

CBDT issues notification amending “Advance Ruling” rules and related Forms in line with BEPS Action Plan 5

July 25, 2018

In brief

The Central Board of Direct Taxes (CBDT) has issued a notification¹, effective from 13 July, 2018 amending Rule 44E of the Income-tax Rules, 1962 (the Rules) and related Forms, i.e., Form 34C, Form 34D and Form 34DA, for making an application to obtain an advance ruling under section 245Q of the Income-tax Act, 1961 (the Act).

In detail

- The notification adopts the changes proposed in the draft notification², which was issued in line with the recommendations made under the Base Erosion and Profit Sharing (BEPS) Action Plan 5, and harmonised with the amendment brought in by the Finance Act, 2017 in the definition of the term “applicant” under section 245N of the Act.
- The draft notification apprised that the AARs are required to exchange rulings relating to existence of Permanent Establishment (PE) not only with the countries of residence of all related parties with whom the taxpayer enters into a transaction, but also with the country of residence of the immediate parent company and the ultimate parent company.
- Accordingly, Forms 34C and 34D were proposed to be modified to capture details such as the name, address and country of the residence of the non-resident’s immediate parent company or ultimate parent company at the application stage itself.
- The CBDT in its notification has adopted what it proposed in its draft, and has accordingly amended the Rules and the Forms³.
- The amendments in the Forms 34C and 34D have been highlighted here.

Form 34C	Form 34D
<ul style="list-style-type: none"> • In the heading, the words “Form of application” has been substituted as “Form of application by non-resident applicant.” 	<ul style="list-style-type: none"> • The resident applicant has to furnish the following information additionally with respect to the non-resident with whom the

¹ Notification No. 31/ 2018/ F.No. 370142/ 34/ 2016-TPL(Part) dated 13 July, 2018

² Notification F.No. 370142/34/2016-TPL(Part) dated 10 April, 2018

³ Rule 44E and Form 34DA: Amendments on account of clause referencing are made in Rule 44E and to the heading in Form 34DA

Form 34C	Form 34D
<ul style="list-style-type: none"> • The non-resident applicant has to furnish the following information additionally: <ul style="list-style-type: none"> – Taxpayer registration number (TRN)/ taxpayer identification number (TIN)/ functional equivalent/ any unique number used for identification by the Government of that country/ specified territory of which the applicant claims to be a resident. • In respect of the immediate as well as ultimate parent company of the non-resident applicant, the following information needs to be provided. <ul style="list-style-type: none"> – Name, – address, – country of residence, – PAN (if allotted), – TRN/ TIN/ functional equivalent/ any unique number used for identification by the government of that country/ specified territory of which it claims to be a resident. 	<p>transaction is undertaken or proposed to be undertaken:</p> <ul style="list-style-type: none"> – In respect of the non-resident: <ul style="list-style-type: none"> ○ TRN/ TIN/ functional equivalent/ any unique number used for identification of the non-resident by the Government of that country/ specified territory of which it claims to be a resident. – With respect to the immediate as well as the ultimate parent company of the non-resident: <ul style="list-style-type: none"> ○ Name, ○ address, ○ country of residence, ○ PAN (if allotted), ○ TRN/ TIN/ functional equivalent/ any unique number used for identification of the immediate/ ultimate parent company of the non-resident by the Government of that country/ specified territory of which it claims to be a resident.

The takeaways

- The amendments have been made with an intention to bring greater transparency in cross-national transactions in line with BEPS Action Plan 5. However, furnishing of the details of the immediate and

ultimate parent company may pose practical challenges, and may add to the compliance burden of non-resident companies.

- The requirement to furnish such additional information may further delay the process of obtaining the advance

ruling and may deter the taxpayers from approaching the AAR.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

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