

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II,
SECTION 3, SUB-SECTION (ii)]

**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
[CENTRAL BOARD OF DIRECT TAXES]**

Notification

New Delhi, the 28th June, 2016

INCOME-TAX

S.O. 2226 (E). – In exercise of the powers conferred by section 9 and section 285A, read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely: -

1. (1) These rules may be called the Income-tax (19th Amendment), Rules, 2016.
 - (2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Income-tax Rules, 1962 (hereinafter referred to as the said rules), in Part II, after sub-part H, the following sub-part shall be inserted, namely: -

“I- Determination of value of assets and apportionment of income in certain cases.

11UB. Fair market value of assets in certain cases.- (1) The fair market value of asset, tangible or intangible, as on the specified date, held directly or indirectly by a company or an entity registered or incorporated outside India (hereafter referred to as “foreign company or entity”), for the purposes of clause (i) of sub-section (1) of section 9, shall be computed in accordance with the provisions of this rule.

(2) Where the asset is a share of an Indian company listed on a recognised stock exchange on the specified date, the fair market value of the share shall be the observable price of such share on the stock exchange:

Provided that where the share is held as part of the shareholding which confers, directly or indirectly, any right of management or control in relation to the aforesaid company, the fair market value of the share shall be determined in accordance with the following formula, namely:-

Fair market value = $(A+B) / C$

Where;

A= the market capitalisation of the company on the basis of observable price of its shares quoted on the recognised stock exchange;

B= the book value of liabilities of the company as on the specified date;

C= the total number of outstanding shares:

Provided further that where, on the specified date, the share is listed on more than one recognised stock exchange, the observable price of the share shall be computed with reference to the recognised stock exchange which records the highest volume of trading in the share during the period considered for determining the price.

(3) Where the asset is a share of an Indian company not listed on a recognised stock exchange on the specified date, the fair market value of the share shall be its fair market value on such date as determined by a merchant banker or an accountant in accordance with any internationally accepted valuation methodology for valuation of shares on arm's length basis as increased by the liability, if any, considered in such determination.

(4) Where the asset is an interest in a partnership firm or an association of persons, its fair market value shall be determined in the following manner, namely:-

(i) the value on the specified date of such firm or association of persons, shall be determined by a merchant banker or an accountant in accordance with any internationally accepted valuation methodology as increased by the liability, if any, considered in such determination;

(ii) the portion of the value computed in clause (i) as is equal to the amount of its capital shall be allocated among its partners or members in the proportion in which capital has been contributed by them and the residue of the value shall be allocated among the partners or members in accordance with the agreement of partnership firm or association of persons for distribution of assets in the event of dissolution of the firm or association, or, in the absence of any such agreement, in the proportion in which the partners or members are entitled to share profits and the sum total of the amount so allocated to a partner or member shall be treated as the fair market value of the interest of that partner or member in the firm or the association of persons, as the case may be.

(5) The fair market value of the asset other than those referred to in sub-rules (2), (3) and (4) shall be the price it would fetch if sold in the open market on the specified date as determined by a merchant banker or an accountant as increased by the liability, if any, considered in such determination.

(6) The fair market value of all the assets of a foreign company or an entity shall be determined in the following manner, namely:-

(i) where the transfer of share of, or interest in, the foreign company or entity is between the persons who are not connected persons, the fair market value of all the assets owned by the foreign company or the entity as on the specified date, for the purpose of such transfer, shall be determined in accordance with the following formula, namely:-

Fair market value of all assets = A+B

Where;

A = Market capitalisation of the foreign company or entity computed on the basis of the full value of consideration for transfer of the share or interest;

B = book value of the liabilities of the company or the entity as on the specified date as certified by a merchant banker or an accountant;

(ii) in any other case, if, -

(a) the share of the foreign company or entity is listed on a stock exchange on the specified date, the fair market value of all the assets owned by the foreign company or the entity shall be determined in accordance with the following formula, namely:-

Fair market value of all the assets = A+B

Where;

A = Market capitalisation of the foreign company or entity computed on the basis of the observable price of the share on the stock exchange where the share of the foreign company or the entity is listed;

B = book value of the liabilities of the company or the entity as on the specified date:

Provided that where, as on the specified date, the share is listed on more than one stock exchange, the observable price in the aforesaid formula shall be in respect of the stock exchange which records the highest volume of trading in the share during the period considered for determining the price;

(b) the share in the foreign company or entity is not listed on a stock exchange on the specified date, the value of all the assets owned by

the foreign company or the entity shall be determined in accordance with the following formula, namely :-

Fair market value of all the assets = A+B

Where;

A = fair market value of the foreign company or the entity as on the specified date as determined by a merchant banker or an accountant as per the internationally accepted valuation methodology;

B = value of liabilities of the company or the entity if any, considered for the determination of fair market value in A.

