



CBDT amends rules and forms with respect to expenditure on scientific research under Section 35 of the Income-tax Act

Background

Recently, the Central Board of Direct Taxes (CBDT) has issued a Notification¹ amending the Income-tax Rules, 1962 (the Rules) and forms with respect to expenditure on scientific research under Section 35 of the Income-tax Act, 1961 (the Act). The amended Rules shall come into effect from 1 July 2016. The amendments are summarised as follows:

Amendment in the Rules

- For approval of programme under Section 35(2AA)² of the Act, currently, the prescribed authority³ shall submit its report to Director General (Income-tax Exemptions). As per the amended rules, the prescribed authority shall submit its report to Principal Chief Commissioner of Income-tax or Chief Commissioner of Income-tax or Principal Director General of Income-tax or Director General of Income-tax having jurisdiction over the Sponsor⁴.

- Currently, for an approval of in-house Research and Development (R&D) facility for weighted deduction under Section 35(2AB) of the Act, the prescribed authority shall submit its report in Form No. 3CL to Director General (Income-tax Exemptions) within sixty days of its granting approval. As per the amended rule, the prescribed authority shall furnish electronically its report –
 - In relation to the approval of in-house R&D facility in Part A of Form No. 3CL.
 - Quantifying the expenditure incurred on in-house R&D facility by the company during the previous year and eligible for weighted deduction under Section 35(2AB) of the Act in Part B of Form No 3CL.
- The above report in Form No. 3CL shall be furnished electronically by the prescribed authority to the Principal Chief Commissioner of Income-tax or Chief Commissioner of Income-tax or Principal Director General of Income-tax or Director General of Income-tax having jurisdiction over such company within 120 days –
 - of the grant of approval of in-house R&D facility,

¹ CBDT Notification No. 29/2016, dated 28 April 2016

² Section 35(2AA) of the Act – Weighted deduction on any sum paid to a National Laboratory or a University or an Indian Institute of Technology or a specified person for a scientific research under a programme approved by the prescribed authority

³ As per the Rule 6 of the Rules - The prescribed authority shall be –
 (a) in the case of National Laboratory or a University or an Indian Institute of Technology, the head of National Laboratory or the University or the Indian Institute of Technology, as the case may be; and
 (b) in the case of a specified person, the Principal Scientific Advisor to the Government of India

⁴ As per the Rule 6 of the Rules - The 'sponsor' means a person who makes an application in Form No. 3CG

- of the submission of the audit report in the case of quantifying the expenditure incurred on in-house R&D facility by the company during the previous year and eligible for weighted deduction.
- Currently, the company shall furnish a copy of the audited report to the Secretary, Department of Scientific and Industrial Research (DSIR) by 31 October of each succeeding year. As per the amended rules, a report of an audit in Form No. 3CLA shall be furnished electronically to the Secretary, DSIR on or before the due date specified in Explanation 2 to Section 139(1) of the Act for furnishing the return of income, for each succeeding year.
- As per the amended rules, the Principle 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 the day-to-day administration in relation to furnishing the information in the manner so specified.

Amendment in the Forms specified in Appendix II

Form No. 3CK (application form for entering into an agreement with DSIR for in-house R&D facility and audit of accounts)

- Under the existing form details of nature and business/activity of the company are required to be submitted. As per the amended form following details are required to be mentioned –
 - The address, phone number of the Principal Chief Commissioner of Income-tax or Chief Commissioner of Income-tax or Principal Director General of Income-tax or Director General of Income-tax having jurisdiction over the company.
 - The nature of business/activity of the company i.e. whether it is engaged in the business of bio-technology or whether it is engaged in manufacture/production of an article or things.
- Currently, the R&D facility shall be exclusively used to carry out scientific research relating to manufacture or production of any drugs, pharmaceuticals, electronic equipments, computers, telecommunication equipment, chemicals or any other article or thing notified by CBDT under Section 35(2AB) of the Act. As per the new form, the R&D facility shall be exclusively used to carry out scientific research relating to bio-technology or manufacture or production of any eligible article or thing under Section 35(2AB) of the Act.
- Currently, the applicant shall provide full co-operation to the DSIR in carrying out the R&D work relating to manufacture or production of any drugs, pharmaceuticals, electronic equipments, computers, telecommunication equipment, chemicals or any other article or thing notified by CBDT under Section 35(2AB) of the Act. As per the new form, the applicant shall provide full co-operation to the DSIR in carrying out the R&D work relating to bio-technology or manufacture or production of eligible article or thing under Section 35(2AB) of the Act.
- Currently, the DSIR is required to submit its report in relation to the approval of the said facility to the Director General of Income-tax (Exemptions) within a period of sixty days. As per the new form, DSIR is required to submit its report to the Principal Chief Commissioner of Income-tax or Chief Commissioner of Income-tax or Principal Director General of Income-tax or Director General of Income-tax having jurisdiction over the applicant within a period of 120 days.
- Currently, in Part C of the form, the applicant is required to certify that it will undertake to render full co-operation in carrying out the R&D work relating to manufacture or production of any drugs, pharmaceuticals, electronic equipments, computers, telecommunication equipments, chemicals or any other article or thing notified by the CBDT

under Section 35(2AB) of the Act; and assets acquired by the approved facility will be utilised only for the approved purpose and shall not be disposed of without the approval of the DSIR.

