

MINISTRY OF FINANCE
(Department of Revenue)
(CENTRAL BOARD OF DIRECT TAXES)

NOTIFICATION

New Delhi, the 6th December, 2018

INCOME-TAX

S.O. 6053(E).— In exercise of the powers conferred by sub-section (1) of section 115JG of the Income-tax Act, 1961 (43 of 1961)(hereinafter referred to as the Act), the Central Government hereby notifies that,—

- (i) where a foreign company engaged in the business of banking in India through its branch situate in India (hereinafter referred to as the Indian Branch) converts Indian branch into its subsidiary company (hereinafter referred to as the Indian subsidiary company) as referred to in sub-section (1) of section 115JG of the Act, the provisions of clause (i) and clause (ii) of sub-section (1) of

section 115JG of the Act shall be applicable to such conversion, if following conditions are fulfilled, namely:—

- (a) the Indian branch amalgamates with the Indian subsidiary company in accordance with the scheme of amalgamation approved by the shareholders of the foreign company and the Indian subsidiary company and sanctioned by the Reserve Bank of India under paragraph 20(h) of the Framework for setting up of wholly owned subsidiaries by foreign banks in India issued by the Reserve Bank of India *vide* press release number 2013-2014/936 dated 6th day of November, 2013;
- (b) all the assets and liabilities of the Indian branch immediately before conversion shall become the assets and liabilities of the Indian subsidiary company;
- (c) the asset and liabilities of the Indian branch are transferred to the Indian subsidiary company at values appearing in the books of account of the Indian branch immediately before its conversion.

Explanation.- For determining the value of the assets for the purposes of this clause, any change in the value of assets consequent to their revaluation shall be ignored;

- (d) the foreign bank referred to in sub-section (1) of section 115JG of the Act or its nominee shall hold the whole of the share capital of the Indian subsidiary company during the period beginning from the date of conversion and ending on the last day of the previous year in which the conversion took place and continue to hold the share of Indian subsidiary company carrying not less than fifty-one per cent. of the voting power for a period of five years immediately succeeding the said previous year;
 - (e) the foreign company referred to in sub-section (1) of section 115JG of the Act 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 Indian subsidiary company;
- (ii) the provision of the Act relating to unabsorbed depreciation, set off or carry forward and set off of losses, tax credit in respect of tax paid on deemed income relating to certain companies and the computation of income in the case of foreign company referred to in sub-section (1) of section 115JG of the Act and the Indian subsidiary company shall apply with the following exceptions, modifications and adaptation,-
- (a) for the purposes of allowance of depreciation under section 32 of the Act, the aggregate deduction, in respect of depreciation of buildings, machinery, plant or furniture, being tangible assets or know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets allowable to the Indian branch and the Indian subsidiary company shall not exceed in any previous year the deduction calculated at the prescribed rates as if the conversion had not taken place, and such deduction shall be apportioned between the Indian branch and the Indian subsidiary company in the ratio of the number of days for which the assets were used by them;
 - (b) the accumulated loss and the unabsorbed depreciation of the Indian branch, shall be deemed to be the loss or allowance for depreciation of the Indian subsidiary company for the previous year in which conversion was effected and provisions of the Act relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly.

Explanation.- For the purposes of this clause,-

(I) “accumulated loss” means so much of the loss of the Indian branch before its conversion into the Indian subsidiary company under the head “Profits and gains of business or profession” (not being a loss sustained in a speculation business) which such Indian branch would have been entitled to carry forward and set off under the provisions of section 72 of the Act if the conversion had not taken place;

(II) “unabsorbed depreciation” means so much of the allowance for depreciation of the Indian branch before its conversion into the Indian subsidiary company, which remains to be allowed and which would have been allowed to the Indian branch under the provisions of the Act, if the conversion had not taken place;

- (c) for the purposes of clause (1) of section 43, the actual cost of the block of assets in the case of the Indian subsidiary company shall be the written down value of the block of assets as in the case of the Indian branch on the date of its conversion into the Indian subsidiary company;
- (d) the actual cost of any capital asset on which deduction has been allowed or is allowable under section 35AD of the Act, shall be treated as 'nil' for the purposes of clause (1) of section 43 of the Act in the case of the Indian subsidiary company if the capital asset became the property of the Indian subsidiary company as a result of conversion of the Indian branch;
- (e) where the capital asset other than those referred to in sub-clause(c) and sub-clause (d) became the property of the Indian subsidiary company as a result of conversion of the Indian branch, the cost of acquisition of the asset for the purposes of computation of capital gains shall be deemed to be the cost for which the Indian branch acquired it or, as the case may be, the cost for which previous owner has acquired it.

Explanation.— For the purposes of this clause, the expression ‘previous owner’ in relation to any capital asset owned by the Indian subsidiary company means the last previous owner of the capital asset who acquired it by a mode of acquisition other than those referred to in clause (i) or clause (ii) or clause (iii) or clause (iv) of sub-section (1) of section 49 or sub-section (1) of section 115JG of the Act;

- (f) the tax credit of the Indian branch shall be deemed to be the tax credit of the Indian subsidiary company for the purpose of the previous year in which conversion was effected and the provisions of section 115JAA of the Act shall apply accordingly.

Explanation.— For the purposes of this clause ‘tax credit’ means so much of the tax credit of the Indian branch before conversion into Indian subsidiary company which such Indian branch would have been entitled to carry forward and set off under the provisions of section 115JAA of the Act, if the conversion had not taken place;

- (g) the provisions of 35DDA of the Act shall be, as far as may be, apply to the Indian subsidiary company, as they would have applied to the Indian branch, if the conversion had not taken place;
- (h) the credit balance in the provision for bad and doubtful debts account made under clause (viiia) of sub-section (1) of section 36 of the Act of the Indian Branch on the date of conversion shall be deemed to be the credit balance of the Indian subsidiary company and the provisions of section 36 of the Act shall apply accordingly;

-
- (i) the provisions of clause (x) of sub-section (2) of section 56 of the Act shall not apply to the transaction of receipt of shares in the Indian subsidiary company by the foreign company referred to in sub-section (1) of section 115JG or its nominee in consequence of the conversion of the Indian branch into the Indian subsidiary company.

Explanation.— For the purposes of this notification “date of conversion” shall be the date which the Reserve Bank of India appoints for the vesting of undertaking of the Indian branch in Indian subsidiary company under paragraph 20(i) of the Framework for setting up of wholly owned subsidiaries by foreign banks in India issued by the Reserve Bank of India *vide* press release number 2013-2014/936 dated 6th day of November, 2013.

[Notification No.85/2018/F.No.370133/34/2016-TPL]

PRAVIN RAWAL, Director (Tax Policy & Legislation)