(7) Where fair market value has been determined on the basis of any interim balance sheet referred to in the first proviso to clause (ix) of the Explanation, then the fair market value shall be appropriately modified after finalisation of the relevant financial statement in accordance with the applicable laws and all the provisions of this rule and rules 11UC and 114DB shall apply accordingly.

(8) For determining the fair market value of any asset located in India, being a share of an Indian company or interest in a partnership firm or association of persons, all the assets and business operations of the said company or partnership firm or association of persons shall be taken into account irrespective of whether the assets or business operations are located in India or outside.

(9) The rate of exchange for the calculation in foreign currency, of the value of assets located in India and expressed in rupees shall be the telegraphic transfer buying rate of such currency as on the specified date.

Explanation: For the purposes of this rule and rule 11UC, -

(i) "accountant" means an accountant referred to in the Explanation to sub-section (2) of section 288 and for the purposes of sub-rule (6) includes any valuer recognised for undertaking similar valuation by the Government of the country where the foreign company or the entity is registered or incorporated or any of its agencies, who fulfils the following conditions, namely :-

(a) if he is a member or partner in any entity engaged in rendering accountancy or valuation services then,-

(i) the entity or its affiliates has presence in more than two countries; and

(ii) the annual receipt of the entity in the year preceding the year in which valuation is undertaken exceeds ten crore rupees ;

- (b) if he is pursuing the profession of accountancy individually or is a valuer then,-
 - (i) his annual receipt in the year preceding the year in which valuation is undertaken, from the exercise of profession, exceeds one crore rupees ; and
 - (ii) he has professional experience of not less than ten years.
- (ii) “connected person” shall have the meaning as assigned to it in clause (4) of section 102;
- (iii) “right of management or control” shall include the right to appoint majority of the directors or to control the management or policy decision exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of shareholding or management rights or shareholders agreements or voting agreements or in any other manner;
- (iv) “telegraphic transfer buying rate” shall have the meaning as assigned to it in the Explanation to rule 26;
- (v) “observable price” in respect of a share quoted on a stock exchange shall be the higher of the following:-
 - (a) the average of the weekly high and low of the closing prices of the shares quoted on the said stock exchange during the six months period preceding the specified date; or
 - (b) the average of the weekly high and low of the closing price of the shares quoted on the said stock exchange during the two weeks preceding the specified date;
- (vi) “book value of the liabilities” means the value of liabilities as shown in the balance-sheet of the company or the entity as the case may be, excluding the paid-up capital in respect of equity shares or members’ interest and the general reserves and surplus and security premium related to the paid up capital .
- (vii) “specified date” shall have the meaning as assigned to it in clause (d) of Explanation 6 to clause (i) of subsection (1) of section 9;
- (viii) the terms “merchant banker” and “recognised stock exchange” shall have the meaning as assigned to them in rule 11U;
- (ix) “balance sheet” ,-
 - (a) in relation to an Indian company, means the balance-sheet of such company (including the notes annexed thereto and forming part of the accounts) as drawn up on the specified date which has been audited

by the auditor of the company appointed under the laws relating to companies in force; and

- (b) in any other case, means the balance-sheet of the company or the entity (including the notes annexed thereto and forming part of the accounts) as drawn up on the specified date and submitted to the relevant authority outside India under the laws in force of the country in which the foreign company or the entity is registered or incorporated:

Provided that where the balance-sheet as on the specified date is not drawn up, pending finalisation of accounts, as mentioned in clauses (a) and (b), the balance sheet shall mean an interim balance-sheet drawn up as on the specified date and approved by the board of directors of the company or an equivalent body in case of any other entity:

Provided further that where the specified date is the date referred to in sub-clause (ii) of clause (d) of Explanation 6 to clause (i) of subsection (1) of section 9, the balance sheet means the balance sheet as drawn up on the specified date and certified by an accountant.

