

MINISTRY OF FINANCE
(Department of Revenue)
(CENTRAL BOARD OF DIRECT TAXES)

NOTIFICATION

New Delhi, the 17th October, 2016

INCOME-TAX

G.S.R. 982(E).—In exercise of the powers conferred by section 115QA read with section 295 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 (28th Amendment), Rules, 2016.
(2) They shall come into force from the 1st June, 2016.
2. In the Income-tax Rules, 1962, after PART-VII B, the following part shall be inserted, namely: -

‘PART VII-BA

Special Provisions Relating to Tax on Distributed income of Domestic Company for Buy-Back of Shares

40BB. Amount received by the company in respect of issue of share. (1) For the purposes of clause (ii) of the *Explanation* to sub-section (1) of section 115QA, the amount received by a company in respect of the share issued by it, being the subject matter of buy-back referred to in the said section, shall be determined in accordance with this rule.

(2) Where the share has been issued by a company to any person by way of subscription, amount actually received by the company in respect of such share including any amount actually received by way of premium shall be the amount received by the company for issue of such share.

(3) Where the company had at any time, prior to the buy-back of the share, returned any sum out of the amount received in respect of such share the amount as reduced by the sum so returned shall be the amount received by the company for issue of said share:

Provided that if the sum or any part of it so returned was chargeable to additional income-tax under section 115-O and the company has paid such additional income tax then such sum or part thereof, as the case may be, shall not be reduced.

(4) Where the share has been issued by a company under any plan or scheme under which an employees' stock option has been granted or as part of sweat equity shares, the fair market value of the share as computed in accordance with sub-rule (8) of rule 3, to the extent credited to the share capital and share premium account by the company shall be deemed to be the amount received by the company for issue of said share:

Explanation.- For the purposes of this sub-rule the expression “sweat equity shares” shall have the meaning assigned to it in clause (b) of the *Explanation* to sub-clause (vi) of clause (2) of section 17.

(5) Where the share has been issued by a company being an amalgamated company, under a scheme of amalgamation, *in lieu* of the share or shares of an amalgamating company, then, the amount received by the amalgamating company in respect of such share or shares determined in accordance with this rule, shall be deemed to be the amount received by the amalgamated company in respect of the share so issued by it.

(6) The amount received by a company, being a resulting company in respect of shares issued by it under a scheme of demerger, shall be the amount which bears the amount received by the demerged company in respect of the original shares determined in accordance with this rule in the same proportion as the net book value of the assets transferred in a demerger bears to the net worth of the demerged company immediately before such demerger.

(7) The amount received by the demerged company in respect of the original shares in the demerged company shall be deemed to have been reduced by the amount as so arrived under sub-rule (6).

(8) Where the share has been issued or allotted by the company as part of consideration for acquisition of any asset or settlement of any liability then the amount received by the company for issue of such share shall be determined in accordance with the following formula-

Amount received = A/B

Where,

A= an amount being lower of the following amounts-

- (a) the amount which bears to the fair market value of the asset or the liability, as determined by a merchant banker, the same proportion as the part of consideration being paid by issue of shares bears the total consideration;
- (b) the amount of consideration for acquisition of the asset or settlement of the liability to be paid in the form of shares, to the extent credited to the share capital and share premium account by the company;

B= the number of shares issued by the company as part of consideration:

Explanation.- For the purposes of this sub-rule, the term “merchant banker” shall have the meaning assigned to in sub-clause(b) of clause (iv) of sub-rule (8) of rule 3.

(9) Where the shares have been issued or allotted by a company on succession or conversion, as the case may be, of a firm into the company or succession of sole proprietary concern by the company, then the amount received by the company for issue of shares shall be determined in accordance with the following formula-

Amount received = $\frac{A-B}{C}$

A= book value of the assets in the balance-sheet as reduced by any amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act and any amount shown in the balance-sheet as asset including the unamortized amount of deferred expenditure which does not represent the value of any asset;

Explanation.-For determining book value of the assets, any change in the value of the assets consequent to their revaluation shall be ignored.

B= book value of liabilities shown in the balance-sheet, but does not include the following amounts, namely:-

- (a) capital, by whatever name called, of the proprietor or partners of the firm, as the case may be;
- (b) reserves and surpluses, by whatever name called, including balance in profit and loss account;
- (c) any amount representing provision for taxation, other than amount of tax paid, as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund

under the Income-tax Act, if any, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;

- (d) any amount representing provisions made for meeting liabilities, other than ascertained liabilities; and
- (e) any amount representing contingent liabilities,

C= number of shares issued on conversion or succession.

(10) Where the share has been issued or allotted, without any consideration, on the basis of existing shareholding in the company, the consideration in respect of such share shall be deemed to be “Nil”.

(11) Where the shares have been issued on conversion of preference shares or bond or debenture, debenture-stock or deposit certificate in any form or warrants or any other security issued by the company, the amount received by the company in respect of such instrument as so converted.

(12) Where the share being bought back is held in dematerialised form and the same cannot be distinctly identified, the amount received by the company in respect of such share shall be the amount received for the issue of share determined in accordance with this rule on the basis of the first-in-first-out method.

(13) In any other case, the face value of the share shall be deemed to be the amount received by the company for issue of the share.’

[Notification No. 94 /2016 [F. No. 370133/30/2016-TPL]

NIRAJ KUMAR, Under Secy. (Tax Policy & Legislation)

Note : The principal rules were published in the Gazette of India Extraordinary, part III, section 3, sub-section (i), *vide* notification number S.O. 969(E), dated the, 26th March, 1962 and were last amended *vide* notification number S.O. 3179(E) dated the 7th October, 2016.