

CBDT Notification for Affordable Housing Scheme u/s 35AD of IT Act 1961

RULES/AMENDMENT RULES - INCOME-TAX (FIRST AMENDMENT) RULES, 2012 - INSERTION OF RULE 11-OA AND FORM NO. 3CN

NOTIFICATION NO.1/2012[F.NO.142/24/2011-SO(TPL)]/S.O. 5(E), DATED 2-1-2012

In exercise of the powers conferred by section 295 read with sub-clause (vii) of clause (c) of sub-section (8) of section 35AD of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:-

1. (1) These rules may be called the Income-tax (First Amendment) Rules, 2012

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Income-tax Rules, 1962, in Part II, in sub-part F, after rule 11-O, the following rule shall be inserted, namely:-

"11-OA Guidelines for notification of affordable housing project as specified business under section 35AD.—(1) The form and manner in respect of notification of an affordable housing project as a specified business under sub-clause (vii) of clause (c) of sub-section (8) of section 35AD of the Act shall be as follows:—

- (a) the applicant shall apply for notification of the project in Form No. 3CN to Member (IT), Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, North Block, New Delhi;
- (b) if any defect is noticed in the application in Form No. 3CN or if any relevant document is not attached thereto, a deficiency letter may be served on the applicant;
- (c) the applicant shall remove the deficiency within a period of fifteen days from the date of service of the deficiency letter or within such further period which, on an application made in this behalf may be extended;
- (d) if the applicant fails to remove the deficiency within the period so allowed, the Board, if satisfied, may pass an order treating the application as invalid;
- (e) the Board may, before granting approval, call for such documents or information from the applicant as it may consider necessary and may call for further details or information from the applicant as well as from the income-tax authorities and other Departments or agencies, as it may deem fit;
- (f) the Board may issue the notification to be published in the Official Gazette granting approval to the project or for reasons to be recorded in writing, reject the application;

- (g) the Board may withdraw the approval if it is satisfied that the assessee has ceased its activities relating to the specified business or its activities are not genuine or are not being carried out in accordance with all or any of the conditions under this rule;
- (h) no order treating the application as invalid or rejecting the application or withdrawing the approval or cancellation of the notification, shall be passed without giving an opportunity of being heard to the assessee;
- (i) a copy of the order invalidating or rejecting the application or withdrawing the approval shall be communicated to the applicant as well as the Assessing Officer and the Commissioner having jurisdiction over the assessee.

(2) A project shall be considered for notification if it fulfils all of the following conditions, namely: —

- (a) the project shall have prior sanction of the competent authority empowered under the Scheme of Affordable Housing in Partnership framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;
- (b) the date of commencement of operations of the project shall be on or after the 1st day of April 2011;
- (c) the project shall be on a plot of land which has a minimum area of one acre;
- (d) at least thirty per cent, of the total allocable rentable area of the project shall comprise of affordable housing units of EWS category;
- (e) at least sixty per cent of the total allocable rentable area of the project shall comprise of affordable housing units of EWS and LIG categories;
- (f) at least ninety per cent of the total allocable rentable area of the project shall comprise of affordable housing units of EWS, LIG and MIG categories;
- (g) the remaining ten per cent or less of the total allocable rentable area of the project may comprise of other residential or commercial units;
- (h) the layout and specifications including design of the project to be developed and built shall be approved by the State or Union territory Government or its designated implementing agency;
- (i) the project shall be completed within a period of five years from the end of the financial year in which the project is sanctioned by the competent authority empowered under the Scheme of Affordable Housing in Partnership framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India.

(3) The assessee shall maintain separate book of accounts for the project with complete details of all capital expenditure incurred during the previous year on which it intends to claim the said deduction under section 35AD and shall file the relevant income tax returns in the due date to the Income Tax Department to avail the tax benefit under section 35AD.

(4) A project notified under sub-clause (vii) of clause (c) of sub-section (8) of section 35AD shall continue to be governed by the provisions of this rule to the extent it is not in contravention with the provisions of the Act, as amended from time to time.

(5) In this rule,—

(a) "affordable housing units" shall be of the following categories:-

Category	Rentable Area (<i>in square metres</i>)	
	Specified cities	Other cities
Economically Weaker Section (EWS)	Up to 25	Up to 30
Lower Income Group (LIG)	Greater than 25 and up to 50	Greater than 30 and up to 60
Middle Income Group (MIG)	Greater than 50 and up to 70	Greater than 60 and up to 85

(b) "date of commencement of operations" means the date on which the project is sanctioned by the competent authority empowered under the Scheme of Affordable Housing in Partnership framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;

(c) "housing unit" means an independent residential unit with separate facilities for living, cooking and sanitary requirements, distinctly separated from other residential units within the building - (i) directly accessible from an outer door or through an interior door in a shared hallway and not by walking through another household's living space and (ii) excluding any shared dining areas;

(d) "project" means an affordable housing project;

