

**F.No. 5/13/2023-DIPAM-V(E)(E-300585916)**  
**Government of India**  
**Ministry of Finance**  
**Department of Investment and Public Asset Management**

**Room No.221, Block 11 & 14**  
**CGO Complex, Lodhi Road**  
**New Delhi – 110 003**  
**Dated:12.06.2023**

**OFFICE MEMORANDUM**

**Subject: Amendment to Income Tax Rules, 1962 w.r.t. disinvestment- reg.**

The undersigned is directed to share the following two enclosed amendments in the Income Tax Act, 1961 and Rules thereunder:

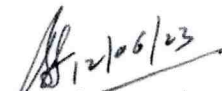
- (a) A copy of Section 72A of Income-tax Act, 1961 as amended vide Finance Act, 2023; and  
(b) A copy of the Gazette Notification No. G.S.R. 403(E) dated 31.05.2023 on amendment of Rule 11UAC under Income Tax Rules, 1962.

2. Section 72A of the Income-tax Act, 1961 deals with the set off of accumulated loss and unabsorbed depreciation allowance in amalgamation or demerger cases. Previously, in section 72A of Income-tax Act, 1961, the definition of "strategic disinvestment" included the sale of shareholding only when sold by the Central Government or any State Government. Now, the said definition has been broadened to include sale of shares even when done by any "public sector company" (PSC). However, any such sale of shares shall qualify a "strategic disinvestment" only if sale of such shares by the entity (Central Government, State Government or PSC alone or any two of them or all of them) reduce its shareholding below 51% and results in transfer of control to the buyer. Provided the entity was having more than 51% of shares before such sale.

3. With respect to the amendment in Rule 11UAC, earlier any person receiving shares of a "public sector company" (PSC) sold by Central and State Governments under "strategic disinvestment" were given exemption from deeming provision of "Fair Value Determination" of shares sold. The amended Rule 11UAC of Income Tax Rules, 1962, extends this exemption to a person who receives such shares of a PSC or a company under "strategic disinvestment" even when such shares are sold by a PSC.

4. The information may be circulated to all the CPSEs under your administrative control.

**Encl: As above.**

  
(Bhupendra Bahuguna)  
Under Secretary to the Government of India  
Tel.:011-24360163  
Email: b.bahuguna@nic.in

**To**

**All Ministries/Departments as per list.**



## Income Tax Department

Government of India

### Provisions relating to carry forward and set off of accumulated loss and unabsorbed depreciation allowance in amalgamation or demerger, etc.

72A. (1) Where there has been an amalgamation of—

- (a) a company owning an industrial undertaking or a ship or a hotel with another company; or
- (b) a banking company referred to in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949) with a specified bank; or

<sup>38</sup>[(c) one or more public sector company or companies with one or more public sector company or companies; or

- (d) an erstwhile public sector company with one or more company or companies, if the share purchase agreement entered into under strategic disinvestment restricted immediate amalgamation of the said public sector company and the amalgamation is carried out within five years from the end of the previous year in which the restriction on amalgamation in the share purchase agreement ends,]

then, notwithstanding anything contained in any other provision of this Act, the accumulated loss and the unabsorbed depreciation of the amalgamating company shall be deemed to be the loss or, as the case may be, allowance for unabsorbed depreciation of the amalgamated company for the previous year in which the amalgamation was effected, and other provisions of this Act relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly:

<sup>39</sup>[**Provided** that the accumulated loss and the unabsorbed depreciation of the amalgamating company, in case of an amalgamation referred to in clause (d), which is deemed to be the loss or, as the case may be, the allowance for un-absorbed depreciation of the amalgamated company, shall not be more than the accumulated loss and unabsorbed depreciation of the public sector company as on the date on which the public sector company ceases to be a public sector company as a result of strategic disinvestment.

*Explanation.*—For the purposes of clause (d),—

- (i) "control" shall have the same meaning as assigned to in clause (27) of section 2 of the Companies Act, 2013 (18 of 2013);
- (ii) "erstwhile public sector company" means a company which was a public sector company in earlier previous years and ceases to be a public sector company by way of strategic disinvestment by the Government;

<sup>40</sup>[(iii) "*strategic disinvestment*" means sale of shareholding by the Central Government or any State Government or a public sector company, in a public sector company or in a company, which results in—

- (a) reduction of its shareholding to below fifty-one per cent; and
- (b) transfer of control to the buyer:

**Provided** that the condition laid down in sub-clause (a) shall apply only in a case where shareholding of the Central Government or the State Government or the public sector company was above fifty-one per cent before such sale of shareholding:

**Provided further** that requirement of transfer of control referred to in sub-clause (b) may be carried out by the Central Government or the State Government or the public sector company or any two of them or all of them.]]

