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INCOME-TAX ACT, 2025

Chapter X: SPECIAL PROVISIONS RELATING TO AVOIDANCE OF TAX

Section 163 - Meaning of international transaction.

(1) For the purposes of this Chapter, the expression “international transaction” means a transaction between two or more associated enterprises, one of which is necessarily a non-resident, and includes—

(a) the purchase, sale, transfer, lease or use of tangible property, including building, transportation vehicle, machinery, equipment, tools, plant, furniture, commodity or any other article, product or thing;

(b) the purchase, sale, transfer, lease or use of intangible property, including the transfer of ownership or the provision of use of rights regarding land use, copyrights, patents, trademarks, licences, franchises, customer list, marketing channel, brand, commercial secret, know-how, industrial property right, exterior design or practical and new design or any other business or commercial rights of similar nature;

(c) capital financing, lending or borrowing of money, including,––

(i) any type of long-term or short-term borrowing, lending or guarantee; or

(ii) purchase or sale of marketable securities; or

(iii) any type of advance, payments or deferred payment or receivable or any other debt arising during the course of business;

(d) provision of services, including provision of market research, market development, marketing management, administration, technical service, repairs, design, consultation, agency, scientific research, legal or accounting service;

(e) a transaction of business restructuring or reorganisation, entered into by an enterprise with an associated enterprise, irrespective of the fact that it has any bearing on the profit, income, losses or assets of such enterprises at the time of the transaction or at any future date;

(f) a mutual agreement or arrangement between two or more associated enterprises for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises;

(g) any other transaction having a bearing on the profits, income, losses or assets of such enterprises.

(2) A transaction entered into by an enterprise with a person other than an associated enterprise (“other person”) shall, for sub-section (1), be deemed to be an international transaction entered into between two associated enterprises, if—

(a) there exists a prior agreement in relation to the relevant transaction between such other person and the associated enterprise; or

(b) the terms of the relevant transaction are determined, in substance, between such other person and the associated enterprise,

and the enterprise or the associated enterprise or both of them are non-residents, irrespective of whether the other person is a non-resident or not.

(3) The expression “intangible property” shall include:—

(a) marketing related intangible assets, such as, trademarks, trade names, brand names, logos;

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(b) technology related intangible assets, such as, process patents, patent applications, technical documentation such as laboratory notebooks, technical know-how;

(c) artistic related intangible assets, such as, literary works and copyrights, musical compositions, copyrights, maps, engravings;

(d) data processing related intangible assets, such as, proprietary computer software, software copyrights, automated databases, and integrated circuit masks and masters;

(e) engineering related intangible assets, such as, industrial design, product patents, trade secrets, engineering drawing and schematics, blueprints, proprietary documentation;

(f) customer related intangible assets, such as, customer lists, customer contracts, customer relationship, open purchase orders;

(g) contract related intangible assets, such as, favourable supplier, contracts, licence agreements, franchise agreements, non-compete agreements;

(h) human capital related intangible assets, such as, trained and organised work force, employment agreements, union contracts;

(i) location related intangible assets, such as, leasehold interest, mineral exploitation rights, easements, air rights, water rights;

(j) goodwill related intangible assets, such as, institutional goodwill, professional practice goodwill, personal goodwill of professional, celebrity goodwill, general business going concern value;

(k) methods, programmes, systems, procedures, campaigns, surveys, studies, forecasts, estimates, customer lists, or technical data;

(l) any other similar item that derives its value from its intellectual content rather than its physical attributes.

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