

L.N. 317 of 2010**INCOME TAX ACT****(CAP. 123)****Capital Gains (Amendment) Rules, 2010**

IN exercise of the powers conferred by articles 5 and 96 of the Income Tax Act, the Minister of Finance, the Economy and Investment has made the following rules:-

Title and
commencement.

S.L. 123.27

1. (1) The title of these rules is the Capital Gains (Amendment) Rules, 2010 and they shall be read and construed as one with the Capital Gains Rules, hereinafter in these rules referred to as "the principal rules".

(2) These rules shall be deemed to have come into force on the 16th April, 2010.

Amends rule 5
of the principal
rules.

2. Rule 5 of the principal rules shall be amended as follows:

(a) in paragraph (c) of subrule (2) thereof, for the words "of that company." there shall be substituted the words "of that company:" and immediately after paragraph (c) there shall be added the following new provisos to the subrule:

"Provided that, notwithstanding the provisions of this subrule, where a transfer of shares in a company is a transfer referred to in article 5(9A)(d) of the Act, such transfer shall be treated as a transfer of a controlling interest in that company:

Provided further that, notwithstanding the provisions in this subrule, where a transfer of shares in a company is a deemed transfer of a proportion of a holding as referred to in article 5(13)(b)(i) of the Act, such transfer shall not be treated as a transfer of a controlling interest in a company.";

(b) sub-rule (6) thereof shall be amended as follows:

(i) for the words "Provided that -" there shall be substituted the following:

"Provided that, where during the financial year in which the transfer is made, but not later than the date of the transfer, the company has transferred or

acquired any immovable property or rights over an immovable property or any shares in a company, the net asset value of the company shall be that resulting from an accounting statement prepared by a certified public accountant holding a practicing certificate in auditing, to be drawn up as at the date of the transfer. The accounting statement shall consist of a balance sheet showing the position of the company as at the date of the transfer and shall be drawn up using the same methods and the same layout as used for its financial statements for the financial year preceding that in which the transfer is made:

Provided further that – "; and

(ii) in paragraph (d) of the second proviso, for the words "the book value of such shares shall not be considered in determining the net asset value of the company." there shall be substituted the words "the net asset value shall be reduced by the book value of such shares:

Provided that this paragraph shall not apply where the company has applied an amount standing to the credit of any of its reserve accounts funds, other than a capital redemption reserve and profits available for distribution in paying up to any extent the allotment of the said shares.";

(c) in subrule (13) thereof, for the words "in accordance with this rule" there shall be substituted the words "in accordance with rule 5A and this rule"; and

(d) subrule (15) thereof shall be amended as follows:

(i) in paragraph (b) thereof, for the words "contemplated in this paragraph:" there shall be substituted the words "contemplated in this paragraph; or"; and

(ii) immediately after paragraph (b) thereof, there shall be added the following new paragraph:

"(c) shares in a company referred to in article 5(9A)(a) of the Act:".

3. Immediately after rule 5 of the principal rules, there shall

Adds new rules 5A to 5C to the principal rules.

be added the following new rules:

" Transfer of value.

5A. (1) (i) Where as a result of a change in the issued share capital of a company or a change in voting rights attached to such shares, (hereinafter referred to as the "change"), a transfer of value as provided for in article 5(13)(b)(ii) of the Act is deemed to have taken place, the value transferred or acquired by a person shall be determined in accordance with the following formula:

$$Y = (A - B) + C - D$$
 where -

(a) 'Y' represents the amount to be determined;

(b) 'A' is the market value of the shares held in the company immediately before the change;

(c) 'B' is the market value of the shares held in the company immediately after the change;

(d) 'C' is the consideration paid for the acquisition of shares or additional shares issued by the company, where the change consists of an issue of share capital for consideration.

(e) 'D' is the amount paid by the company in respect of a cancellation of shares, where the change consists of a reduction of share capital of the company:

Provided that where the market value of the company immediately before the change does not exceed the value of the paid up share capital of such company, the value of 'Y' shall be taken as zero:

Provided further that where such person does not hold any shares in the company immediately before or after the change, the value of 'A' or 'B' in the said formula, as the case may be, shall be taken as zero:

Provided also that, where the change in the issued share capital consists of a conversion of securities, for the purpose of paragraphs (b) and (c) the market value of shares not being securities as defined in article 5(1)(b) of the Act shall be taken as zero.

