

**JULY 2021**

# NEWSLETTER

## TAX

- Income Tax
- Goods and Services Tax



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## INCOME TAX

### **1. Income-tax (18<sup>th</sup> Amendment) Rules, 2021**

CBDT

Notification No. 76/2021 dated 2.07.2021

CBDT has notified the Income tax (18<sup>th</sup> Amendment) Rules, 2021 to further amend the Income-tax Rules, 1962. Following amendments have been made:

#### **1) Sub-rule (5) has been Inserted in Rule 8AA, which specifies method of determination of period of holding of capital assets in certain cases: -**

(Sub Rule 5). In case of amount which is chargeable to tax as income of specified entity under Sec 45(4) (profits or gains arising from the transfer of a capital asset) under the head - Capital gains-

- i. the amount or a part of it shall be deemed to be from transfer of **short-term capital asset**, if it is attributed to-
  - a) capital asset which is short term capital asset at the time of taxation of amount under Sec 45(4); or
  - b) capital asset forming part of block of asset; or
  - c) capital asset being self-generated asset and self-generated goodwill as defined in clause (ii) of explanation 1 to Section 45(4).
- ii. the amount or a part of it shall be deemed to be from transfer of **long-term capital asset** if it is attributed to capital asset which is not covered by clause (i) and is long term capital asset at the time of taxation of amount under Section 45(4).

#### **2) Rule 8AB has been inserted which specifies attribution of income taxable under sub-Sec 45 (4) to the capital assets remaining with the specified entity, under section 48.**

1. For the purposes of clause (iii) of **section 48 (Mode of computation under capital gains)**, where the amount is chargeable to tax as income of specified entity under Sec 45 (4), the specified entity shall attribute such amount to capital asset remaining with the specified entity in a manner provided in this rule.
2. Where the aggregate of the value of money and the fair market value of the capital asset received by the specified person from the specified entity, in excess of the balance in his capital account, chargeable to tax under Sec 45(4), relates to revaluation of any capital asset or valuation of self-generated asset or self-generated goodwill, of the specified entity, the amount attributable to the capital asset remaining with the specified entity for purpose of clause (iii) of section 48 shall be the amount which bears to the amount charged under Sec 45(4) the same proportion as the increase in, or recognition of, value of that asset because of revaluation or valuation bears to the aggregate of increase in, or recognition of, value of all assets because of the revaluation or valuation.
3. Where the aggregate of the value of money and the fair market value of the capital asset received by the specified person from the specified entity, in excess of the balance in his capital account, charged to tax under Sec 45(4) does not relate to revaluation of any capital asset or valuation of self-generated asset or self-generated goodwill, of the specified entity, the amount charged to tax under Sec 45(4) shall not be attributed to any capital asset for the purposes of section 48(iii).
4. Notwithstanding anything contained in sub-rule (2) or (3), where the aggregate of the value of money and the fair market value of the capital asset received by the specified person from the specified entity, in excess of the balance in his capital account, charged to tax under Sec 45(4) relate only to the capital asset received by the specified person from the specified entity, the amount charged to tax under Sec 45(4) shall not be attributed to any capital asset for the purposes of section 48(iii).
5. The specified entity shall furnish the details of amount attributed to capital asset remaining with the specified entity in Form No. 5C to be furnished electronically.

## 2. Guidelines under section 9B and sub-section (4) of section 45 of the Income-tax Act, 1961

CBDT

Circular No. 14/2021 dated 02.07.2021

CBDT vide this circular has laid down certain Guidelines under **section 9B** and **Section 45(4)** of the Income-tax Act, 1961.

### ➤ **Background**

- Finance Act, 2021 inserted a new **section 9B** in the Income-tax Act, 1961, which mandates that whenever a specified person receives any capital asset or stock-in-trade or both from a specified entity, in connection with the dissolution or reconstitution of such specified entity, then it shall be deemed that the specified entity has transferred such capital asset and/or stock-in-trade, to the specified person.
- Similarly, the Finance Act 2021 substituted **section 45(4)** to provide that where a specified person receives any money or capital asset or both from a specified entity, during the previous year, in connection with the reconstitution of such specified entity, then any profits or gains arising from such receipt by the specified person shall be chargeable to tax as income of the specified entity under the head 'Capital gains'. In order to remove the difficulty, CBDT hereby issues the following guidelines.

### ➤ **Highlights of the Circular / Guidelines:**

#### ▪ **Attribution of income of an entity on its reconstitution**

The amount taxed under Sec 45(4) is required to be attributed to the remaining capital assets of the specified entity so that when such capital assets get transferred in the future, the amount attributed to such capital assets gets reduced from the full value of the consideration and to that extent the specified entity does not pay tax again on the same amount.

#### ▪ **Capital Assets forming a block of assets**

The attribution is done for the purposes of section 48 (Mode of computation under capital gains). It only applies to capital assets that are not forming a block of assets.

For capital assets forming a block of assets, there is Sec 43(6)(c) to determine the written down value of the block of asset and Sec 50 to determine the capital gains arising on transfer of such assets.

