

**INCOME TAX UPDATE**

**Final Notification on the Manner  
of Calculating Remuneration to  
Eligible Fund Manager u/s 9A**



## **CBDT Issues Final Notification On The Manner Of Calculating Remuneration To Eligible Fund Manager u/s 9A**

Section 9A of the Income Tax Act, 1961 (Act) provides for a special taxation regime in respect of certain offshore funds in context of their fund managers being located in India.

It provides that the fund management activity carried out through an eligible fund manager acting on behalf of an eligible investment 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 subsection (3) of Section 9A of the Act.

Clause (m) of sub-section (3) of Section 9A of the Act 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.

Income Tax Rules, 1962 (Rules) was amended by way of insertion of Rule 10V to Rule 10VB and Forms 3CEJ and 3CEK vide Notification No. 14/2016 dated 15<sup>th</sup> March 2016. Rule 10V was further amended vide Notification No. 106/2016 dated 21<sup>st</sup> November 2016. Sub-Rule (5) to (10) of Rule 10V of Rules contains provisions relating to determination of arm's length price as per Section 9A (3)(m) of the Act.

Thereafter, Finance (No. 2) Act, 2019 amended clause (m) with effect from 01<sup>st</sup> April 2019 so as to substitute the words “the arm's length price of the said activity”, for the words “the amount calculated in such manner as may be prescribed”.

Accordingly, the manner for calculation remuneration was required to be prescribed.

CBDT vide Notification No. 29/2020 dated 27th May 2020 notified the final rules on the manner of calculating remuneration to be paid to the eligible fund manager in terms of Clause (m) to Sec. 9A(3) of the Act.

Rule 10V of the Rules have been amended vide said notification to inter alia provide as under:

- (a) In case where fund is Category-I Foreign Portfolio Investor as referred in Regulation 5 of the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019, the amount of remuneration shall be 0.10% of the asset under management.
- (b) In other cases, the amount of remuneration shall be:
  - i. 0.30% of the asset under management; or

- ii. 10% of profits derived by fund in excess of the specified hurdle rate from the fund management activity undertaken by the fund manager, where it is entitled only to remuneration linked to the income or profits derived by the fund; or
- iii. 50% of the management fee, whether in the nature of fixed charge or linked to the income or profits derived by the fund from the management activity undertaken by the fund manager, paid by such fund in respect of the fund management activity undertaken by the fund manager as reduced by the amount incurred towards operational expenses including distribution expenses, if any.

In case where amount of remuneration is lower than the amount arrived at under clause (a) or clause (b), the fund may apply to the Member, CBDT referred to Rule 10VA (2) of the Rules seeking approval of the Board for that lower amount to be the amount of remuneration.

Further, the fund manager shall 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. 3CEJA duly verified by such accountant.

**For details, please refer the link below to the Notification issued by CBDT dated 27<sup>th</sup> May 2020.**

[Click Here](#)

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*The information contained herein is in summary form based information provided in Notification No. 29/2020 dated 27<sup>th</sup> May 2020 issued by CBDT. While the information is believed to be accurate to the best of our knowledge, we do not make any representations or warranties, express or implied, as to the accuracy or completeness of this information. Reader should conduct and rely upon their own examination and analysis and are advised to seek their own professional advice. This note is not an offer, invitation, advice or solicitation of any kind. We accept no responsibility for any errors it may contain, whether caused by negligence or otherwise or for any loss, howsoever caused or sustained, by the person who relies upon it.*