(2) Notwithstanding anything contained in sub-section (1), the accumulated loss shall not be set off or carried forward and the unabsorbed depreciation shall not be allowed in the assessment of the

amalgamated company unless—

(a) the amalgamating company—

- (i) has been engaged in the business, in which the accumulated loss occurred or depreciation remains unabsorbed, for three or more years;
- (ii) has held continuously as on the date of the amalgamation at least three-fourths of the book value of fixed assets held by it two years prior to the date of amalgamation;

(b) the amalgamated company—

- (i) holds continuously for a minimum period of five years from the date of amalgamation at least three-fourths of the book value of fixed assets of the amalgamating company acquired in a scheme of amalgamation;
- (ii) continues the business of the amalgamating company for a minimum period of five years from the date of amalgamation;
- (iii) fulfils such other conditions as may be prescribed<sup>41</sup> to ensure the revival of the business of the amalgamating company or to ensure that the amalgamation is for genuine business purpose.

(3) In a case where any of the conditions laid down in sub-section (2) are not complied with, the set off of loss or allowance of depreciation made in any previous year in the hands of the amalgamated company shall be deemed to be the income of the amalgamated company chargeable to tax for the year in which such conditions are not complied with.

(4) Notwithstanding anything contained in any other provisions of this Act, in the case of a demerger, the accumulated loss and the allowance for unabsorbed depreciation of the demerged company shall—

- (a) where such loss or unabsorbed depreciation is directly relatable to the undertakings transferred to the resulting company, be allowed to be carried forward and set off in the hands of the resulting company;
- (b) where such loss or unabsorbed depreciation is not directly relatable to the undertakings transferred to the resulting company, be apportioned between the demerged company and the resulting company in the same proportion in which the assets of the undertakings have been retained by the demerged company and transferred to the resulting company, and be allowed to be carried forward and set off in the hands of the demerged company or the resulting company, as the case may be.

(5) The Central Government may, for the purposes of this Act, by notification in the Official Gazette, specify such conditions as it considers necessary to ensure that the demerger is for genuine business purposes.

(6) Where there has been reorganisation of business, whereby, a firm is succeeded by a company fulfilling the conditions laid down in clause (xiii) of section 47 or a proprietary concern is succeeded by a company fulfilling the conditions laid down in clause (xiv) of section 47, then, notwithstanding anything contained in any other provision of this Act, the accumulated loss and the unabsorbed depreciation of the predecessor firm or the proprietary concern, as the case may be, shall be deemed to be the loss or allowance for depreciation of the successor company for the purpose of previous year in which business reorganisation was effected and other provisions of this Act relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly:

**Provided** that if any of the conditions laid down in the proviso to clause (xiii) or the proviso to clause (xiv) to section 47 are not complied with, the set off of loss or allowance of depreciation made in any previous year in the hands of the successor company, shall be deemed to be the income of the company chargeable to tax in the year in which such conditions are not complied with.

(6A) Where there has been reorganisation of business whereby a private company or unlisted public company is succeeded by a limited liability partnership fulfilling the conditions laid down in the proviso to clause (xiiib) of section 47, then, notwithstanding anything contained in any other provision of this Act, the accumulated loss and the unabsorbed depreciation of the predecessor company, shall be deemed to be the loss or allowance for depreciation of the successor limited liability partnership for the purpose of the previous year in which business reorganisation was effected and other provisions of this

Act relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly:

**Provided** that if any of the conditions laid down in the proviso to clause (xiiib) of section 47 are not complied with, the set off of loss or allowance of depreciation made in any previous year in the hands of the successor limited liability partnership, shall be deemed to be the income of the limited liability partnership chargeable to tax in the year in which such conditions are not complied with.

(7) For the purposes of this section,—

(a) "accumulated loss" means so much of the loss of the predecessor firm or the proprietary concern or the private company or unlisted public company before conversion into limited liability partnership or the amalgamating company or the demerged company, as the case may be, under the head "Profits and gains of business or profession" (not being a loss sustained in a speculation business) which such predecessor firm or the proprietary concern or the company or amalgamating company or demerged company, would have been entitled to carry forward and set off under the provisions of section 72 if the reorganisation of business or conversion or amalgamation or demerger had not taken place;

(aa) "industrial undertaking" means any undertaking which is engaged in—

(i) the manufacture or processing of goods; or

(ii) the manufacture of computer software; or

(iii) the business of generation or distribution of electricity or any other form of power; or

(iiia) the business of providing telecommunication services, whether basic or cellular, including radio paging, domestic satellite service, network of trunking, broadband network and internet services; or

(iv) mining; or

(v) the construction of ships, aircrafts or rail systems;

(b) "unabsorbed depreciation" means so much of the allowance for depreciation of the predecessor firm or the proprietary concern or the private company or unlisted public company before conversion into limited liability partnership or the amalgamating company or the demerged company, as the case may be, which remains to be allowed and which would have been allowed to the predecessor firm or the proprietary concern or the company or amalgamating company or demerged company, as the case may be, under the provisions of this Act, if the reorganisation of business or conversion or amalgamation or demerger had not taken place;

(c) "specified bank" means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955) or a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959) or a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980).



