

Transactions not regarded as transfer

47. Nothing contained in section 45 shall apply to the following transfers :—

(i) any distribution of capital assets on the total or partial partition of a Hindu undivided family;

(ii) [***]

(iii) any transfer of a capital asset under a gift or will or an irrevocable trust :

Provided that this clause shall not apply to transfer under a gift or an irrevocable trust of a capital asset being shares, debentures or warrants allotted by a company directly or indirectly to its employees under [any Employees' Stock Option Plan or Scheme of the company offered to such employees in accordance with the guidelines issued by the Central Government in this behalf];

(iv) any transfer of a capital asset by a company to its subsidiary company, if—

(a) the parent company or its nominees hold the whole of the share capital of the subsidiary company, and

(b) the subsidiary company is an Indian company;

(v) any transfer of a capital asset by a subsidiary company to the holding company, if—

(a) the whole of the share capital of the subsidiary company is held by the holding company, and

(b) the holding company is an Indian company :

Provided that nothing contained in clause (iv) or clause (v) shall apply to the transfer of a capital asset made after the 29th day of February, 1988, as stock-in-trade;

(vi) any transfer, in a scheme of amalgamation, of a capital asset by the amalgamating company to the amalgamated company if the amalgamated company is an Indian company;

(via) any transfer, in a scheme of amalgamation, of a capital asset being a share or shares held in an Indian company, by the amalgamating foreign company to the amalgamated foreign company, if—

(a) at least twenty-five per cent of the shareholders of the amalgamating foreign company continue to remain shareholders of the amalgamated foreign company, and

(b) such transfer does not attract tax on capital gains in the country, in which the amalgamating company is incorporated;

(*viaa*) any transfer, in a scheme of amalgamation of a banking company with a banking institution sanctioned and brought into force by the Central Government under sub-section (7) of section 45 of the Banking Regulation Act, 1949 (10 of 1949), of a capital asset by the banking company to the banking institution.

Explanation.—For the purposes of this clause,—

(i) "banking company" shall have the same meaning assigned to it in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);

(ii) "banking institution" shall have the same meaning assigned to it in sub-section (15) of section 45 of the Banking Regulation Act, 1949 (10 of 1949);]

¹ [(*viab*) any transfer, in a scheme of amalgamation, of a capital asset, being a share of a foreign company, referred to in the *Explanation 5* to clause (i) of sub-section (1) of section 9, which derives, directly or indirectly, its value substantially from the share or shares of an Indian company, held by the amalgamating foreign company to the amalgamated foreign company, if—

(A) at least twenty-five per cent. of the shareholders of the amalgamating foreign company continue to remain shareholders of the amalgamated foreign company; and

(B) such transfer does not attract tax on capital gains in the in which the amalgamating company is incorporated]

(*vib*) any transfer, in a demerger, of a capital asset by the demerged company to the resulting company, if the resulting company is an Indian company;

(*vic*) any transfer in a demerger, of a capital asset, being a share or shares held in an Indian company, by the demerged foreign company to the resulting foreign company, if—

(a) the shareholders holding not less than three-fourths in value of the shares of the demerged foreign company continue to remain shareholders of the resulting foreign company; and

(b) such transfer does not attract tax on capital gains in the country, in which the demerged foreign company is incorporated :

Provided that the provisions of sections 391 to 394 of the Companies Act, 1956 (1 of 1956) shall not apply in case of demergers referred to in this clause;

(*vica*) any transfer in a business reorganisation, of a capital asset by the predecessor co-operative bank to the successor co-operative bank;

¹ Inserted with effect from April 1, 2016

(*vicb*) any transfer by a shareholder, in a business reorganisation, of a capital asset being a share or shares held by him in the predecessor co-operative bank if the transfer is made in consideration of the allotment to him of any share or shares in the successor co-operative bank.