(ii) Where the amount determined in accordance with the said formula is a positive amount, such person ("the transferor") shall be deemed for the purposes of article 5(13)(b)(ii) of the Act to have made a transfer of value equal to the said amount and such value shall be deemed for the purposes of the said article to have passed into other shares in or rights over the company held by any other person or persons. The amount so determined shall be the gains or profits referred to in the said article.

(iii) Where the amount determined in accordance with the said formula is a negative amount, such person ("the transferee") shall be deemed to have acquired value equal to the said amount and such value shall be deemed to have passed into shares in or rights over the company held by him.

(2) For the purpose of sub-rule (1):

(i) the market value of shares held in a company is a percentage of the market value of the said company corresponding to the percentage of the issued share capital represented by the nominal value of those shares;

(ii) where the issued share capital of the company is made up of different classes of shares (whether before or after the change in the issued share capital) or where the change consists of an alteration of voting rights, the market value of shares held in the company shall, notwithstanding paragraph (i), be the percentage of the market value of the said company corresponding to the percentage of the total voting rights in the company represented by the total voting rights attached to those shares;

(iii) notwithstanding paragraph (ii), where the value of 'Y' as determined by the application of paragraph (i) is higher than the value of 'Y' as determined by the application of paragraph (ii), the value of 'Y' is to be determined by the application of paragraph (i).

(3) The market value of a company shall, for the purpose of subrule (2), be determined in accordance with rules 5(6) and (7):

Provided that in determining the market value of the company the total net asset value referred to in rule 5(6) shall be that resulting from an accounting statement prepared by a certified public accountant holding a practicing certificate in auditing, to be drawn up as at the date of the deemed transfer of value. The accounting statement shall consist of two balance sheets showing the position of the company immediately before and after the change and shall be drawn up using the same methods and the same layout as used for its financial statements for the financial year preceding that in which the change takes place.

(4) (i) For the purpose of determining the chargeable gain there shall be allowed as a deduction against the gains or profits determined in accordance with subrule (1) of this rule, a portion of the cost of acquisition of the shares held by the transferor immediately before the change in the issued share capital or voting rights (herein after referred to as the "change"), to be determined in accordance with the following formula –

$$Z = ((A - B) / A) \times E \text{ where –}$$

(a) 'Z' represents the amount to be determined;

(b) 'A' is the market value of the shares held by the transferor immediately before the change as determined in sub-rule (1);

(c) 'B' is the market value of the shares held by the transferor immediately after the change as determined in sub-rule (1); and

(d) 'E' is the cost of acquisition of the shares held by the transferor immediately before the change:

Provided that the deduction to be allowed against the said gains or profits, shall in no case exceed such gains or profits:

Provided further that where the amount determined in accordance with the said formula is a negative amount, such amount shall be taken to be zero:

Provided also that no such deduction shall be allowed where the gains or profits determined in accordance with subrule (1) of this rule arise as a result of a change in the issued share capital consisting of a reduction of share capital.

(ii) on a subsequent transfer of the shares held by the transferor immediately before the change, the cost of acquisition shall be deemed to be the portion of the cost of acquisition not taken into account in determining the chargeable gain referred to in paragraph (i) of this subrule, and proviso (ii) of rule 5(5) shall not apply to the said transfer.

(iii) the acquisition cost of shares held by the transferee acquiring value referred to in subrule (1)(iii) shall be increased by the amount referred to in the said paragraph, which shall for such purpose be treated as a positive amount, and the aggregate amount so obtained shall, for the purpose of determining the chargeable gain on a subsequent transfer, be the cost of acquisition of the said shares:

Provided that where the said transferee, held shares in the company immediately before the change in the issued share capital and acquired further shares as a result of a change in the issued share capital consisting of an increase in the share capital of the company, the acquisition cost of the shares held and acquired shall be increased pro rata by the said amount.

Provided further that the acquisition cost of shares, not being securities as defined in article 5(1)(b) of the Act, held by the transferee immediately before the change in the issued share capital shall, for the purpose of determining the aggregate amount referred to in this paragraph, be taken to be zero:

Provided also that this paragraph shall only apply where the said transferee acquiring value has paid the relative duty as determined in accordance with article 42 of the Duty on Documents and Transfers Act in respect of the value so acquired.

(iv) on a subsequent transfer of the shares held by the transferor and transferee immediately after the change, made before the end of the financial year in which the change took place, the market value taken into account in determining the chargeable gain shall, notwithstanding the provisions of rule 5, not be lower than the value of 'B' referred to in sub-rule (1)(i)(c) of this rule, being the value that was taken into account in determining the value transferred or acquired, as the case may be.