11UC. Determination of Income attributable to assets in India.- (1) The income from transfer outside India of a share of, or interest in, a company or an entity referred to in clause (i) of sub-section (1) of section 9, attributable to assets located in India, shall be determined in accordance with the following formula, namely: –

$$A \times \frac{B}{C}$$

Where;

A = Income from the transfer of the share of, or interest in, the company or the entity computed in accordance with the provisions of the Act, as if, such share or interest is located in India;

B = Fair Market Value of assets located in India as on the specified date, from which the share or interest referred to in A derives its value substantially, computed in accordance with rule 11UB;

C = Fair Market Value of all the assets of the company or the entity as on the specified date, computed in accordance with rule 11UB:

Provided that if the transferor of the share of, or interest in, the company or the entity fails to provide the information required for the application of the aforesaid formula then the income from the transfer of such share or interest attributable to the assets

located in India shall be determined in such manner as the Assessing Officer may deem suitable.

(2) The transferor of the share of, or interest in, a company or an entity that derives its value substantially from assets located in India, shall obtain and furnish along with the return of income a report in Form No. 3CT duly signed and verified by an accountant providing the basis of the apportionment in accordance with the formula and certifying that the income attributable to assets located in India has been correctly computed.”.

3. In the said rules, after rule 114DA, following rule shall be inserted, namely: -

“114DB. Information or documents to be furnished under section 285A.-(1) Every Indian concern referred to in section 285A shall, for the purposes of the said section, maintain and furnish the information and documents in accordance with this rule.

(2) The information shall be furnished in Form No. 49D electronically under digital signature to the Assessing Officer having jurisdiction over the Indian concern within a period of ninety days from the end of the financial year in which any transfer of the share of, or interest in, a company or entity incorporated outside India (hereafter referred to as “foreign company or entity”) referred to in Explanation 5 to clause (i) of sub-section (1) of section 9 has taken place:

Provided that where the transaction in respect of the share or the interest has the effect of directly or indirectly transferring the rights of management or control in relation to the Indian concern, the information shall be furnished in the said Form within ninety days of the transaction.

(3) The Indian concern shall maintain the following alongwith its english translation, if the documents originally prepared are in foreign languages and produce the same when called upon to do so by any income-tax authority in the course of any proceeding to substantiate the information furnished under sub-rule (2), namely: -

- (i) details of the immediate holding company or entity, intermediate holding company or companies or entity or entities and ultimate holding company or entity of the Indian concern;
- (ii) details of other entities in India of the group of which the Indian concern is a constituent;
- (iii) the holding structure of the shares of, or the interest in, the foreign company or entity before and after the transfer;
- (iv) any transfer contract or agreement entered into in respect of the share of, or interest in, any foreign company or entity that holds any asset in India through, or in, the Indian concern;
- (v) financial and accounting statements of the foreign company or entity which directly or indirectly holds the assets in India through, or in, the

- Indian concern for two years prior to the date of transfer of the share or interest ;
- (vi) information relating to the decision or implementation process of the overall arrangement of the transfer;
 - (vii) information in respect of the foreign company or entity and its subsidiaries, relating to, -
 - (a) the business operation;
 - (b) personnel;
 - (c) finance and properties;
 - (d) internal and external audit or the valuation report, if any, forming basis of the consideration in respect of share, or the interest;
 - (viii) the asset valuation report and other supporting evidence to determine the place of location of the share or interest being transferred;
 - (ix) the details of payment of tax outside India, which relates to the transfer of the share or interest;
 - (x) the valuation report in respect of Indian asset and total assets duly certified by a merchant banker or accountant with supporting evidence;
 - (xi) documents which are issued in connection with the transactions under the accounting practice followed.

(4) Where there are more than one Indian concerns that are constituent entities of a group, the information may be furnished by any one Indian concern, if, -

- (i) the group has designated such Indian concern to furnish information on behalf of all other Indian concerns that are constituent of the group, and
- (ii) the information regarding the designated Indian concern has been conveyed in writing on behalf of the group to the Assessing officer:

Provided that nothing contained in this sub-rule shall have effect if the designated Indian concern fails to furnish the information in accordance with the provisions of this rule.

