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INCOME-TAX ACT, 2025

Chapter X: SPECIAL PROVISIONS RELATING TO AVOIDANCE OF TAX

Section 174 - Avoidance of income-tax by transactions resulting in transfer of income to non-residents.

(1) Where there is a transfer of assets before and after the commencement of this Act, and by virtue or in consequence of it,––

(a) either alone; or

(b) in conjunction with associated operations,

any income becomes payable to a non-resident, the provisions of this section shall apply.

(2) If any person (“first mentioned person”), by means of any transfer referred to in sub-section (1), either alone or in conjunction with associated operations, acquires any rights,––

(a) by virtue of which he has, within the meaning of this section, power to enjoy, whether forthwith or in the future, any income of a non-resident; and

(b) such income would have been chargeable to income-tax if it were such first mentioned person’s income,

then, that income shall, whether or not it would have been chargeable to income-tax under any other provisions of this Act, be deemed to be the income of such first mentioned person for all the purposes of this Act.

(3) If any such first mentioned person receives or is entitled to receive any capital sum,––

(a) the payment of which is in any way connected with the transfer or any associated operations; and

(b) whether before or after any such transfer,

then any income, which has become the income of a non-resident by virtue or in consequence of such transfer, either alone or in conjunction with associated operations, shall be deemed to be the income of such first mentioned person for all the purposes of this Act, whether or not it would have been chargeable to income-tax under any other provisions of this Act.

(4) Where any person has been charged to income-tax on any income deemed to be his under the provisions of this section and that income is subsequently received by him, whether as income or in any other form, it shall not again be deemed to form part of his income for the purposes of this Act.

(5) The provisions of this section shall not apply if the first mentioned person in sub-section (2) or (3) shows to the satisfaction of the Assessing Officer that—

(a) neither the transfer nor any associated operation had for its purpose or for one of its purposes the avoidance of liability to taxation; or

(b) the transfer and all associated operations were bona fide commercial transactions and were not designed for the purpose of avoiding liability to taxation.

(6) In this section,—

(a) references to assets representing any assets, income or accumulations of income include references to shares in or obligation of any company to which, or obligation of any other person to whom, those

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assets, that income or those accumulations are or have been transferred;

(b) any body corporate incorporated outside India shall be treated as if it were a non-resident;

(c) a person shall be deemed to have power to enjoy the income of a non-resident if—

(i) the income is in fact so dealt with by any person as to be calculated at some point of time and, whether in the form of income or not, to enure for the benefit of the first mentioned person in sub-section (2) or (3); or

(ii) the receipt or accrual of the income operates to increase the value to such first mentioned person of any assets held by him or for his benefit; or

(iii) such first mentioned person receives or is entitled to receive at any time any benefit provided or to be provided out of that income or out of moneys which are or shall be available for the purpose by reason of the effect or successive effects of the associated operations on that income and assets which represent that income; or

(iv) such first mentioned person has power by means of the exercise of any power of appointment or power of revocation or otherwise to obtain for himself, whether with or without the consent of any other person, the beneficial enjoyment of the income; or

(v) such first mentioned person is able, in any manner whatsoever and whether directly or indirectly, to control the application of the income;

(d) in determining whether a person has power to enjoy income, regard shall be had to the substantial result and effect of the transfer and any associated operations, and all benefits which may at any time accrue to such person as a result of the transfer and any associated operations shall be taken into account irrespective of the nature or form of the benefits.

(7) For the purposes of this section,—

(a) “assets” includes property or rights of any kind and “transfer” in relation to rights includes the creation of those rights;

(b) “associated operation” in relation to any transfer, means an operation of any kind effected by any person in relation to—

(i) any of the assets transferred; or

(ii) any assets representing, whether directly or indirectly, any of the assets transferred; or

(iii) the income arising from any such assets; or

(iv) any assets representing, whether directly or indirectly, the accumulations of income arising from any such assets;

(c) “benefit” includes a payment of any kind;

(d) “capital sum” means—

(i) any sum paid or payable by way of a loan or repayment of a loan; and

(ii) any other sum paid or payable otherwise than as income, being a sum, which is not paid or payable for full consideration in money or money’s worth.

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