

-COPY OF-
INCOME TAX CIRCULAR
NO.04/2011
Dated: July 19, 2011

Subject: - Prior permission under section 281 of the Income Tax Act, 1961 to create a charge on the assets of business - issuance of guidelines.

References have been received by the Board regarding issuance of guidelines for granting of prior permission u/s 281 of the I.T. Act, 1961 to transfer or create a charge on the assets of the assessee. The Board has considered the matter and in order to have uniformity on the issue, it has been decided that:

1. The taxpayers should apply in the prescribed form annexed hereto titled "Application u/s 281 of the IT Act 1961" which would be available on the departmental website as well as with the Assessing Officers.

2. The taxpayer would have to file the form at least thirty days prior to the proposed date of transaction.

3. The circumstances under which prior permission u/s 281 should be granted by the Assessing Officers are as follows:

(i) If there is no demand outstanding and there is no likelihood of demand arising in the next six months, then the permission should be granted.

(ii) If undisputed demand is outstanding and there is no likelihood of demand arising in next 6 months, then the tax payer should pay the same along with interest due thereon and then permission should be granted.

(iii) If there is disputed demand outstanding, then the tax payer should obtain stay for the same and indemnify the outstanding demand by way of bank guarantee or sufficient assets or by Department retaining the first charge on the assets proposed to be transferred or on which such charge is being created, to the extent of such demand. Thereafter, the permission u/s 281 would be granted by the A.O.

(iv) If demand is likely to arise in the next six month, then the A.O. should explore the possibility of action prescribed u/s 281B.

4. There would be only one level of intervention i.e. at the level of the range head for granting permission. The cases in which A.O. would require such approval would be where

(a) value of assets being transferred or on which charge is being created or

(b) the amount of charge being created is Rs. Ten crores or more.

5. The timelines for granting/refusing permission u/s 281 by the A.O. are as follows:

(i) If there is no demand outstanding and there is no likelihood of demand arising in the next six months, then the A.O. should grant the permission within ten working days of the receipt of the application.

(ii) If undisputed demand is outstanding and there is no likelihood of demand arising in next 6 months, then the A.O. should grant permission within ten working days of payment as in para 3(ii) above.

(iii) If there is disputed demand outstanding and the tax payer has obtained stay and indemnified the demand, then the A.O. should grant the permission within ten working days of the indemnification of the demand.

(iv) If demand is likely to arise in the next six months and the A.O. is considering actions prescribed u/s 281B for the assets excluding the asset under consideration, then the A.O. should grant the permission within fifteen working days of the receipt of the application.

(v) If the taxpayer does not pay the undisputed outstanding demand or his application for stay of disputed demand is rejected or he is unable to indemnify the outstanding demand, the application shall be disposed off within a period of ten working days. In case the permission is not being granted, a speaking and reasoned order conveying refusal would be issued with the approval of the Range head within ten working days of expiry of time given to the taxpayer to pay the undisputed demand or rejection of his stay application, as the case may be.

These time limits should be followed scrupulously by the A.Os.

6. The validity of the letter granting permission u/s 281 would be:

(i) One hundred and eighty days from the date of issue of approval, or

(ii) Service of order of attachment u/s 281B whichever is earlier.

7. Once the asset is transferred or charge is created, the tax payer should submit the documents, in this regard, to the A.O. for his record.

8. This circular shall come into force with immediate effect.

F.No.402/69/2010-ITCC

(Shanker Lal)
Under Secretary (ITCC),
Central Board of Direct Taxes

ASSESSMENT YEAR	DEMAND SECTION	OUTSTANDING DEMAND ON 1-1	Particulars of stay of demand, if any	Remarks
01	▶	▶	▶	▶
02	▶	▶	▶	▶
03	▶	▶	▶	▶
04	▶	▶	▶	▶
05	▶	▶	▶	▶
06	▶	▶	▶	▶
07	▶	▶	▶	▶
08	▶	▶	▶	▶
09	▶	▶	▶	▶
10	▶	▶	▶	▶

PART C - Particulars of land, building, machinery, plant, shares, securities and fixed deposits in banks, to the extent to which any of the assets aforesaid does not form part of the stock-in-trade of the business of the assessee as on the date of application.

