

Finance Act 1999

Section 3 - Amendment of Section 2

In section 2 of the Income-tax Act, -

(a) in clause (1B), in sub-clause (iii), for the words "nine-tenths", the words "three-fourths" shall be substituted with effect from the 1st day of April, 2000;

(b) in clause (14), after sub-clause (v), the following sub-clause shall be inserted with effect from the 1st day of April, 2000, namely :-

"(vi) Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 notified by the Central Government;";

(c) after clause (19A), the following clauses shall be inserted with effect from the 1st day of April, 2000, namely :-

'(19AA) "demerger", in relation to companies, means the transfer, pursuant to a scheme of arrangement under sections 391 to 394 of the Companies Act, 1956 (1 of 1956), by a demerged company of its one or more undertakings to any resulting company in such a manner that -

(i) all the property of the undertaking, being transferred by the demerged company, immediately before the demerger, becomes the property of the resulting company by virtue of the demerger;

(ii) all the liabilities relating to the undertaking, being transferred by the demerged company, immediately before the demerger, become the liabilities of the resulting company by virtue of the demerger;

(iii) the property and the liabilities of the undertaking or undertakings being transferred by the demerged company are transferred at values appearing in its books of account immediately before the demerger;

(iv) the resulting company issues, in consideration of the demerger, its shares to the shareholders of the demerged company on a proportionate basis;

(v) the shareholders holding not less than three-fourths in value of the shares in the demerged company (other than shares already held therein immediately before the demerger, or by a nominee for, the resulting company or, its subsidiary) become shareholders of the resulting company or companies by virtue of the demerger, otherwise than as a result of the acquisition of the property or assets of the demerged company or any undertaking thereof by the resulting company;

(vi) the transfer of the undertaking is on a going concern basis;

(vii) the demerger is in accordance with the conditions, if any, notified under sub-section (5) of section 72A by the Central Government in this behalf.

Explanation 1. - For the purposes of this clause, "undertaking" shall include any part of an undertaking, or a unit or division of an undertaking or a business activity taken as a whole, but does not include individual assets or liabilities or any combination thereof not constituting a business activity.

Explanation 2. - For the purposes of this clause, the liabilities referred to in sub-clause (ii), shall include -

(a) the liabilities, which arise out of the activities or operations of the undertaking;

(b) the specific loans or borrowings (including debentures) raised, incurred and utilised solely for the activities or operations of the undertaking; and

(c) in cases, other than those referred to in clause (a) or clause (b), so much of the amounts of general or multipurpose borrowings, if any, of the demerged company as stand in the same proportion which the value of the assets transferred in a demerger bears to the total value of the assets of such demerged company immediately before the demerger.

Explanation 3. - For determining the value of the property referred to in sub-clause (iii), any change in the value of assets consequent to their revaluation shall be ignored.

Explanation 4. - For the purposes of this clause, the splitting up or the reconstruction of any authority or a body constituted or established under a Central, State or Provincial Act, or a local authority or a public sector company, into separate authorities or bodies or local authorities or companies, as the case may be, shall be deemed to be a demerger if such split up or reconstruction fulfils the conditions specified in sub-clauses (i) to (vii) of this clause, to the extent applicable;

(19AAA) "demerged company" means the company whose undertaking is transferred, pursuant to a demerger, to a resulting company;';

(d) in clause (22), after sub-clause (iii) and before Explanation 1, the following sub-clauses shall be inserted with effect from the 1st day of April, 2000, namely :-

"(iv) any payment made by a company on purchase of its own shares from a shareholder in accordance with the provisions of section 77A of the Companies Act, 1956 (1 of 1956);

(v) any distribution of shares pursuant to a demerger by the resulting company to the shareholders of the demerged company (whether or not there is a reduction of capital in the demerged company).";

(e) in clause (30), after the word "resident", the words, figures and brackets ", and for the purposes of sections 92, 93 and 168, includes a person who is not ordinarily resident within the meaning of clause (6) of section 6" shall be inserted;

(f) after clause (41), the following clause shall be inserted with effect from the 1st day of April, 2000, namely :-

'(41A) "resulting company" means one or more companies (including a wholly owned subsidiary thereof) to which the undertaking of the demerged company is transferred in a demerger and, the resulting company in consideration of such transfer of undertaking, issues shares to the shareholders of the demerged company and includes any authority or body or local authority or public sector company or a company established, constituted or formed as a result of demerger;';

(g) in clause (42A), in Explanation 1, after sub-clause (f), the following sub-clause shall be inserted with effect from the 1st day of April, 2000, namely :-

"(g) in the case of a capital asset, being a share or shares in an Indian company, which becomes the property of the assessee in consideration of a demerger, there shall be included the period for which the share or shares held in the demerged company were held by the

assessee;"

(h) after clause (42B), the following clause shall be inserted with effect from the 1st day of April, 2000, namely :-

'(42C) "slump sale" means the transfer of one or more undertakings as a result of the sale for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales.

Explanation 1. - For the purposes of this clause, "undertaking" shall have the meaning assigned to it in Explanation 1 to clause (19AA).

Explanation 2. - For the removal of doubts, it is hereby declared that the determination of the value of an asset or liability for the sole purpose of payment of stamp duty, registration fees or other similar taxes or fees shall not be regarded as assignment of values to individual assets or liabilities.'