

File no. 27(86)/2014-IPHW
Government of India
Ministry of Electronics and Information Technology

Dated: 09.09.2019

**Guidelines for Disbursement of Incentives against Related Party Transactions (RPTs)
under Motified Special Incentive Package Scheme(M-SIPS)**

1.0 Background

1.1 Modified Special Incentive Package Scheme(M-SIPS), hereinafter called "Scheme", to encourage investments in the Electronic System Design and Manufacturing sector in India was notified vide notification no. 175 dated 27-07-2012 in Part-1, Section 1 of the Gazette of India(Extraordinary) [File no. 24(10/ IPHW)]. In pursuance of para 6.2 of the said notification and for effective functioning of the scheme, M-SIPS guidelines dated 07-10-2012 were laid down.

1.2 Paragraph 13.1 of the aforesaid guidelines states that- "*separate guidelines will be issued with regard to disbursement of incentives under the scheme*". In pursuance of the said para 13.1, separate disbursement guidelines were issued vide notification no. 27(42)/2013-IPHW dated 04-06-2014. Guidelines on incentive disbursal against Related Party Transactions(RPTs) have been mentioned at para 4.10 and 6.7 which are reproduced below:

Para 4.10:

"For building works, plant, machinery & equipment (including erection and commissioning of the same, tools, dies, moulds, jigs, fixtures and parts, accessories, components, spares of the plant and machinery or equipment) purchased / leased from Group Companies / 'related entities':

- i) Transfer pricing certificate (for domestic and / or international procurement) as required for income tax purposes must be provided by the Applicant. This should be submitted in accordance with the methodology as per Income Tax laws, even if not required by tax laws.*
- ii) The decision on approval / rejection of the certificate and its amount shall be based on the final assessment by Income Tax Authority. In case the Income Tax Authority makes any changes to the acceptability of the Transfer Pricing certificate during the assessment process, then the onus lies on the Applicant to inform to DeitY immediately and reimburse DeitY for any subsidy amount claimed on the disallowed expenditure."*

Para 6.7:

"The decision on approval / dis-approval of the Transfer Pricing Certificate (if submitted) and its amount shall be based on the final assessment by Income Tax Authority. In case the disbursement is made prior to the assessment and the decision is

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against the Applicant, then the onus lies on the Applicant to inform to DeitY immediately and reimburse DeitY for any incentives amount repayable along with interest, as may be decided by DeitY”.

2.0 In furtherance of **Para 4.10** and **Para 6.7** of the aforesaid guidelines, the following guidelines provide the mechanism for release of incentives against Related Party Transactions under M-SIPS:

2.1 The applicant shall submit all relevant documents (e.g.: Transfer Pricing Certificate in form 3CEB for International/Domestic Related Party Transactions) submitted to Income Tax Department w.r.t Related Party Transactions. Even if filing of Transfer Pricing Certificate is not mandatory, for M-SIPS, the same has to be submitted to Ministry of Electronics and Information Technology (MeitY).

2.2 The applicant shall submit an unconditional, irrevocable Bank Guarantee from a Scheduled Commercial Bank for an amount equivalent to the incentive amount on the approved Related Party Transactions. The validity of the Bank Guarantee shall be for 5 years initially from date of release of sanction letter for incentive. The format of the Bank Guarantee is as per **Annexure A**.

2.3 The applicant through its authorized representative shall submit an undertaking to MeitY on the company's letterhead. The undertaking shall cover the following points:

2.3.1 In case the Income Tax authority disallows any expenditure, then the applicant shall inform MeitY immediately and will reimburse MeitY for any subsidy amount claimed on the disallowed expenditure along with the interest calculated at 3 years SBI MCLR compounded quarterly (as applicable during the entire period i.e. period between excess payment by MeitY and date of refund of the same by the applicant).

