



Income Tax Department Government of India

Secondary adjustment in certain cases.

92CE. (1) Where a primary adjustment to transfer price,—

- (i) has been made *suo motu* by the assessee in his return of income;
- (ii) made by the Assessing Officer has been accepted by the assessee;
- (iii) is determined by an advance pricing agreement entered into by the assessee under [section 92CC](#) ⁹⁹,
on or after the 1st day of April, 2017];
- (iv) is made as per the safe harbour rules framed under [section 92CB](#); or
- (v) is arising as a result of resolution of an assessment by way of the mutual agreement procedure under an agreement entered into under [section 90](#) or [section 90A](#) for avoidance of double taxation,

the assessee shall make a secondary adjustment:

Provided that nothing contained in this section shall apply, if,—

- (i) the amount of primary adjustment made in any previous year does not exceed one crore rupees;
¹[*or*]
- (ii) the primary adjustment is made in respect of an assessment year commencing on or before the 1st day of April, 2016:

²[**Provided further** that no refund of taxes paid, if any, by virtue of provisions of this sub-section as they stood immediately before their amendment by the Finance (No. 2) Act, 2019 shall be claimed and allowed.]

(2) Where, as a result of primary adjustment to the transfer price, there is an increase in the total income or reduction in the loss, as the case may be, of the assessee, the excess money ²[*or part thereof, as the case may be,*] which is available with its associated enterprise, if not repatriated to India within the time as may be prescribed, shall be deemed to be an advance made by the assessee to such associated enterprise and the interest on such advance, shall be computed in such manner as may be prescribed.

²[**Explanation.**—*For the removal of doubts, it is hereby clarified that the excess money or part thereof may be repatriated from any of the associated enterprises of the assessee which is not a resident in India.*]

³[(2A) Without prejudice to the provisions of sub-section (2), where the excess money or part thereof has not been repatriated within the prescribed time, the assessee may, at his option, pay additional income-tax at the rate of eighteen per cent on such excess money or part thereof, as the case may be.

(2B) The tax on the excess money or part thereof so paid by the assessee under sub-section (2A) shall be treated as the final payment of tax in respect of the excess money or part thereof not repatriated and no further credit therefor shall be claimed by the assessee or by any other person in respect of the amount of tax so paid.

(2C) No deduction under any other provision of this Act shall be allowed to the assessee in respect of the amount on which tax has been paid in accordance with the provisions of sub-section (2A).

(2D) Where the additional income-tax referred to in sub-section (2A) is paid by the assessee, he shall not be required to make secondary adjustment under sub-section (1) and compute interest under sub-section (2) from the date of payment of such tax.]

(3) For the purposes of this section,—

- (i) "associated enterprise" shall have the meaning assigned to it in sub-section (1) and sub-section (2) of [section 92A](#);
- (ii) "arm's length price" shall have the meaning assigned to it in clause (ii) of [section 92F](#);
- (iii) "excess money" means the difference between the arm's length price determined in primary adjustment and the price at which the international transaction has actually been undertaken;

- (iv) "primary adjustment" to a transfer price, means the determination of transfer price in accordance with the arm's length principle resulting in an increase in the total income or reduction in the loss, as the case may be, of the assessee;
- (v) "secondary adjustment" means an adjustment in the books of account of the assessee and its associated enterprise to reflect that the actual allocation of profits between the assessee and its associated enterprise are consistent with the transfer price determined as a result of primary adjustment, thereby removing the imbalance between cash account and actual profit of the assessee.