(e) "rentable area" means the carpet area at any floor level, including the carpet area of kitchen, pantry, store, lavatory, bathroom, fifty per cent of unglazed verandah and hundred per cent of glazed verandah, in accordance with the provisions of the Indian Standard - Method of Measurement of Plinth, Carpet and rentable Areas of Buildings, IS 3861 : 2002, formulated and published by the Bureau of Indian Standards;

(f) "specified cities" shall mean the following—

(i) Greater Mumbai urban agglomeration;

(ii) Delhi urban agglomeration;

- (iii) Kolkata urban agglomeration;
- (iv) Chennai urban agglomeration;
- (v) Hyderabad urban agglomeration;
- (vi) Bangalore urban agglomeration;
- (vii) Ahmedabad urban agglomeration;
- (viii) District of Faridabad;
- (ix) District of Gurgaon;
- (x) District of Gautam Budh Nagar;
- (xi) District of Ghaziabad;
- (xii) District of Gandhinagar; and
- (xiii) City of Secunderabad;

Explanation.—For the purposes of this clause,—

the area comprising an urban agglomeration shall be the area included in such urban agglomeration on the basis of the latest census;

- (g) "total allocable rentable area" means the total rentable area of all the proposed housing units or non-housing units but excluding the areas earmarked for common facilities and services."

FORM No. 3CN

[See rule 11-OA(1)(a)]

Application for notification of affordable housing project as specified business under section 35AD

1.1 Name and address of the specified business (in full, block letters) :-

1.2 Details of the assessee:-

(i) Name (in full, block letters)_____

(ii) Is there any change in the name? If yes, please furnish the old name

(iii) PAN

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(iv) Complete address _____

(v) Office Phone Number (with STD code) _____

(vi) Mobile No. _____ E-mail Address _____

(vii) Date of incorporation/formation/birth (DD/MM/YYYY)

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(whichever applicable)

(viii) Status

[public company - 1, private company -2, general partnership firm - 3, local authority -4, cooperative society - 5, LLP - 6, any other AOP/BOI artificial juridical person - 7, individual - 8, HUF - 9, any other person -10 (please specify: _____)]

(ix) If a domestic company (Tick)

(x) Income Tax Ward/Circle _____

Residential Status (Tick) Resident Non-Resident

2.1 Location of the proposed project:-

(i) Name of the project (if any) _____

(ii) Complete address of location of the proposed project:-

2.2 Details of the proposed project:-

(i) Rentable area of various units in the project (indicate in sq. metres):-

<i>Sl.No.</i>	<i>Description</i>	<i>Category of unit (EWS/LIG/MIG/Other Residential/Commercial)</i>	<i>Rentable area</i>	<i>Number of units</i>	<i>Total rentable area (4*5)</i>	<i>Percentage of total allocable rentable area</i>
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>	<i>7</i>

Total allocable rentable area (col. 6) & total percentage (col.7)	_____	_____
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(ii) Details of other areas to be constructed (common facilities, etc.):—

2.4 Proposed investment (amount in Rs. Lakhs) _____

2.5 Expected or actual date of commencement of the project _____

3.1 Whether the assessee has any land or project adjacent or in the vicinity of the proposed project? (If yes, details thereof.) Yes/No

3.2 Whether the proposed project is located or developed as a separate identifiable area? Yes/No

3.3 Whether the project is independent of other projects or is an extension or part of any other project? Yes/No

3.4 The nature of title the assessee holds on the land on which the project is situated.

3.5 Whether the project is developed under any agreement and if yes, the details of other parties (other than applicant) to such an agreement? Yes/No

3.6 Whether each of the following conditions mentioned in sub-rule (2) of rule 11-OA is fulfilled:—

(i) the project has the prior sanction of the competent authority empowered under the Scheme of Affordable Housing in Partnership framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India; Yes/No

(ii) the date of commencement of operations of the project is on or after the 1st day of April, 2011; Yes/No

(iii) the project is on a plot of land which has a minimum area of one acre; Yes/No

(iv) at least thirty per cent of the total allocable rentable area of the project comprises of affordable housing units of EWS category; Yes/No

(v) at least sixty per cent of the total allocable rentable area of the project comprises of affordable housing units of EWS and LIG categories; Yes/No

(vi) at least ninety per cent of the total allocable rentable area of the project comprises of affordable housing units of EWS, LIG and MIG categories; Yes/No

(vii) the layout and specifications including design of the project to be developed and built have been approved by the State or Union territory Government or its designated implementing agency. Yes/No

DECLARATION

I/We hereby undertake to continue to operate the affordable housing project during the period in which the benefits under section 35AD of the Income-tax Act, 1961 are to be availed.

I/We hereby certify that the above statements are true and correct to the best of my/our Knowledge and belief.

(Signature of Applicant)

(Name in Block Letters)

(Designation of the Signatory)

Place: _____

Date: _____

List of Enclosures:-

- 1. _____
- 2. _____
- 3. _____
- 4. _____

- 5. _____
- 6. _____
- 7. _____
- 8. _____

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