2.3.2 If the income tax assessment is not completed within a period of 4 years and six months from the start of the validity of Bank Guarantee, the applicant shall submit a fresh Bank Guarantee for an equal amount and period to the satisfaction of MeitY. In the event of failure to do so, MeitY shall have the option to invoke the earlier submitted Bank Guarantee by issuing a notice for taking requisite action within one month from the date of issue of letter.


2.3.3 Even if the notice is not issued to the Applicant, the Applicant is legally bound to renew the BG, failing which MeitY may invoke the BG. The format of the undertaking is at **Annexure B**.

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2.4 In order to ensure proper custody and regular monitoring of the validity of the Bank Guarantee and issuing alerts to the applicant companies where BG validity is likely to expire in the following six months, MeitY may either do the monitoring by itself or entrust this work to the verification agency.

2.5 While considering disbursement claims, the applicant company shall invariably provide the details/status of assessment by Income Tax authority in respect of RPTs for which incentives have been disbursed by MeitY in the previous claims. Further, the applicant should provide the status of assessment by IT authorities in respect of RPTs in the Quarterly Progress Reports (QPRs).

2.6 The applicant shall provide the status of assessment of RPTs by Income Tax authorities in the Quarterly Progress Reports (QPRs) on regular basis.


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To,

1. All concerned Ministries/Department of Govt. of India
2. Cabinet Secretariat
3. PMO
4. Secretary, MeitY
5. AS & FA, MeitY
6. PPS to MEIT
7. PPS to MoS(E & IT)

Copy to:

1. All industry associations
2. MeitY website
3. MSIPS e-portal

Bank Guarantee for availing incentive against Related Party Transaction
(From any scheduled commercial bank)

This Deed of Guarantee executed on this _____ day of _____, 20-
- at _____ by _____ (from any
commercial bank), having its Head Office/Registered Office at _____
and inter-alia a Branch Office at _____ (hereinafter referred to as the
Bank or 'the Guarantor', which expression shall unless it be repugnant to the subject or context
hereof be deemed to include its successors and assigns).

In favor of

The Ministry of Electronics and Information Technology, Government of India, Electronics
Niketan, 6, CGO Complex, Lodhi Road, New Delhi-110003 (hereinafter referred
to as "MeitY").

WHEREAS

A. [.....], a company within the meaning of the Companies Act, 1956 **OR** meaning
under----- and having its Registered Office at [-----] (herein after referred to
as "the Applicant", which expression unless repugnant to the subject or context
includes its successors, legal representatives and permitted assigns) and has been
awarded the sanction under Letter Reference -----
- dated ----- and sanction letter for incentive dated ----- for a total incentive amount of
Rs.----- out of which Rs.----- is an incentive amount against related party transaction of
Rs.-----.

B. In terms of the undertaking dated ----- and clause ----- of the Supplementary
Guidelines on RPTs, Reference No. ----- dated -----, the Applicant
has to provide a Bank Guarantee for an amount equivalent to Rs.----- which
is calculated in line with the undertaking.

C. At the request of the Applicant, the Guarantor has agreed to provide this
guarantee, being these presents, guaranteeing the due and punctual
performance/discharge by the Vendor of its obligations under the said contract
during the implementation period.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS

A. The Guarantor hereby irrevocably guarantees the due and compliance of terms
by the Applicant of all its obligation under the said undertaking till the time Income
Tax assessment is completed;

B. The Guarantor shall, without demur, pay to MeitY sums not exceeding in
aggregate ----- (Rupees ----- within five (5) calendar days of
receipt of a written demand thereof from MeitY stating that the Applicant has
failed to meet its obligations under the said undertaking during the Income Tax

assessment period. The Guarantor shall have not to go into the veracity of any breach or failure on the part of the Applicant or validity of the demand so made by MeitY and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Applicant or any other person. The Guarantor's obligations hereunder shall subsist until all such demands are duly met and discharged in accordance with the provisions hereof;