DESCRIPTION OF THE ASSET	PARTICULARS OF PLACE WHERE SITUATED	VALUE OF THE ASSET AS SHOWN IN THE BOOKS OF ACCOUNTS AS ON THE DATE OF APPLICATION (IN Rs.)	WHETHER ANY CHARGE EXISTS IN PART OR FULL ON THE ASSET	REMARKS (PLEASE INDICATE THE AMOUNTS IN Lacs of Rupees existing on the asset)
C1			Yes No	
C2			Yes No	
C3			Yes No	
C4			Yes No	
C5			Yes No	
C6			Yes No	
C7			Yes No	
C8			Yes No	

PART D - The particulars of the proposed transaction(s) transferring the assets / creating charge for which permission is sought

- D1 NAME OF THE PARTY/PARTIES BETWEEN WHOM TRANSACTION IS PROPOSED
- D2 ADDRESS OF THE PARTY/PARTIES WITH WHOM TRANSACTION IS PROPOSED
- D3 PAN OF THE PARTY/PARTIES WITH WHOM TRANSACTION IS PROPOSED
- D4 THE COMPLETE PARTICULARS OF THE ASSETS PROPOSED TO BE TRANSFERRED OR FOR WHICH A CHARGE IS TO BE CREATED
- D5 EXPECTED DATE OF TRANSFER OR CREATION OF CHARGE (DD/MM/YYYY)
- D6 THE PERIOD FOR WHICH CHARGE IS BEING CREATED (IF APPLICABLE)
- D7 ANY OTHER INFORMATION CONSIDERED RELEVANT BY THE ASSESSEE
- D8 Nature of Transaction ► Creation of Charge ► Transfer
- D9 How the assessee proposes to pay or indemnify the Income Tax Department for outstanding demand disclosed ?

D10 Whether Credit Information Report (CIR) from Credit Information Bureau (India) Ltd. (CIBIL) is available ► Yes ► No (if yes, attach a copy)

VERIFICATION

I, _____ son/daughter of _____ holding permanent account number _____

do hereby declare that to the best of my knowledge and belief, the information given in the particulars above is correct and complete. I

further declare that I am submitting this application in my capacity as _____ and I am also competent to make the return of income and verify the return of income.

Place ► _____ **SIGN HERE** ►

APPLICATION U/S 281- INSTRUCTIONS

Instructions for Application u/s 281 of the IT Act, 1961

1. This form needs to be used by the tax payer to seek permission from the Assessing Officer before creating a charge or parting with the possession of an asset. According to Section 281, no tax payer shall make a sale or mortgage or gift or exchange or any other mode of transfer of any asset in favour of any other person, during the pendency of any proceedings or after the completion of proceedings, but before service of notice under Rule 2 of the Second Schedule. However, the following exceptions are provided in the Act:

- The transfer is made for adequate consideration and without any notice of proceedings or pendency of tax
- The previous permission of the Assessing Officer is obtained
- The tax payable does not exceed Rs 5000/- and the value of the asset does not exceed Rs 10000/-

2. Asset means land, building, plant, machinery, shares, securities and fixed deposits in bank (other than Stock in trade)

3. " Previous Year" is the financial year (1st April to the following 31" March) during which the income in question has been earned. "Assessment Year" is the financial year immediately following the previous year

4. Scheme of the Form

The form has been divided into four parts, the details of the same are provided below,

- Part A seeks general information requiring identificatory and other data
- Part B seeks the position of outstanding demand as on the date of Application
- Part C seeks particulars of assets as on the date of application
- Part D seeks the particulars of the proposed transaction(s) transferring the assets/creating charge for which permission is sought

5. Item by Item Instructions Part A

- A1-A3: In case of Individual, fill your First name, Middle name and Last name in A1, A2 & A3 as per details entered in PAN Card. In any other case, use the space given in A1-A3 to fill the name of the person
- A4: In case of Individual, indicate the Date the birth. In others, indicate the date of incorporation. The format should always be in DD-MM-YYYY
- A5-A11: Fill in the communication Address. All -PIN CODE is mandatory to enable faster communications from/with the department
- A12: Indicate your email address
- A13: Fill the STD code in the first five digits and then the telephone no. in the next eight digits. No Special Characters or Alphabets are allowed in A13

- A14: Fill the Country code in the first two digits and then fill the 10 digit mobile number in the next ten digits. No special characters or Alphabets are allowed in A16
- A15: Shade the appropriate circle
- A16: Shade the appropriate circle
- A17: Fill in the Ward/Circle. Example: Ward 15(1), Circle 14(1)

Part B

- Indicate the Assessment Year in which the demand was raised in Column i. This should be of the format 2010-11, 2011-12.
- Indicate the Section under which Demand was raised in Column ii.

A detailed list of various demand section is given below.