Explanation.—For the purposes of clauses (*vica*) and (*vicb*), the expressions "business reorganisation", "predecessor co-operative bank" and "successor co-operative bank" shall have the meanings respectively assigned to them in section 44DB;]

²[(*vicc*) any transfer in a demerger, of a capital asset, being a share of a foreign company, referred to in the *Explanation 5* to clause (*i*) of subsection (*I*) of section 9, which derives, directly or indirectly, its value substantially from the share or shares of an Indian company, held by the demerged foreign company to the resulting foreign company, if—

(*a*) the shareholders, holding not less than three-fourths in value of the shares of the demerged foreign company, continue to remain shareholders of the resulting foreign company; and

(*b*) such transfer does not attract tax on capital gains in the country in which the demerged foreign company is incorporated:

Provided that the provisions of sections 391 to 394 of the Companies Act, 1956 shall not apply in case of demergers referred to in this clause] ;

(*vid*) any transfer or issue of shares by the resulting company, in a scheme of demerger to the shareholders of the demerged company if the transfer or issue is made in consideration of demerger of the undertaking;]

(*vii*) any transfer by a shareholder, in a scheme of amalgamation, of a capital asset being a share or shares held by him in the amalgamating company, if—

(*a*) the transfer is made in consideration of the allotment to him of any share or shares in the amalgamated company except where the shareholder himself is the amalgamated company, and

(*b*) the amalgamated company is an Indian company;

(*viii*) any transfer of a capital asset, being bonds or [Global Depository Receipts] referred to in sub-section (1) of section 115AC, made outside India by a non-resident to another non-resident;

(*viib*) any transfer of a capital asset, being a Government Security carrying a periodic payment of interest, made outside India through an intermediary dealing in settlement of securities, by a non-resident to another non-resident.

² Inserted with effect from April 1, 2016

Explanation.—For the purposes of this clause, “Government Security” shall have the meaning assigned to it in clause (b) of section 2 of the Securities Contracts (Regulation) Act, 1956;]

(viii) any transfer of agricultural land in India effected before the 1st day of March, 1970;

(ix) any transfer of a capital asset, being any work of art, archaeological, scientific or art collection, book, manuscript, drawing, painting, photograph or print, to the Government or a University or the National Museum, National Art Gallery, National Archives or any such other public museum or institution as may be notified by the Central Government in the Official Gazette to be of national importance or to be of renown throughout any State or States.

Explanation.—For the purposes of this clause, "University" means a University established or incorporated by or under a Central, State or Provincial Act and includes an institution declared under section 3 of the University Grants Commission Act, 1956 (3 of 1956), to be a University for the purposes of that Act;]

(x) any transfer by way of conversion of [bonds or] debentures, debenture-stock or deposit certificates in any form, of a company into shares or debentures of that company;

(xa) any transfer by way of conversion of bonds referred to in clause (a) of sub-section (1) of section 115AC into shares or debentures of any company;

(xi) any transfer made on or before the 31st day of December, [1998] by a person (not being a company) of a capital asset being membership of a recognised stock exchange to a company in exchange of shares allotted by that company to the transferor.

Explanation.—For the purposes of this clause, the expression "membership of a recognised stock exchange" means the membership of a stock exchange in India which is recognised under the provisions of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(xii) any transfer of a capital asset, being land of a sick industrial company, made under a scheme prepared and sanctioned under section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) where such sick industrial company is being managed by its workers' co-operative :

Provided that such transfer is made during the period commencing from the previous year in which the said company has become a sick industrial company under sub-section (1) of section 17 of that Act and ending with the previous year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses.

Explanation.—For the purposes of this clause, "net worth" shall have the meaning assigned to it in clause (ga) of sub-section (1) of section 3 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986);]

- (xiii) any transfer of a capital asset or intangible asset by a firm to a company as a result of succession of the firm by a company in the business carried on by the firm, or any transfer of a capital asset to a company in the course of [demutualisation or] corporatisation of a recognised stock exchange in India as a result of which an association of persons or body of individuals is succeeded by such company :