(5) The Principal Director General of Income-tax (Systems) or Director General Income-tax (Systems), as the case may be, shall specify the procedure for electronically filing of Form No. 49D and shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to the information so furnished under this rule.

(6) The information and documents specified in sub-rule (3) shall be kept and maintained for a period of eight years from the end of relevant assessment year.

Explanation: For the purposes of this rule, -

- (i) "constituent entity" shall have the meaning as assigned to it in clause (d) of sub-section (9) of section 286;

- (ii) "group" shall have the meaning as assigned to it in clause (e) of sub-section (9) of section 286;
- (iii) "intermediate holding company or entity" means a company or an entity that has controlling interest in another company or entity and is itself controlled by, or is subsidiary of, another company or entity;
- (iv) "immediate holding company or entity" means the company or the entity that directly maintains the controlling interest in the Indian concern;
- (v) "ultimate holding company or entity" means a company or an entity that has ultimate control of the Indian concern directly or indirectly and such company or entity is not itself controlled by, or is subsidiary of, any other company or entity .".

4. In the said rules, in Appendix II, -

(a) after Form No. 3CS, the following Form shall be inserted, namely: -

"FORM NO. 3CT
[See rule 11UC]

**Income attributable to assets located in India
under section 9 of the Income-tax Act, 1961**

* I/We have examined the accounts and records of M/s ** (name and address of the assessee) having PAN being transferor of the share of, or interest in,(name of company or entity incorporated outside India)# referred to in Explanation 5 to clause (i) of sub-section (1) of section 9 during the previous year ended on

* I/We have obtained all the information and explanations which to the best of my/our* knowledge and belief were necessary for the purposes of ascertaining the income of the said assessee attributable to the assets located in India.

* I/We certify that in respect of the assessment year the income deemed to accrue or arise in India to the assessee on transfer of share/interest* in the above mentioned company/entity* is Rs..... which has been worked out on the basis of the details given in the Annexure to this form. In my/our* opinion and to the best of my/our* information and according to the explanations given to me/us* the particulars given in the Annexure are true and correct.

Date

Signed
‡ *Accountant*
Membership No. _____

Notes :

1. *Delete whichever is not applicable.

2. **Here give name and address.
3. ‡This report is to be given by— an accountant as defines in the Explanation below sub-section (2) of section 288.
4. # if transfer is of shares of, or interest in, more than one company or entity in a previous year, details to be given in respect of each such company or entity.
5. Where any of the matter stated in this report is answered in negative or with a qualification, the report shall state the reasons therefor.

ANNEXURE

1. Company/entity wise breakup of consideration received for transfer of share or interest:

Sr.No	Name of the company /entity	Quantum of share/interest transferred	Cost of acquisition of share /interest	Date of transfer	Consideration received

2. Income derived from transfer of share or interest. (company/ entity wise details) Rs.....
3. Value of assets located in India from which the share or interest derives its value (company/ entity wise details): Rs.....
4. Value of global assets of the company or the entity (company/entity wise details): Rs.....
5. Income attributable to assets located in India (company/ entity wise breakup and aggregate) Rs.....
6. Details of the method employed for arriving at the value of assets in item 3 and 4.
7. Details of the documents and valuation report, if any, relied upon
8. Remarks including any assumption made.”;

(b) after Form 49C, the following Form shall be inserted, namely: -

**“FORM NO. 49D
[see Rule 114DB]**

Information and documents to be furnished by an Indian concern under section 285A

To
The Assessing Officer

PART A

1.	Name and address of the Indian concern	
2.	Status [whether company, LLP/firm/permanent establishment etc.]	

3.	Residential status	
4.	Permanent Account Number	
5.	Previous Year	
6.	Assessment Year	
7.	Whether the Indian concern has been designated to provide information on behalf of the group: If yes,- (i) provide details of all the Indian concerns which are constituent of the group : (a) Name (b) PAN (c) Address (ii) if the information is being furnished on behalf of any Indian concern(s) details of such concern (s) : (a) Name (b) PAN (c) Address	Yes/No
8.	Details of immediate holding entity, intermediate holding entity and ultimate holding entity, - (A) Immediate holding entity: - (a) Name (b) Country of incorporation (c) Country of which it is tax resident (B) Intermediate holding entity: - (a) Name (b) Country of incorporation (c) Country of which it is tax resident (C) Ultimate holding entity: - (a) Name (b) Country of incorporation (c) Country of which it is tax resident	
9.	(a) Whether share of, or interest in, any company or entity derives its value substantially from assets located in India, which are held in, or through, the Indian concern; (b) If yes, give details of the company (ies) or entity (ies).	Yes/No

