

**F. No. 370133/34/2017-TPL**

**Government of India**

**Ministry of Finance**

**Department of Revenue**

**Central Board of Direct Taxes**

\*\*\*\*\*

**New Delhi, Dated 17th November, 2017**

**Sub: Draft notification under section 115JG (1) of the Income-tax Act, 1961 in respect of conversion of Indian branch of foreign bank into Indian subsidiary company -reg.**

Finance Act, 2012 inserted a new Chapter XII-BB consisting of section 115JG in the Income-tax Act, 1961 (the Act) which contains “Special provisions relating to conversion of Indian Branch of a foreign bank into a subsidiary company”. Section 115JG of the Act *inter-alia* provides that in case the conversion of Indian Branch of foreign bank fulfils the conditions notified by the Central Government, the capital gains arising from such conversion shall not be chargeable to tax and the provision 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 case of foreign company and Indian subsidiary shall apply with such modification, exception etc. as may be specified in the notification. Accordingly, it is proposed to issue notification under section 115JG (1) of the Act specifying the conditions to be fulfilled by the conversion and also specifying modifications, exceptions, in applicability of certain provisions of the Act to such conversion. The Draft of the said notification is given below. The stakeholders are requested to send their comments/suggestions on the draft notification by 30-11-2017 to the email address (dirtpl2@nic.in).

### **DRAFT NOTIFICATION**

S.O.....(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) a foreign company engaged in the business of banking in India through its branch situate in India (hereafter referred to as Indian branch) convert

such branch into its subsidiary company (hereafter referred to 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,–

- (a) all the assets and liabilities of the Indian branch immediately before conversion become the assets and liabilities of the Indian subsidiary company;
  - (b) the foreign company referred to in sub-section (1) of section 115JG of the Act or its nominees hold the whole of the share capital of the subsidiary company;
  - (c) 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 in deemed income relating to certain companies and the computation of income in the cases of foreign company and Indian subsidiary company shall apply with 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 or depreciation of the Indian subsidiary company for the purpose of 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 conversion into 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 conversion into Indian subsidiary company, which remains to be allowed and which would have been allowed to the Indian branch under the provisions of this 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 conversion of the Indian branch into the Indian subsidiary company;
- (d) the actual cost of any capital asset on which deduction has been allowed or is allowable to the assessee under section 35AD of the Act, shall be treated as 'nil' for the purposes of clause (1) of section 43 of the Act if the capital asset is acquired or received as a result of conversion referred to in sub-section (1) of section 115JG of the Act;
- (e) 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;

- (f) where the capital asset became the property of the Indian subsidiary company as a result of conversion of 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;

- (g) the credit balance in the provision for bad and doubtful debts account made under clause (viia) 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.

*Explanation.*—for the purposes of this notification,—

- (i) “conversion of Indian branch into Indian subsidiary company” shall mean the amalgamation of Indian branch with Indian subsidiary company in accordance with scheme of amalgamation approved by the shareholders of the foreign bank and Indian subsidiary company which has been sanctioned by the Reserve Bank of India under paragraph 20(h) of the “Scheme for setting up of wholly owned subsidiary by foreign bank in India” issued by the Reserve Bank of India;
- (ii) “date of conversion” shall be the date which the Reserve Bank of India appoint for the vesting of undertaking of the Indian branch in Indian subsidiary company under paragraph 20(i) of the “Scheme for setting up of wholly owned subsidiary by foreign bank in India” issued by the Reserve Bank of India.