Provided that—

- (a) all the assets and liabilities of the firm [or of the association of persons or body of individuals] relating to the business immediately before the succession become the assets and liabilities of the company;
- (b) all the partners of the firm immediately before the succession become the shareholders of the company in the same proportion in which their capital accounts stood in the books of the firm on the date of the succession;
- (c) the partners of the firm do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in the company; and
- (d) the aggregate of the shareholding in the company of the partners of the firm is not less than fifty per cent of the total voting power in the company and their shareholding continues to be as such for a period of five years from the date of the succession;
- (e) the [demutualisation or] corporatisation of a recognised stock exchange in India is carried out in accordance with a scheme for [demutualisation or] corporatisation which is approved by the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);
- (xiiia) any transfer of a capital asset being a membership right held by a member of a recognised stock exchange in India for acquisition of shares and trading or clearing rights acquired by such member in that recognised stock exchange in accordance with a scheme for demutualisation or corporatisation which is approved by the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);]
- (xiiib) any transfer of a capital asset or intangible asset by a private company or unlisted public company (hereafter in this clause referred to as the company) to a limited liability partnership or any transfer of a share or shares held in the company by a shareholder as a result of conversion of the company into a limited liability partnership in accordance with the provisions of section 56 or section 57 of the Limited Liability Partnership Act, 2008 (6 of 2009):

Provided that—

- (a) all the assets and liabilities of the company immediately before the conversion become the assets and liabilities of the limited liability partnership;
- (b) all the shareholders of the company immediately before the conversion become the partners of the limited liability partnership and their capital contribution and profit sharing ratio in the limited liability partnership are in the same proportion as their shareholding in the company on the date of conversion;
- (c) the shareholders of the company do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of share in profit and capital contribution in the limited liability partnership;
- (d) the aggregate of the profit sharing ratio of the shareholders of the company in the limited liability partnership shall not be less than fifty per cent at any time during the period of five years from the date of conversion;
- (e) the total sales, turnover or gross receipts in the business of the company in any of the three previous years preceding the previous year in which the conversion takes place does not exceed sixty lakh rupees; and
- (f) no amount is paid, either directly or indirectly, to any partner out of balance of accumulated profit standing in the accounts of the company on the date of conversion for a period of three years from the date of conversion.

Explanation.—For the purposes of this clause, the expressions "private company" and "unlisted public company" shall have the meanings respectively assigned to them in the Limited Liability Partnership Act, 2008 (6 of 2009);]

- (xiv) where a sole proprietary concern is succeeded by a company in the business carried on by it as a result of which the sole proprietary concern sells or otherwise transfers any capital asset or intangible asset to the company :

Provided that—

- (a) all the assets and liabilities of the sole proprietary concern relating to the business immediately before the succession become the assets and liabilities of the company;
- (b) the shareholding of the sole proprietor in the company is not less than fifty per cent of the total voting power in the company and his shareholding continues to remain as such for a period of five years from the date of the succession; and

(c) the sole proprietor does not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in the company;

(xv) any transfer in a scheme for lending of any securities under an agreement or arrangement, which the assessee has entered into with the borrower of such securities and which is subject to the guidelines issued by the Securities and Exchange Board of India, established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) [or the Reserve Bank of India constituted under sub-section (1) of section 3 of the Reserve Bank of India Act, 1934 (2 of 1934)], in this regard;]

[(xvi) any transfer of a capital asset in a transaction of reverse mortgage under a scheme made and notified by the Central Government.]

(xvii) any transfer of a capital asset, being share of a special purpose vehicle to a business trust in exchange of units allotted by that trust to the transferor.

Explanation.—For the purposes of this clause, the expression “special purpose vehicle” shall have the meaning assigned to it in the Explanation to clause (23FC) of section 10.

³[(xviii) any transfer by a unit holder of a capital asset, being a unit or units, held by him in the consolidating scheme of a mutual fund, made in consideration of the allotment to him of a capital asset, being a unit or units, in the consolidated scheme of the mutual fund:

Provided that the consolidation is of two or more schemes of equity oriented fund or of two or more schemes of a fund other than equity oriented fund.

Explanation.— For the purposes of this clause,—

(a) “consolidated scheme” means the scheme with which the consolidating scheme merges or which is formed as a result of such merger;

(b) “consolidating scheme” means the scheme of a mutual fund which merges under the process of consolidation of the schemes of mutual fund in accordance with the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 made under the Securities and Exchange Board of India Act, 1992;

(c) “equity oriented fund” shall have the meaning assigned to it in clause (38) of section 10;

(d) “mutual fund” means a mutual fund specified under clause (23D) of section 10]

³ Inserted with effect from April 1, 2016