C. In the event of delay on the part of the Guarantor to pay on demand, the Guarantor shall be liable to pay interest at the rate of fifteen (15) per cent, compounding quarterly, to MeitY. There shall not be any delay in payment of the guaranteed amount and payment of interest shall not be an excuse for delaying the payment of guarantee amount. Time is the essence of this Guarantee;

D. The Guarantor agrees that its liability under this guarantee shall in no manner be affected by any such variation, alteration, modification, waiver dispensation with or release of security and that no further consent of the Guarantor is required for giving effect to any such variation, alteration, modification, waiver dispensation with or release of security;

E. This Guarantee shall be enforceable against the Guarantor notwithstanding that any security or securities comprised in any instrument executed or to be executed by the Applicant in favor of MeitY may at the time when the proceedings are taken against the Guarantor of this guarantee be outstanding or unrealized or lost. In order to give effect to this Guarantee, MeitY shall be entitled to treat the Guarantor as the principal debtor;

F. This Guarantee shall be in-evocable and shall remain in full force and effect till-----

G. Until and unless discharged/released earlier by MeitY in accordance with the provisions of the said undertaking. The Guarantor's liability in aggregate shall be limited to a sum of Rs.----- (Rupees-----);

H. This Guarantee shall not be affected by any change in the constitution or winding up of the Applicant /the Guarantor or any absorption, merger or amalgamation of the Applicant/the Guarantor with any other person;

I. The Guarantor has power to issue this Guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorized to execute this Guarantee pursuant to the power granted under ___.

All future correspondence with reference to this Guarantee shall be made to (Bank Name and Address).

The jurisdiction in relation to this Guarantee shall be the Courts at New Delhi and Indian Law shall be applicable.

IN WITNESS WHEREOF THE GUARANTOR HAS SET ITS HANDS
HEREUNTO ON THE DAY, MONTH AND YEAR FIRST HEREINABOVE
WRITTEN.

SIGNED AND DELIVERED by _____ Bank by the hand of _____,
its _____ and authorized official.

ANNEXURE B

FORMAT OF UNDERTAKING

(to be submitted by the applicant before the disbursement of incentives against RPTs)

(on the letterhead of the applicant)

1. We,, hereby acknowledge that the incentives that would / may be provided to us against Related Party Transactions under the Modified Special Incentive Package Scheme (M-SIPS), notified by the then Department of Electronics and Information Technology (now MeitY) vide Notification No. 24(10)/2010 - IPHW dated 27th July, 2012, will be provided to us based on, and after relying upon, the information provided by us to avail the said incentives.
2. We hereby confirm that the information provided by us for availing the said incentives is true, correct and complete in all respects and that no material fact / information that may have an adverse impact on the information provided by us for availing the said incentives has been concealed. We acknowledge and confirm that the foregoing averment is on an on-going basis and further undertake to immediately apprise the MeitY about any change in the status of the information provided by us to avail the said incentives.
3. In case of all Related Party Transactions, we understand that the decision on approval/rejection of the certificate and its amount shall be based on the final assessment by the Income Tax Authority. With regard to the aforesaid transactions, we hereby undertake the following:
 - i. In case the Income Tax authority disallows any item, then we will inform MeitY immediately and will reimburse MeitY for any subsidy amount claimed on the disallowed expenditure along with the compound interest (compounding quarterly) calculated at 3 years SBI MCLR (as applicable period between excess payment by MeitY and date of refund of the same by the applicant).
 - ii. To avail the incentive corresponding to the related party transaction, we further undertake to provide Bank Guarantee from a schedule commercial Bank and accept the methodology for BG calculation which is mentioned below:

Sl. No.	Particulars	Details
1	Date of issuance of Incentive Sanction Letter	01-07-2019 (assumption)
2	Validity Period of BG*	30-06-2023
3	Amount of BG	Equal to the incentive amount on the approved Related Party Transaction

**5 years from the date of issuance of incentive sanction letter (which includes eligible RPT) by the competent authority*