(5) The transferor in any transfer of value referred to in this rule shall submit to the Commissioner a computation of the market value of the shares, made on the form prescribed in Schedule F, accompanied, where applicable, by the accounting statement referred to in subrule (3) and by an architect's valuation of the market value of the immovable property taken into account in determining the value of the company.

(6) The form referred to in subrule (5) shall be delivered in triplicate to the Commissioner and the transferor shall, together with the delivery, pay to the Commissioner the provisional tax due on the transfer in accordance with article 43 of the Income Tax Management Act.

(7) The Commissioner shall stamp one of the copies of the form submitted in accordance with subrule (5) in acknowledgement of the receipt of same and return it to the person who submitted it.

(8) For the purposes of this rule, the term "shares" or "share capital" shall exclude shares which do not participate in any way in the profits of a company other than by way of a fixed rate of return.

Applicability of article 5(9) of the Act.

5B. The provisions of article 5(9) of the Act shall not apply where the asset transferred from one company to another company consists of value in securities as provided for in article 5(13)(b)(ii) of the Act.

Transfer of shares acquired by means of separate acquisitions.

5C. For the purposes of identifying shares acquired with shares subsequently disposed of, in so far as the shares are of the same class, shares acquired at an earlier time shall for the purposes of determining the gains or profits referred to in article 5(1)(a)(ii) of the Act be deemed to have been disposed of before shares acquired at a later time."

Amendment of Schedule C to the principal rules.

4. Section II of Part 4 of Schedule C to the principal rules shall be amended as follows:

(a) in paragraph (a), the words "as resulting from its financial statements for the financial year preceding that in which the transfer is made" shall be deleted;

(b) paragraph (e) shall be renumbered as paragraph (f); and

(c) immediately after paragraph (d), the following new paragraph (e) shall be inserted:

"(e) Deduct book value of the shares referred to in Rule 5(6)(d)".

Amendment of Schedule E to the principal rules.

5. In Schedule E to the principal rules, for Part 4 thereof there shall be substituted the following:

"Part 4 - Details of exemption

State under which of the following provisions the share transfer is exempt:

Article 5(2)(e) Income Tax Act	
Article 5(6)(e) Income Tax Act	
Article 5(9) Income Tax Act	
Article 5(13) Income Tax Act [please quote specific paragraph]	
Article 5(14) Income Tax Act	
Article 12 Income Tax Act [please quote specific paragraph]	

Rule 3(1): Merchant Shipping (Taxation and Other Matters relating to Shipping Organisations) Regulations	".
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6. Immediately after Schedule E to the principal rules, there shall be added the new Schedule F as follows:

Adds new
Schedule F to
the principal
rules.

(Rule 5A(5))

Computation of the gains or profits referred to in article 5(13)(b)(ii)

(insert "Yes" or "No")

Nature of change	Alteration of voting rights	
	Allotment of shares	
	conversion of shares	
	Reduction in share capital	
Date of change		

Give details:	

In case of an allotment of shares state the amount paid to the company per share:	
In case of a reduction of share capital state the amount paid by the company per share:	

Immediately before change:

Type	Class	Votes per share	Nominal value per share (₹)	Number of Shares	Total voting rights	Total nominal value (₹)

Immediately after change:

Type	Class	Votes per share	Nominal value per share (₹)	Number of Shares	Total voting rights	Total nominal value (₹)

Note: Include only securities as defined in article 5(1)(b) of the Income Tax Act

[illegible]

Note: Include only securities as defined in article 5(1)(b) of the Income Tax Act

Company Name	
Income Tax Registration No	
Company year end	
Date of incorporation	
ROC No	

a	The Company holds shares directly or indirectly in other companies. <i>(if Yes attach details)</i>	
b	The Company or any companies referred to in (a) above own immovable property at the date of the change in the issued share capital or voting rights. <i>(if Yes attach details)</i>	
c	The company came into existence as a result of a restructuring. <i>(if Yes attach details specifying the date and whether a merger, division, etc)</i>	

The value transferred is to be determined as follows:

[illegible]

	Pre change	Post change
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[illegible]

Deduct book value of shares held in the company (as stated in the financial statements)	
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c	Total market value of immovable property as stated in the Architect's Valuation (as per Part 6)		
	less Total book value of immovable property		
	Adjustment to the value of immovable property:		

d	Value of goodwill: (as calculated in Sec IV below)		
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e	Deduct book value of preference shares (refer to Rule 5(6)(e))		
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g	Total adjusted market value of the company:		
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