

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II,
SECTION 3, SUB-SECTION (ii)]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(CENTRAL BOARD OF DIRECT TAXES)
(INCOME – TAX)

Notification

New Delhi, the 15th March, 2016

S.O. 1101(E).- In exercise of the powers conferred by section 9A read with section 295 of the Income-tax Act, 1961(43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:-

1. (1) These rules may be called the Income-tax (5th Amendment) Rules, 2016.
(2) They shall come into force from the date of their publication in the Official Gazette.
2. In the Income-tax Rules, 1962 (hereinafter referred to as the said rules), after rule 10UC the following rules shall be inserted, namely:-

“10V. Guidelines for application of section 9A.-(1) Where the investment in the fund has been made directly by an institutional entity, the number of members and the participation interest in the fund shall be determined by looking through the said entity, if it, -

- (a) independently satisfies the conditions mentioned in clauses (c), (e), (f) and (g) of sub-section (3) of section 9A;
- (b) has been setup solely for the purpose of pooling funds and investment thereof; and
- (c) is resident of a country or specified territory with which an agreement referred to in sub-section (1) of section 90 or sub-section (1) of section 90A has been entered into.

(2) For the purposes of clause (c) of sub-section (3) of section 9A, where direct investor in the fund is a person other than a natural person, the fund shall undertake appropriate due diligence to ascertain the indirect participation, if any, of a person resident in India and the extent thereof:

Provided that where such direct investor is, the Government or the Central bank or a sovereign fund or a multilateral agency or appropriately regulated investor in the form of pension fund or University fund or a bank or collective investment vehicles such as mutual funds, the fund shall obtain a declaration in writing from the direct investor regarding the participation, if any, of a person resident in India and the indirect participation in the fund of any person resident in India may be determined by the fund on the basis of such declaration.

Explanation.– For the purposes of this sub-rule an investor shall be considered to be appropriately regulated if it is regulated or supervised by the securities market regulator or the banking regulator of the country outside India of which it is resident, in the same capacity in which it has made investment in the fund.

(3) A fund shall not be denied the benefit of being an eligible fund for the purposes of section 9A, if, -

(a) non-fulfilment of any of the conditions specified in clauses (c), (d) and (e) of sub-section (3) of section 9A, -

(i) is for the reasons beyond the control of the fund and it does not exceed a period of ninety days;

(ii) does not exceed a period of eighteen months beginning from the date on which the fund is setup or is not beyond the final closing of the fund, whichever is earlier, and bonafide efforts are made to satisfy the conditions specified in the clauses (c), (d) and (e) of sub-section (3) of section 9A;

(iii) is for the reason that the fund is in the process of being wound up and it does not exceed a period of one year beginning from the date on which the process of winding has begun; or

(b) there is delay in furnishing the statement referred to in sub-section (5) of section 9A and such delay does not exceed a period of ninety days.

(4) For the purposes of clause (k) of sub-section (3) of section 9A, a fund shall be said to be controlling or managing a business carried out by any entity, if the fund directly or indirectly holds such rights in, or in relation to, the entity, which results in the fund holding the share capital or a voting power or an interest exceeding twenty six per cent. of the total share capital of, or as the case may be, total voting power or total interest in, the entity.

(5) Subject to the provisions of sub- rules (6), (7) and (8), for the purposes of determining the arm's length price in respect of any remuneration, paid by the eligible investment fund to an eligible fund manager, referred to in clause (m) of sub-section (3) of section 9A, the provisions of the Act shall apply as if,-

(i) the transaction between the eligible investment fund and the eligible fund manager is an international transaction; and

(ii) the eligible investment fund and the eligible fund manager are associated enterprises.

(6) The fund manager shall keep and maintain information and documents as required under section 92D and the rules made thereunder.

(7) The fund manager shall, in addition to any report required to be furnished by it under section 92E, obtain a report from the accountant in respect of activity undertaken for the fund and furnish such report on or before the specified date in the Form No. 3CEJ duly verified by such accountant in the manner indicated therein and all the provisions of the Act shall apply as if it is a report to be furnished under section 92E.

Explanation.- For the purposes of this sub-rule “specified date” shall have the same meaning as assigned to “due date” in the *Explanation 2* below sub-section (1) of section 139.

(8) Where the fund manager has either not maintained the document or information as required under section 92D and the rules made thereunder or not produced the document or information before the Assessing Officer or the Transfer Pricing Officer, as the case may be, then, the Assessing Officer or the Transfer Pricing Officer, as the case may be, shall, before determining the arm’s length price for the purposes of clause (m) of sub-section (3) of section 9A, provide an opportunity to the fund to produce the information and documents necessary for the determination of the arm’s length price and the arm’s length price shall be determined after considering the documents or information, if any, provided by the fund.

