Form 2 [in case of Rule 11UE(3)(c) discussed above].
- The directions of Jurisdictional Principal Commissioner or Commissioner shall be binding on the AO and the AO shall give effect to such directions and pass an order and issue the refund, if any, and revoke attachments, if any, and shall withdraw any appeal(s) or application or petition or proceedings filed by the income tax authority with respect to the specified order covered under Form No. 4 within a period of 30 days from the date of receipt of such directions.
- 'Declarant' means the person in whose case a specified order has been passed or made.

- 'Interested Party' shall mean a person whose name has been declared in part K or part I, of the Undertaking in Form 1 filed by the Declarant
- Forms (Form No. 1 to Form No. 4) are also proposed in the Income-tax Rules, 1962 (the Rules)

Suggestions/comments invited

CBDT has invited suggestions/comments on the draft notification electronically⁹ by 4 September 2021.



⁷ Intimation of withdrawal

⁸ Under 5th and 6th proviso to Explanation 5 of clause (i) of Section 9(1) of the Act

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