Demands under various section	Description
115O	Tax on distributed profits of domestic companies.
115P	Interest payable for non-payment of tax by domestic companies.
115R	Tax on distributed income to unit holders.
115S	Interest payable for non-payment of tax u/s 115R
115WE(1)	Summary Assessment-Fringe Benefits Tax
115WE(3)	Regular Assessment-Fringe Benefit Tax
115WF	Best judgment assessment-FBT
115WG	Fringe benefits escaping assessment
115WK	Interest for default in furnishing return of fringe benefits
144	Best judgment assessment
147	Income escaping assessment
148	Issue of notice where income has escaped assessment
154	Rectification of mistake
139(1)	Time Limit for filing the Return
139(4)	Belated Return
142(1)	Inquiry before assessment
143(1)	Summary Assessment

143(3)	Regular Assessment
153A	Assessment in case of search
153C	Assessment of income of any other person
158BA	Assessment of undisclosed income as a result of search
158BFA	Levy of interest and penalty in certain cases
174	Assessment of persons leaving India
174A	Assessment of association of persons or body of individuals or artificial juridical person formed for a particular event or purpose
175	Assessment of persons likely to transfer property to avoid tax
184	Assessment as a firm
201	Consequences of failure to deduct or pay
220(2)	Interest in case demand not paid within 30 days from the date of service
220	Interest in case demand not paid within 30 days from the date of service
221	Penalty payable when tax in default
254	Orders of Appellate Tribunal
263	Revision of orders prejudicial to revenue passes by Commissioner
264	Revision of other orders by Commissioner
271	Failure to furnish returns, comply with notices, concealment of income, etc.
271(1)(b)	Failure to comply with a notice under sub-section (2) of section 115WD or under sub-section (2) of section 115WE or under sub-section (1) of section 142 or sub-section (2) of section 143 or fails to comply with a direction issued under sub-section(2A) of section 142
271(1)(c)	Concealment of the particulars of income, or furnishing inaccurate particulars thereof.
271(1)(d)	has concealed the particulars of the fringe benefits or furnished inaccurate particulars of such fringe benefits
271A	Failure to keep, maintain or retain books of account, documents, etc.
271AA	Penalty for failure to keep and maintain information and document in respect of international transaction

271AAA	Penalty where search has been initiated
271B	Failure to get accounts audited
271BA	Penalty for failure to furnish report under section 92E
271BB	Failure to subscribe to the eligible issue of capital
271C	Penalty for failure to deduct tax at source
271CA	Penalty for failure to collect tax at source
271D	Penalty for failure to comply with the provisions of section 269SS
271E	Penalty for failure to comply with the provisions of section 269T
271F	Penalty for failure to furnish return of income
271FA	Penalty for failure to furnish annual information return
271FB	Penalty for failure to furnish return of fringe benefits
271G	Penalty for failure to furnish information or document under section 92D
272A	Penalty for failure to answer questions, sign statements, furnish information, returns or statements, allow inspections, etc.
272AA	Penalty for failure to comply with the provisions of section 133B
272B	Penalty for failure to comply with the provisions of section 139A
272BB	Penalty for failure to comply with the provisions of section 203A
272BBB	Penalty for failure to comply with the provisions of section 206CA
273	False estimate of, or failure to pay, advance tax
275A	Contravention of order made under sub-section (3) of section 132
275B	Failure to comply with the provisions of clause (iib) of subsection (1) of section 132
276	Removal, concealment, transfer or delivery of property to thwart tax recovery
276A	Failure to comply with the provisions of sub-sections (1) and (3) of section 178
276AB	Failure to comply with the provisions of sections 269UC 269UE and 269UL

276B	Failure to pay tax to the credit of Central Government under Chapter XII-D or XVII-B
276BB	Failure to pay the tax collected at source
276C	Wilful attempt to evade tax, etc.
276CC	Failure to furnish returns of income
276CCC	Failure to furnish return of income in search cases
276D	Failure to produce accounts and documents
277	False statement in verification etc.
277A	Falsification of books of account or document, etc.
278	Abetment of false return, etc.
278A	Punishment for second and subsequent offences
278B	Offences by companies
278C	Offences by Hindu undivided families

- Indicate the value of the Outstanding Demand in Column iii
- Indicate the details of stay of demand in Column iv

Part C

- Indicate the type of asset in column i. The following types of assets can be indicated

i. Land

ii. Building

iii. Plant and Machinery

iv. Shares and Securities

v. Fixed Deposits in Bank

The above assets should not form part of the Stock in Trade

- Indicate the particulars of place where the asset is situated in column ii. Complete Address where the Assets are situated needs to be furnished

Part D

- D1: Indicate the name of the party/parties with whom the transaction is proposed

- D2: Give the complete Address of the party/parties with whom the transaction is proposed
- D3: Give the PAN of the Party/Parties with whom the transaction is proposed. If there are multiple PAN's, then indicate in the space after the boxes provided for writing PAN
- D4: Indicate the details of all the Assets proposed to be transferred or for which a charge is to be created
- D5: Fill the expected date of transfer or creation of charge
- D6: If applicable, fill the period for which the charge is being created
- D7: Fill any other information considered relevant by the tax payer
- D8: Fill the appropriate circle
- D9: Explain in detail, how the tax payer proposes to pay or indemnify the Income Tax Department for outstanding demand disclosed. The tax payer should submit his latest asset/liability statement including the guarantees given by him.