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INCOME-TAX ACT, 2025

Chapter X: SPECIAL PROVISIONS RELATING TO AVOIDANCE OF TAX

Section 170 - Secondary adjustment in certain cases.

(1) An assessee shall make a secondary adjustment in every case where primary adjustment of one crore rupees or more to the transfer price—

(a) has been made by the assessee on his own in his return of income;

(b) made by the Assessing Officer has been accepted by him;

(c) is determined by an advance pricing agreement entered into by him under section 168;

(d) is made as per the safe harbour rules made under section 167; or

(e) is arising as a result of resolution of an assessment by way of the mutual agreement procedure under an agreement entered into under section 159 for avoidance of double taxation.

(2) The excess money or part thereof available with its associated enterprise shall be deemed to be an advance made by the assessee to such associated enterprise if––

(a) 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; and

(b) such excess money or part thereof is not repatriated to India within the time as may be prescribed.

(3) The excess money or part thereof referred to in sub-section (2) may be repatriated from any of the associated enterprises of the assessee which is not a resident in India.

(4) The interest on advance as referred to in sub-section (2) shall be computed in such manner as may be prescribed.

(5) 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 18% on such excess money or part thereof, as the case may be.

(6) The tax on the excess money or part thereof so paid by the assessee under sub-section (5) shall be treated as the final payment of tax in respect of the excess money or part thereof not repatriated and no further credit thereof shall be claimed by the assessee or by any other person in respect of tax so paid.

(7) Deduction under any other provision of this Act shall not be allowed to the assessee in respect of the amount on which tax has been paid as per sub-section (5).

(8) In a case where the additional income-tax referred to in sub-section (5) is paid by the assessee, he shall not be required to make secondary adjustment under sub-section (1) and compute interest under sub-section (4) from the date of payment of such tax.

(9) For the purposes of this section,—

(a) “arm’s length price” shall have the meaning assigned to it in section 173(a);

(b) “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;

(c) “primary adjustment” to a transfer price, means the determination of transfer price as per the arm’s

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length principle resulting in an increase in the total income or reduction in the loss, as the case may be, of the assessee;

(d) “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.

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