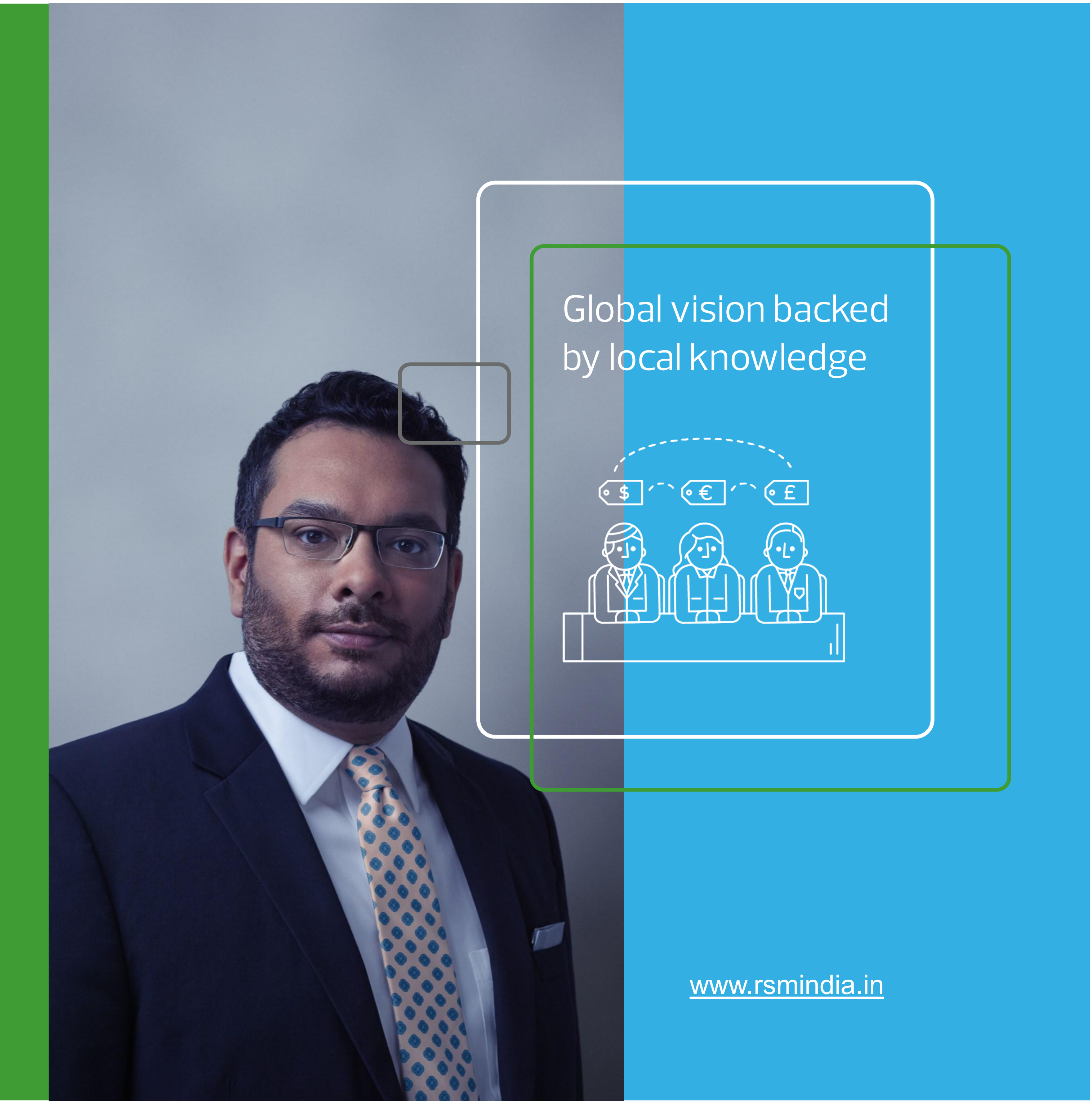

Newsflash: Secondary Adjustments in Transfer Pricing

CBDT notification 52/2017

THE POWER OF BEING UNDERSTOOD

1.0 Introduction to Secondary Adjustment

In order to align the transfer pricing provisions with OECD Transfer Pricing Guidelines and International best practices, a new section **92CE** was introduced in the Income Tax Act, 1961.

“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 adjustments, thereby removing the imbalance between cash account and actual profit of the assessee.

"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;

Where as a result of primary adjustment to the transfer price, there is an increase in total income or reduction in loss, as the case may be, of the assessee, the excess money which is available with its AE, if not repatriated to India on or before 90 days *(refer pt. 2.0 below)* shall be deemed to be an advance made by the assessee to such AE and the interest on such advance shall be computed. *(refer pt. 2.0 below)*

The provision shall be applicable to primary adjustments exceeding Rs. 1 crore made in respect of the assessment year 2017-18 and onwards.

2.0 Time limit for repatriation and interest rate applicable on excess money

The Central Board of Direct Taxes (CBDT) vide Notification No. 52 of 2017 dated 15 June 2017 has issued rules to support the implementation of the above provision by prescribing the time limit for repatriation and the method of computing the interest as given below.

<table>
<tr><th rowspan="2">Nature of Primary Adjustment</th><th rowspan="2">Time limit for repatriation</th><th colspan="2">Interest rate applicable in case of failure to repatriate the excess money</th></tr>
<tr><th>Transaction in Indian Rupee (INR)</th><th>Transaction in Foreign Currency (FC)</th></tr>
<tr><td>Primary adjustments to transfer price has been made suo-moto by the assessee in his return of income</td><td>On or before 90 days from the due date of filing return of income</td><td rowspan="5">1 year marginal cost of fund lending rate of State Bank of India as on 1 April of the relevant previous year plus 325 basis points</td><td rowspan="5">6 month London Interbank Offered Rate as on 30 September of the relevant previous year plus 300 basis points</td></tr>
<tr><td>Primary adjustments to transfer price as determined in the order of Assessing Officer or the appellate authority, as the case may be and has been accepted by the assessee</td><td>On or before 90 days from the date of the order of Assessing Officer or the appellate authority</td></tr>
<tr><td>Agreement for advance pricing entered into by the assessee under section 92CD</td><td rowspan="3">On or before 90 days from the due date of filing return of income</td></tr>
<tr><td>Option exercised by the assessee as per the safe harbour rules under section 92CB</td></tr>
<tr><td>Agreement made under the mutual agreement procedure under a Double Taxation Avoidance Agreement entered into under section 90 or 90A</td></tr>
</table>

For further information please contact:

RSM Astute Consulting Pvt. Ltd.

13th Floor, Bakhtawar, 229, Nariman Point, Mumbai - 400021.

T: (91-22) 6108 5555 / 6121 4444

F: (91-22) 6108 5556 / 2287 5771

E: emails@rsmindia.in

W: www.rsmindia.in

Offices: Mumbai, New Delhi - NCR, Chennai, Kolkata, Bengaluru, Surat, Hyderabad, Ahmedabad, Pune, Gandhidham and Jaipur.

facebook.com/RSMinIndia

twitter.com/RSM_India

linkedin.com/company/rsm-india

23 June 2017