The new form has omitted the above requirements while certifying Part C of the form. Now it states as follows:

- While certifying the report, it is required to ensure that the company does not manufacture any product listed in the Eleventh Schedule of the Act. Further, it is required to ensure that the capital and revenue expenditure on in-house R&D facility should be reflected in the schedules/notes to accounts in the audited financial statement of the company prepared for the purposes of its annual report and for the purposes of computation of income-tax.
- It is required to submit the information⁵ every year for the approved period on or before the due date specified in Section 139 of the Act for furnishing the return of income.
- It is required to ensure that the assets acquired by the approved facility will be utilised only for the approved purpose and shall not be disposed of without the approval of the Secretary, DSIR.
- Additional details such as name and address of the registered office of the company, PAN, previous year, assessment year, etc., are required to be furnished separately in respect of each R&D facility approved by prescribed authority under Section 35(2AB) of the Act in Annexure I. Similarly, details of revenue and capital expenditure incurred on the R&D facility approved by the prescribed authority under Section 35(2AB) of the Act will be required to be given separately in Annexure II.

Form No. 3CL (Report to be submitted by prescribed authority to the income tax authority)

- The amended rules substitute new form with respect to the report to be submitted by the prescribed authority to the income-tax authority specified under Section 35(2AB) of the Act.
- As per the new form following additional details are required to be mentioned –
 - The nature of business/activity i.e. whether the applicant is engaged in the business of biotechnology or in the manufacture/production of any eligible article or thing under Section 35(2AB) of the Act.
 - Registration number, date and validity of recognition granted by DSIR to the in-house R&D centre of the company.
 - Additional details such as assessment year, the previous year, the location of the R&D facility, annual production of the eligible products during the year, details of expenditure, and details of assets disposed of/transferred, etc.

Form No. 3CLA (Report from an accountant to be furnished under Section 35(2AB) of the Act relating to in-house scientific R&D facility)

New Form 3CLA requires reporting of following details duly certified by an accountant as defined in Section 288 of the Act –

- The accounts of in-house R&D centre have been audited and it is approved under Section 35(2AB) of the Act by the prescribed authority.
- Separate accounts have been maintained for the R&D centre approved by DSIR under Section 35(2AB) of the Act.

⁵ Specified in Annexure I and II of the Form No. 3CK

- The accounts have been satisfactorily maintained and expenditure certified is in consonance with DSIR guidelines.
- The expenditure relating to in-house scientific R&D facility is in accordance with Section 35(2AB) of the Act.

Form No. 3CM (Order of approval of in-house R&D facility under Section 35(2AB) of the Act)

- Amended Form No. 3CM requires to provide a registration number, date and validity of recognition granted by DSIR to the in-house R&D centre of the company.
- Currently, a copy of the form required to be sent to the Director General (Income-tax Exemption). As per new form, a copy shall be sent to Principal Chief Commissioner of Income-tax or Chief Commissioner of Income-tax or Principal Director General of Income-tax or Director General of Income-tax having jurisdiction over the company.

Our comments

The introduction of electronic filing of form in relation to the approval of in-house R&D facility is a welcome development. Electronic filing of the form will bring transparency and save a lot of time and cost of the taxpayer/applicant.

A new Form 3CLA has been introduced, which is to be duly certified by an accountant. The accountant has to certify that the accounts have been satisfactorily maintained and expenditure certified is in consonance with DSIR guidelines.

As per the amended rules, the prescribed authority shall furnish electronically its report in relation to the approval of in-house R&D facility, quantifying the expenditure incurred on in-house R&D facility by the company during the previous year and eligible for weighted deduction under Section 35(2AB) of the Act in Form No 3CL.

Various courts⁶ have held that DSIR has the authority to decide the quantum of R&D expenditure entitled to the weighted deduction under Section 35(2AB) of the Act. The Assessing Officer/Appellate Authority does not have the authority to modify viz. enhance or reduce the quantum of R&D expenditure as determined by DSIR, which is eligible for deduction. However, relying on the specific language of Rule 6(4)/(5A)/(7A) of the Rules) and Forms 3CK, 3CL and 3CM, the Mumbai Tribunal in case of Wockhardt Limited⁷ held that DSIR does not have the authority to quantify the R&D expenditure eligible for weighted deduction under Section 35(2AB) of the Act.



⁶ Electronics Corporation of India Ltd. v. ACIT (ITA No. 1106/Hyd/2011), Apollo Tyres Ltd v. Union of India [WP (C) 13338/2009 – Del], Tejas Networks Ltd. v. DCIT [2015] 60 taxmann.com 309 (Kar)

⁷ Wockhardt Limited (2010-TIOL-606-ITAT-MUM) (Mum)

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