However, the Act has not provided that the amount taxed under Sec 45(4) can also be attributed to capital assets forming part of a block of assets and which are covered by these two provisions. (Sec 43(c) & Sec 50)

#### ▪ **New Rule for capital assets forming part of a block of assets**

CBDT notified the Rule 8AB vide Notification No. 76 dated 2 July 2021 also applies to capital assets forming part of block of assets. Wherever the terms capital asset is appearing in rule 8AB, it refers to a capital asset whose capital gains is computed under section 48 as well as capital asset forming part of a block of assets.

[Circular No.14](#)

## 3. Income-tax (19<sup>th</sup> Amendment) Rules, 2021

CBDT

Notification No. 77/2021 dated 07.07.2021

Vide this notification, CBDT has inserted **Rule 8AC**, which specifies the computation of short-term capital gains and written down value under **section 50 (capital gain on sale of depreciable asset)** where depreciation on goodwill has been claimed: -

- 1) For the purposes of proviso to section 50, the written down value of the block of asset and short-term capital gains, if any, for the previous year relevant to the assessment year commencing on the **1<sup>st</sup> April, 2021** shall be determined in accordance with this rule.
- 2) Where the goodwill of the business or profession was the only asset or one of the assets in the block of asset "intangible" for which depreciation was obtained by the assessee in the assessment year

beginning on the 1<sup>st</sup> April, 2020, the written down value of this block of asset for the previous year relevant to the assessment year commencing on the 1<sup>st</sup> April, 2021 shall be determined in accordance with the provisions of Sec 43(6)(c)(ii) which is related to written down value of assets.

- 3) Where the reduction under Sec 43(6)(c)(ii)(B), for the previous year relevant to the assessment year commencing on the 1<sup>st</sup> April, 2021, exceeds the aggregate of the following amounts, namely
  - a) the written down value of the block of assets at the beginning of the previous year relevant to the assessment year commencing on the 1<sup>st</sup> April, 2021 without giving effect to reduction under such provisions; and
  - b) the actual cost of any asset falling within the block of assets “intangible”, other than goodwill, acquired during the previous year relevant to the assessment year commencing on the 1<sup>st</sup> April, 2021,  
such excess shall be deemed to be the capital gains arising from the transfer of short-term capital assets.
- 4) Without prejudice to the provisions of Sec 55(3), where the goodwill of the business or profession was the only asset in the block of asset “intangible” for which depreciation was obtained by the assessee in the assessment year beginning on the 1<sup>st</sup> April, 2020, and the block of asset ceases to exist on account of there being no further asset acquired during the previous year relevant to the assessment year commencing on the 1<sup>st</sup> April, 2021 in that block, there will not be any capital gains or loss on account of the block of asset having ceased to exist.
- 5) The capital gains or loss on transfer of goodwill, during the previous years relevant to the assessment year 2021-22 or subsequent assessment years, shall be determined in accordance with the provisions of **section 48** (Mode of computation under capital gains), **section 49** (Cost with reference to certain modes of acquisition) and of **section 55(2)(a)** (Cost of improvement & acquisition).

[Notification No.77](#)

## **GOODS AND SERVICES TAX**

### **1. Clarification regarding extension of limitation under GST Law in terms of Hon'ble Supreme Court's Order dated 27<sup>th</sup> April 2021**

CBIC Circular No.  
157/2021 of Central Tax – dated 20.07.2021

Vide this circular, CBIC has clarified extension of limitation for various actions under the GST Laws pursuant to Hon'ble Supreme Court's Order dated 27<sup>th</sup> April, 2021. The Government has issued notifications wherein the time limit for completion of various actions, by any authority or by any person, under the CGST Act, which falls during the specified period, has been extended up to a specific date, subject to exceptions as specified in the said notifications.

The matter of extension of period of limitation was deliberated in the **43rd Meeting of GST Council**. Council, while providing various relaxations in the compliances for taxpayers, also recommended that wherever the timelines for actions have been extended by the Hon'ble Supreme Court, the same would apply. Legal opinion was solicited on this issue and the matter has been examined on the basis of the legal opinion received in the matter. On the basis of the legal opinion, it is hereby clarified that, various actions/ compliances under GST can be broadly categorised as follows –

<b>Action</b>	<b>Impact</b>
Proceedings that need to be initiated or compliances that need to be done by the taxpayers	These actions would continue to be governed only by the statutory mechanism and time limit provided/ extensions granted under the statute itself
Quasi-Judicial proceedings by tax authorities	The tax authorities can continue to hear and dispose off proceedings which include disposal of application for refund, application for revocation of cancellation of registration, adjudication proceedings of demand notices, etc.
Appeals by taxpayers/ tax authorities against any quasi-judicial order	Wherever any appeal is required to be filed by Taxpayer, the time line for the same would stand extended as per the Hon'ble Supreme Court's order

[Circular No.157](#)

**Disclaimer:**

This is not a complete listing of all circulars/notifications issued during the month.  
Instead, it is only a listing of some of the circulars/notifications that we considered important



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