PART B

[To be filled in to report the transaction resulting in transfer of right of management or control]

10.	Whether any transaction in respect of share of, or interest in, any company or entity referred to in 9 has the effect of transferring the right of management or control over the Indian concern. If yes give following details: -	Yes/No
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	<ul style="list-style-type: none"> (i). Name of the company or entity (ii). Details of the transactions including consideration for such transaction (iii). Name of transferor along with address (iv). Percentage share/interest transferred including percentage holding of transferor during the period of 12 months preceding the transfer (v). Details of the transferee along with address (vi). Holding structure in respect of shares of, or interest in, the company or entity before and after the transfer (vii). Financial and accounting statements of the company or the entity (viii). Basis of determining the location of share or interest being transferred (ix). Value and breakup of assets of the Indian concern immediately before the date of transfer (x). Basis of valuation of assets of the company or entity (xi). Details of supporting documents in respect of items (viii) and (x) 	
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PART C

[To be filled for reporting the information in respect of transfer of share/interest during the previous year]

11.	<p>(a) Whether share of, or interest in, the company or entity referred to in 9 has been transferred during the previous year, the income from which is deemed to accrue or arise in India under the provisions of section 9(1).</p> <p>(b) If yes give details: -</p> <ul style="list-style-type: none"> (i). Name of the company or entity (ii). Details of the transaction(s) (iii). Name of transferor along with address (iv). Percentage share/interest transferred including holding percentage of transferor during the period of 12 months preceding the transfer (v). Value of total assets of the company or the entity (vi). Details of transferee along with address 	Yes/No
12.	<p>Whether any transaction in respect of shares of, or interest in, any company or entity referred to in 9 has the effect of transferring right of management or control over the Indian concern.</p> <p>If yes give details.</p> <ul style="list-style-type: none"> (i). Name of the company or entity (ii). Details of transactions including consideration (iii). Name of transferor along with address (iv). percentage share/interest transferred including holding percentage of transferor during the period of 	Yes/No

	<p>12 months preceding the transfer</p> <p>(v). Details of transferee along with address</p> <p>(vi). Whether Form 49D was furnished in respect of the transaction</p> <p>If yes date of furnishing Form 49D ___/___/___</p> <p>If No , -</p> <p>(a) reason for not furnishing the Form 49D</p> <p>(b) furnish the following details:</p> <p>(i). Holding chart in respect of shares of, or interest in, the company or entity before and after the transfer</p> <p>(ii). Financial and accounting statements of the company or entity</p> <p>(iii). Basis of determining location of share of, or interest in, the company or entity</p> <p>(iv). Value and breakup of assets of the Indian concern immediately before the date of transfer</p>	Yes/No
13.	<p>Value and breakup of assets of the Indian concern, -</p> <p>(i). at the beginning of the year</p> <p>(ii). at the end of the year</p>	
14.	<p>Basis of valuation of assets referred to in items 11(v), 12(b) (iii) and (iv) and 13.</p>	
15.	<p>Details of supporting documents in respect of items 11(v), 12(b)(iii) and (iv) and 13.</p>	

Signature of Authorised Signatory

Name

Verification

I, [full name in block letters] son/daughter of , on behalf of the above mentioned Indian concern holding Permanent Account Number, solemnly declare that to the best of my knowledge and belief, the information given in the Form is correct and complete and that the other particulars shown therein are truly stated. I further declare that I am submitting this Form in my capacity as and I am also competent to make this submission and verify it.

Verified today the day of

Place:

Signature of Authorised Signatory

Name”.

[Notification No.55 /2016 F. No. 142/26/2015-TPL]

(Niraj Kumar)
Under Secretary (Tax Policy and Legislation)

Note:- The principal rules were published in the Gazette of India, Extraordinary, Part III, Section 3, Sub-section (i), vide notification number S.O. 969(E), dated the, 26th March, 1962 and were last amended vide notification number S.O. 2213 (E) dated the 27/06/2016.