

# Section 92CE Secondary Adjustments

The Rs 1 Crore Cross-Border Trap Under the Income-tax Act, 2025

TRANSFER PRICING

SECTION 92CE

INCOME-TAX ACT 2025

AY 2026-27


FEMA

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Transfer Pricing Compliance | AY 2026-27 First Year Impact



# What Is Section 92CE? The Quick Read

A primary transfer pricing adjustment under Section 92C raises Indian taxable income, but the cash never moves. The AE keeps the benefit. The Indian taxpayer pays tax on **phantom income**.

 **Section 92CE forces a separate cash repatriation.** It treats the unmoved excess as a deemed loan from the Indian entity to the AE, accruing imputed interest until repatriated.

Two hard exclusions apply: adjustments below Rs 1 crore in any single previous year, and primary adjustments for AY 2016-17 and earlier, never trigger Section 92CE.

<b>Statute</b>	Section 92CE, Income-tax Act, 2025 (re-enacted from 1961 Act)
<b>Effective</b>	April 1, 2026 (AY 2026-27 onwards under new Act)
<b>Saving Clause</b>	Section 532 of Income-tax Act, 2025 (preserves liability for older years)
<b>Underlying Rule</b>	Rule 10CB of Income-tax Rules, 1962
<b>Originally Inserted</b>	Finance Act, 2017 (effective AY 2017-18)
<b>Threshold</b>	Primary adjustment exceeds Rs 1 crore in any previous year
<b>Repatriation Window</b>	90 days from Rule 10CB anchor date

# Five Triggers Under Section 92CE(1)

Each trigger is independent. A single primary adjustment can qualify under more than one limb.

1	<b>Suo-Moto Adjustment</b> Adjustment by the assessee in the return of income under Section 92C(1)/(2). The 90-day window starts from the due date under Section 139(1).
2	<b>AO Order Accepted</b> Adjustment made by the Assessing Officer and accepted by the assessee under a Section 92C order. Window starts from the date of the AO order.
3	<b>APA Adjustment</b> Adjustment determined under an Advance Pricing Agreement under Section 92CC. Window starts from the date of the APA.
4	<b>Safe Harbour Rules</b> Adjustment under safe harbour rules under Section 92CB. Window starts from the due date under Section 139(1).
5	<b>MAP Resolution</b> Adjustment under a Mutual Agreement Procedure resolution under Section 90/90A. Window starts from the date of giving effect to the MAP.

**i Who is in scope:** Indian startups with overseas AEs, family-owned groups with cross-border holdings, software exporters with offshore subsidiaries, and inbound MNCs with Indian subsidiaries. If a transfer pricing adjustment crosses Rs 1 crore in a single year, the secondary adjustment obligation is **automatic**.

# The 90-Day Repatriation Window (Rule 10CB)



## Trigger Date by Source

Source of Primary Adjustment	90-Day Window Start
Suo-moto adjustment in return	Due date u/s 139(1)
AO order accepted by assessee	Date of AO order
APA-determined adjustment	Date of APA
Safe harbour (SHR) acceptance	Due date u/s 139(1)
MAP resolution	Date of giving effect to MAP

## Documentation Required for Repatriation

- Inward remittance from AE supported by FIRC
- AD Bank purpose code referencing Section 92CE
- AE board resolution authorising the remittance
- Underlying invoice or debit note describing the transaction as a transfer pricing secondary adjustment

⊗ If the cash does not arrive in 90 days, deemed interest starts accruing from **Day 91**.

# Imputed Interest: The Daily Cost of Inaction

Deemed interest accrues from day 91 until actual repatriation OR the date of 18 percent settlement under subsection (2A), whichever is earlier.

## 12.30%

### INR Rate FY 2026-27

SBI 1-year MCLR as of 1 April plus 325 bps spread. This is the indicative imputed interest rate for INR-denominated transactions.

## +325

### Basis Points Spread (INR)

Added over SBI MCLR for Indian Rupee transactions per Rule 10CB.

## +300

### Basis Points Spread (FX)

Added over 6-month SOFR/EURIBOR for foreign currency transactions per CBDT FAQ Dec 2023.

## Rs 3.07 Cr

### 5-Year Phantom Interest

On a Rs 5 crore unrepatriated adjustment at 12.30% for 5 years. At 25% corporate rate, that is Rs 76.7 lakh of tax on phantom interest alone.

Currency	Reference Rate	Spread	FY 2026-27 Indicative Rate
INR	SBI 1-year MCLR (as of 1 April)	+ 325 bps	~12.30% p.a.
Foreign Currency	6-month SOFR/EURIBOR (as of 30 September)	+ 300 bps	Varies by currency

**⚠ Disclosure trail:** Deemed interest must be disclosed in Form 3CD Clause 30B and Form 3CEB Part B Clause 16. Non-disclosure invites Section 271AAB penalty proceedings of 1 to 2 percent of the undisclosed amount, plus general concealment penalties under Section 270A.

# The 18 Percent Settlement Option (Section 92CE(2A))

Inserted by Finance Act (No. 2), 2019 effective September 1, 2019. Designed for cases where repatriation is structurally impossible: AE in a no-banking-corridor jurisdiction, AE in insolvency, or AE owned by sovereign-wealth funds.