(9) If in any previous year, it is determined that the remuneration paid or payable by a fund to the fund manager is not in accordance with the provisions of clause (m) of sub-section (3) of section 9A, then the benefits of section 9A shall not be denied to the fund which otherwise satisfies all other conditions specified in section 9A.

(10) Nothing contained in sub-rule (9) shall apply to a fund if the remuneration paid or payable by the fund to the fund manager has been determined to be not at arm’s length price, -

(a) for a period of three previous years in succession; or

(b) for any three out of the preceding four previous years.

10VA. Approval of the fund.- (1) An investment fund may at its option seek approval of the Board regarding its eligibility for the purposes of section 9A.

(2) The fund seeking approval may make an application in writing, enclosing relevant documents and evidence, to Member (Income-tax), Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, North Block, New Delhi.

(3) The application under sub-rule (2) shall be made three months before the beginning of the previous year for which the fund seeks the approval.

(4) A committee as notified by the Board, shall examine the application and submit its recommendations regarding grant of approval or otherwise and the conditions, if any, subject to which such an approval is to be granted.

(5) The committee referred to in sub-rule(4) shall be headed by a Principal Chief Commissioner or Chief Commissioner, as the case may be, and consist of two other Income-tax authorities not below the rank of Commissioner.

(6) The committee on behalf of the Board may, before giving its recommendation, call for such documents or information from the investment fund as it may consider necessary and may call for further details or information from the fund as well as from the Income-tax authorities and other Departments or agencies, as it may deem fit.

(7) The Board, on the basis of the recommendations of the committee, shall, within sixty days from the end of the month in which the application under sub-rule (2) has been made,-

(i) by an order in writing, grant approval to the fund subject to such conditions as it may deem fit; or

(ii) for reasons to be recorded in writing, reject the application.

(8) The approval once granted, subject to any condition specified in this behalf, shall be applicable for the previous year referred to in sub-rule(3) and subsequent previous years unless it is withdrawn by the Board.

(9) The benefit of section 9A shall not be denied to an eligible investment fund, which has been granted approval, for any previous year for which the approval is in force and has not been withdrawn.

(10) The Board may withdraw the approval granted to any fund, if it is satisfied that, -

(a) the approval has been obtained on the basis of misrepresentation of facts or fraud ;or

(b) the conditions mentioned in section 9A are not fulfilled; or

(c) any condition subject to which approval was granted, has been violated.

(11) No order rejecting the application or withdrawing the approval, shall be passed without giving an opportunity of being heard.

(12) A copy of the order rejecting the application or withdrawing the approval shall be communicated to the fund as well as the Assessing Officer and the Principal Commissioner or Commissioner having jurisdiction over the fund.

10VB. Statement to be furnished by the fund.- (1) The statement required to be furnished under sub-section (5) of section 9A shall be furnished for every financial year by the eligible investment fund in Form No.3CEK duly verified in the manner indicated therein, to the Assessing Officer who has the jurisdiction over the fund or would have had the jurisdiction had such fund been assessable to tax in India but for the provision of section 9A.

(2) The annual statement referred to in sub-rule (1) shall be furnished electronically under digital signature.

(3) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) shall specify the procedures, formats and standards 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 of annual statement in the manner specified in sub-rule (2).”

2. In Appendix II to the said rules, after Form No. 3CEH, the following Forms shall be inserted, namely:-

“FORM No. 3CEJ

[See rule 10V (7)]

Report from an accountant to be furnished for purposes of section 9A relating to arm’s length price in respect of the remuneration paid by an eligible investment fund to the fund manager.

*I/We have examined the accounts and records of (name and address of the fund manager with PAN) relating to the fund management activity and other transactions or services rendered by the fund manager to the eligible investment fund/ funds during the previous year ending on 31st March,

1. In*my/our opinion proper information and documents as are prescribed have been kept by the fund manager in respect of fund management activity and other transactions or services rendered by the fund manager to the fund/ funds so far as appears from *my/our examination of the records of the fund manager .
2. The particulars required to be furnished for the purposes of section 9A are given in the Annexure to this Form. In*my/our opinion and to the best of my/our information and according to the explanations given to *me/us, the particulars given in the Annexure are true and correct.

**Signed

Name

Address:

Membership No.:

Place :

Date :

Notes :

1. *Delete whichever is not applicable.
2. **This report has to be signed by an accountant as defined in the Explanation below sub-section (2) of section 288.