# भारत का राजपत्र

## The Gazette of India

सी.जी.-डी.एल.-आ. 31052023-246186  
CG-DL-E-31052023-246186

असाधारण  
EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (i)  
PART II—Section 3—Sub-section (i)

प्राधिकार से प्रकाशित  
PUBLISHED BY AUTHORITY

सं. 329]  
No. 329]

नई दिल्ली, बुधवार, मई 31, 2023/ज्येष्ठ 10, 1945  
NEW DELHI, WEDNESDAY, MAY 31, 2023/JYAISHTHA 10, 1945

वित्त मंत्रालय

(राजस्व विभाग)

(केंद्रीय प्रत्यक्ष कर बोर्ड)

अधिसूचना

नई दिल्ली, 31 मई, 2023

आय-कर

सा.का.नि. 403(अ).—केंद्रीय प्रत्यक्ष कर बोर्ड, आय-कर अधिनियम, 1961 (1961 की धारा 43) की धारा 295 के माथ पठित धारा 56 की उपधारा (2) के खंड (X) के परंतुक के खंड (XI) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, आय-कर नियम, 1962 का और संशोधन करने के लिए निम्नलिखित नियम बनाता है, अर्थात्:-

- संक्षिप्त नाम और प्रारंभ - (1) इन नियमों का संक्षिप्त नाम आय-कर (आठवाँ संशोधन) नियम, 2023 है।  
(2) ये 1 अप्रैल, 2023 से प्रवृत्त होंगे तथा निर्धारण वर्ष 2023-2024 और पश्चातवर्ती निर्धारण वर्षों को लागू होंगे।
- आय-कर नियम, 1962 के नियम 11पकग के खंड (4) के स्थान पर निम्नलिखित खंड रखा जाएगा, अर्थात्:-

“(4) सामरिक विनिवेश के अधीन किमी पब्लिक सैक्टर कंपनी या केंद्रीय सरकार या किसी राज्य सरकार में किसी व्यक्ति को प्राप्त किमी पब्लिक सैक्टर कंपनी या कंपनी की कोई जंगम मंपत्ति, जो साम्था शेयर है।

**स्पष्टीकरण-** इस खंड के प्रयोजनों के लिए, 'सामरिक विनिवेश' का वही अर्थ होगा, जो उसका धारा 72क की उपधारा (1) के खंड (घ) के स्पष्टीकरण के खंड (iii) में है।

[अधिसूचना सं. 35 /2023/फा. सं. 370142/14/2023-टीपीएल]

जिवितेश आनंद, अवर सचिव (कर नीति और विधान)

**टिप्पण :** मूल नियम भारत के राजपत्र, असाधारण, भाग II, खंड 3, उपखंड (ii) में संख्या का.आ. 969(अ), तारीख 26 मार्च, 1962 द्वारा प्रकाशित किए गए थे और उनका अंतिम संशोधन अधिसूचना संख्या सा.का.नि. 399(अ), तारीख 30 मई, 2023 द्वारा आय-कर (सातवां संशोधन) नियम, 2023 द्वारा किया गया।

**स्पष्टीकारक ज्ञापन :** यह प्रमाणित किया जाता है कि इस अधिसूचना को भूतलक्षी प्रभाव देने से कोई व्यक्ति विपरीत रूप से प्रभावित नहीं हो रहा है।

**MINISTRY OF FINANCE**

(Department of Revenue)

(CENTRAL BOARD OF DIRECT TAXES)

**NOTIFICATION**

New Delhi, the 31<sup>st</sup> May, 2023

**INCOME-TAX**

**G.S.R. 403(E).**—In exercise of the powers conferred by clause (XI) of the proviso to clause (x) of sub-section (2) of section 56 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. **Short title and commencement.**— (1) These rules may be called the Income-tax (Fifth Amendment) Rules, 2023.

(2) They shall come into force from the 1st day of April, 2023 and shall be applicable for the assessment year 2023-2024 and subsequent assessment years.

2. In the Income-tax Rules, 1962, in rule 11UAC, for clause (4), the following clause shall be substituted, namely:

*“(4) any movable property, being equity shares, of a public sector company or a company, received by a person from a public sector company or the Central Government or any State Government under strategic disinvestment.*

**Explanation** - For the purposes of this clause, 'strategic disinvestment' shall have the same meaning as assigned to it in clause (iii) of Explanation to clause (d) of sub-section (1) of section 72A.”

[Notification No. 35 /2023/F, No. 370142/ 14 /2023-TPL]

JIVITESH ANAND, Under Secy. (Tax Policy and Legislation)

**Note :** The principal rules were published in the Gazette of India, Extraordinary, Part-II, Section-3, Sub-section (ii) vide number S.O. 969(E), dated the 26th March, 1962 and last amended by the Income-tax (Seventh Amendment) Rules, 2023, vide notification number G.S.R. 399 (E), dated 30<sup>th</sup> May, 2023

**Explanatory Memorandum :** It is certified that no person is being adversely affected by giving retrospective effect to this notification.