

CBDT seeks inputs on its draft notification on framing of rules with respect to Fund Manager Regime under Section 9A of the I.T. Act, 1961

Section 9A of the Income-tax Act, 1961 (the Act) provides for a special taxation regime in respect of certain offshore funds in the context of their fund managers being located in India. It is provided that in case of an eligible investment fund, the fund management activity carried out through an eligible fund manager acting on behalf of such fund shall not constitute business connection in India of the said fund.

Further, it is provided that an eligible investment fund shall not be said to be resident in India merely because the eligible fund manager undertaking fund management activities on its behalf is located in India subject to the conditions mentioned in sub-section (3) of section 9A, one of which [clause (m) of said sub-section] provides that the remuneration paid by the fund to an eligible fund manager in respect of fund management activity undertaken by him on its behalf is not less than the arm's length price of the said activity.

Accordingly, Income-tax Rules, 1962 (the Rules) were amended by way of insertion of rules 10V to 10VB and Forms 3CEJ and 3CEK vide notification No 14/2016 with SO 1101 (E) dated 15.03.2016. Rule 10V was further amended vide notification No 106/2016 with SO 3498(E) dated 21.11.2016.

Sub-rule (5) to (10) of rule 10V of the Rules contains the provisions relating to determination of the arm's length price in respect of any remuneration paid by the eligible investment fund to an eligible fund manager as referred to in clause (m) of sub-section (5) of section 9A.

Finance (No 2) Act, 2019 with effect from 1st April, 2019, inter alia, amended clause (m) of sub-section (5) of section 9A so as to provide that the remuneration paid by the fund to an eligible fund manager in respect of fund management activity undertaken by him on its behalf is not less than the amount calculated in such manner as may be prescribed. Accordingly, the manner for calculation of the amount, compared to which the remuneration paid to the eligible fund manager should not be less, is required to be prescribed.

The draft notification proposing the above amendments released by CBDT are enclosed for your kind reference. Request you to please send your inputs (if any) to Ms Surbhi Sharma, Associate Economist, PHDCCI at surbhi@phdcci.in by 15th December 2019

Please contact for any query related to this mail to Ms Divya Sharma, Research Associate at divya.sharma@phdcci.in with a cc to Dr S P Sharma, Chief Economist at spsharma@phdcci.in and Ms Surbhi Sharma, Associate Economist at surbhi@phdcci.in, PHD Chamber of Commerce & Industry.

Warm Regards,

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