ANNEXURE TO FORM No. 3CEJ

Particulars relating to fund management activity required to be furnished for the purposes of section 9A of the Income-tax Act, 1961

1. Name of the Fund Manager
2. Address
3. Permanent account number
4. Nature of business or activities of the fund manager
5. Status
6. Residential status
7. Details of SEBI registration
 - (a) Regulation under which registered
 - (b) Registration number and date
8. Previous year ended
9. Assessment year
10. Aggregate value of remuneration received from the eligible fund/funds as per books of account
11. *List of eligible investment funds for whom the fund manager has undertaken the fund management activity, with the following details :*
 - (a) Name of the offshore fund.
 - (b) Country of residence of the fund
 - (c) Whether the fund manager is an employee of the fund Yes/No
 - (d) Whether the fund manager is a connected person of the Fund Yes/No
 - (e) The amount of profit accruing or arising, during the previous year, to the fund from the activities carried out through the fund manager
 - (f) The amount out of (e) to which the fund manager along with its connected persons is, directly or indirectly, entitled to
12. Particulars of remuneration received in respect of each eligible investment fund and each activity undertaken (if such activity is separately remunerated):
 - (a) Name and address of the fund for which the fund management activity has been undertaken.

- (b) Description of the activity.
- (c) Total amount received or receivable in respect of the activity—
 - (i) as per books of account;
 - (ii) as computed by the fund manager having regard to the arm's length price.
- (d) Method used for determining the arm's length price [*See* section 92C(1)]

13. Particulars in respect of any other transaction undertaken by the fund manager with /on behalf of the eligible investment fund:

(a) Has the fund manager entered into any other transaction or rendered any other service to the eligible investment fund or on behalf of the fund, but not specifically referred to above?

(b) If 'yes' provide the following details in respect of each fund and each transaction or service :

(a) Name and address of the eligible investment fund with which the transaction has been entered or to whom services have been rendered

(b) Description of the transaction/ nature of service.

(c) Amount paid/received or payable/receivable on account of such transaction/ service —

- as per books of account;
- as computed by the fund manager having regard to the arm's length price.

(d) Method used for determining the arm's length price [*See* section 92C(1)].

****Signed**

Name :

Address :

Place :

Date :

1. Notes :** This report has to be signed by an accountant as defined in the Explanation below sub-section (2) of section 288

Annual Statement under section 9A of the Income-tax Act, 1961

FORM No. 3CEK

[See rule 10VB]

Sl No.		
1	Financial Year for which the Statement is being submitted	
2	Name of the eligible fund	
3	Address of the fund	
4	Permanent Account Number (if Allotted)	
5	Country of Residence	
5	Tax Identification No., if any, of country of residence	
6	Accounting year of the Fund	
7	Details of Approval if any granted by CBDT	
8	Whether during the Financial Year the fund has satisfied all the conditions specified in section 9A and in case of Approved Fund whether conditions subject to which approval was granted, have also been fulfilled. YES/NO	
9	If answer to 8 is No then provide details and period of non fulfilment and the reasons thereof	
10	Whether any person resident in India had any participation interest directly or indirectly in the fund during the year? Yes/NO	
11	If answer to 10 is Yes provide details of person(s) and percentage interest	
12	Details of any shareholding agreement entered during the year in respect of any Indian Concern	
13	Details of Fund Manager(s) in India rendering services for or on behalf of the Fund and their SEBI registration number(s)	
14	Whether remuneration paid to the Fund manager (s) is not less than arm's length price and the basis on which it has been determined.	
15	Details of any other Activity carried out by the Fund or on behalf of the fund in India other than through the fund manager indicated in 13	
16	Amount of profit made by the Fund on its investments	
17	Contact details of representative(s) of the Fund	

VERIFICATION

I, [full name in block letters] son/daughter of holding(Designation) on behalf of the above mentioned(Name of Fund) solemnly declare that to the best of my knowledge and belief, the information given in the form is correct and complete and that the other particulars shown therein are truly stated. I further declare that I am submitting this form in my capacity as and I am also competent to make this submission and verify it.

Verified today the day of

Place

Signature of Authorised Signatory

Name”.

Notification No. 14/2016 [F.No. 142/15/2015-TPL]

(Ekta Jain)

Deputy Secretary (Tax Policy and Legislation)

Note:- The principal rules were published in the Gazette of India Extraordinary, Part III, Section 3, Sub-section (i), *vide* notification number S.O. 969(E), dated the, 26th March, 1962 and last amended *vide* notification number S.O. 650 (E) dated the 3rd March, 2016.