## 20.9664%

### Effective Settlement Rate

The all-in cost including surcharge and cess on a Rs 1 crore unrepatriated balance equals Rs 20,96,640.

Component	Rate	Amount on Rs 1 Cr
Additional income-tax	18.00%	Rs 18,00,000
Surcharge on tax	12.00%	Rs 2,16,000
Health and education cess	4.00%	Rs 80,640
<b>Effective settlement rate</b>	<b>20.9664%</b>	<b>Rs 20,96,640</b>

### Three Irreversible Consequences

#### No Further Interest

No further deemed interest accrues from the settlement date onwards.

#### No Repatriation Required

The Indian taxpayer is no longer required to repatriate the cash to India.

#### No Tax Credit

No tax credit is available against this 18% tax (third proviso, Section 92CE(2A)). Subsequent remittance does not unwind the settlement.

**Decision rule:** Model the IRR of continued daily interest accrual versus the 20.9664% one-time payment. The 18% settlement typically becomes economically attractive when imputed interest exceeds 4 to 5 years of accrual at the current MCLR plus 325 bps.

# AY 2026-27: First Year Under the Income-tax Act, 2025

The Income-tax Act, 2025 takes effect on April 1, 2026. AY 2026-27 (FY 2025-26) is the first return-filing year under the new framework.

Aspect	Position Under New Act
Section number	Section 92CE retained, no substantive change
Cross-references	Renumbered to align with Sections 92C, 92CB, 92CC, 90, 90A, 139 of 2025 Act
Legacy adjustments	Continue to attract 92CE via savings clause in Section 532 of new Act
Form 3CEB	Disclosure under new Act numbering for AY 2026-27
Form 3CD Clause 30B	Year-wise disclosure of 92CE liability with bridge to old Act for legacy years
First filing impact	Tax Audit reports filed Sep-Oct 2026 must adopt new numbering

⊗ **Practical issue:** Tax audit working papers and Form 3CEB templates referencing the 1961 Act numbering will fail validation under the 2025 Act schema. CAs should rebuild templates before the September 30 audit window opens.

# 10-Step Compliance Checklist for AY 2026-27

For CAs and CFOs auditing every Indian client with international related-party transactions.

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## **Pull All Primary Adjustments**

From FY 2017-18 to FY 2025-26 (TP orders, ITAT, HC, APA, SHR, MAP). Tabulate by AY, AE, transaction type, quantum.

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## **Determine Repatriation Status**

Verify with FIRC evidence and bank statements per AE per AY. Identify unrepatriated balances.

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## **Run the 18 Percent IRR Model**

Decide whether to settle at 20.9664% effective rate or continue imputing interest. Document the analysis in writing.

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## **Update Form 3CD and Form 3CEB**

Update Form 3CD Clause 30B and Form 3CEB Part B Clause 16 with year-wise disclosure under new Act numbering.

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## **File FEMA Reporting Correctly**

FC-GPR if treated as deemed equity infusion, FC-TRS if treated as transfer of shares, or none if normal commercial repatriation. Consult a FEMA practitioner.

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## **Apply Rs 1 Crore Threshold**

Apply Rs 1 crore threshold and AY 2017-18 cutoff. Eliminate sub-Rs-1-crore items and pre-AY 2017-18 adjustments.

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## **Compute Deemed Interest**

For unrepatriated balances from day 91 of the trigger date, daily basis, at MCLR plus 325 bps (INR) or SOFR plus 300 bps (FX).

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## **Structure Repatriation**

Through AD Bank with Section 92CE purpose code in advance. Obtain AE board resolution authorising the inward remittance.

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## **Document AE Board Approval**

Authorising the inward remittance as a Section 92CE secondary adjustment. Maintain in tax audit file.

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## **Maintain a Perpetual 92CE Register**

By AE and AY: trigger date, day 91, repatriation or settlement date, deemed interest accrued, current outstanding balance.

# Five Pitfalls That Cost Crores

## 1. Ignoring Closed AYs

Section 92CE applies year by year. A 2018-19 adjustment confirmed by ITAT in 2024 still triggers. The 90 days run from the order date, not the AY.

## 2. Computing Interest on Full Amount After Partial Repatriation

If part of the cash returns within 90 days, deemed interest applies only to the unrepatriated balance. Many taxpayers overpay phantom-interest tax.

## 3. Confusing 18 Percent with Corporate Tax


Section 92CE(2A) tax is independent of Section 115BAA election. The 20.9664% is paid even if the regular rate is 22 or 25 percent.

## 4. Skipping Form 3CD Clause 30B

Non-disclosure attracts Section 271AAB at 1 to 2 percent of the undisclosed amount, plus Section 270A on the unreported income.

## 5. Treating MAP as Full Closure

Section 92CE(1)(v) covers MAP. The MAP resolves only the underlying TP dispute, not the cash repatriation obligation. Both must be addressed separately.

 **Edge case:** Specified domestic transactions under Section 92BA are outside Section 92CE. Only international transactions under Section 92B are caught by the secondary adjustment provisions.