

ESTATE DUTY (CONTROLLED COMPANIES) RULES, 1953

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ESTATE DUTY (CONTROLLED COMPANIES) RULES, 1953

S. R. O. 491, dated 13th February, 1954.-In exercise of the powers conferred by sub-section (1) of Sec. 20 of the Estate Duty Act, 1953* (XXXIV of 1953), the Central Board of Revenue hereby makes the following rules, the same having been previously published as required by sub-section (1) of Sec. 85 of the said Act and also laid before the House of the People for not less than 15 days before the date thereof, as required by sub-section (2) of Sec. 20 of the said Act.

1. Short title and commencement :-

(1) These rules may be called the Estate Duty (Controlled Companies) Rules, 1953.

(2) They shall be deemed to have come into force from the 15th October, 1953.

2. Definitions :-

In these rules, unless the context otherwise requires,-

(1) "the Act" means the Estate Duty Act, 1953 (XXXIV of 1953);

(2) "assets" includes goodwill;

(3) "associated operations" has the same meaning as in Cl. (iv) of sub-section (7) of Section 27 of the Act;

(4) "average rate" means, in relation to a company, rate per cent. per annum, the percentage being ascertained by,-

(a) computing the aggregate amount of the net income of the company for the relevant accounting years (a deduction being made where the company sustained a loss in any of those years, of the amount of the loss);

(b) dividing that amount by the number of those years; and

(c) comparing the result with the principal value of the assets of the company passing on the death of the deceased by virtue of Section 17 of the Act after making the allowances to be made under rule 10;

(5) "debenture" means, in relation to a company any obligation of the company in respect of any loan capital issued by the company otherwise than as consideration for a loan made to it in the ordinary course of a banking business, or in respect of any debt incurred by the company-

(a) for any money borrowed by the company, otherwise than by way of temporary loan made in the ordinary course of a banking business;

(b) for any transfer of capital assets made to the company by any person unless the obligation is one resulting from a dealing with a person who transferred such assets to the company in, and on terms consistent with, the ordinary course of a business carried on by him;

(c) without consideration, or for consideration the value of which to the company at the time when the debt was incurred was substantially less than the value at that time of the debt' (including any premium thereon); or

(d) where the debt was of such a nature that it would in the ordinary course of business and apart from some special

arrangement, have carried interest, if the debt did not carry interest or carried interest at a rate which was either unreasonably high or unreasonably low ;

(6) "disposition" includes any trust, covenant, agreement or arrangement, whether made by a single operation or by associated operations, and also in relation to shares in or debentures of a company, the extinguishment or any alteration of rights attaching thereto, whether effected by a single operation or by associated operations;

(7) "distributed assets" means, in relation to a company, assets of the company to which sub-section (3) of Section 17 of the Act applies which were disposed of or distributed by the company as mentioned in that sub-section, and "value of the distribution" means, in relation to any distributed assets, the value thereof or, if partial consideration (other than the extinguishment, or an alteration, of rights attaching to shares in or debentures of a company to which that section applies) was given for the distribution in money or money's worth received by the company for its own use and benefit, the value thereof less the value of the consideration given ;

(8) "dividend" includes any sum which would be treated as dividend for the purposes of the Income-tax Act, 1922 (XI of 1922);

(9) "member" means, in relation to a company, a holder in his own right of any share in or debenture of the company, and a person interested in any share or in debenture of the company held, whether by himself or another, otherwise

than in the holder's own right;

(10) "payment" includes a transfer of property and a set-off or release of an obligation and references to the amount of a payment include, in relation to property transferred or to an obligation set-off or released, references to the value thereof;

(11) "power" includes any right or power exercisable by virtue of the holding of shares in or debentures of a company, and any right or power to procure an issue of shares in or debentures of a company.

3. Interpretation :-

(1) For the purposes of these rules a person shall be deemed to have received or had any payment, income, enjoyment, assets, or interest, the receipt or having whereof by him is relevant for the purposes of these rules, if any of the following conditions have been satisfied in relation thereto, namely,-

(a) if the relevant payment or other matter has been applied in any manner for the benefit of that person, or has been dealt with by that or any other person in any manner calculated to cause it to inure for the benefit of that person at any time, whether in the form of income or not, or if any property which was or would be available for the purpose by reason of the effect or successive effects of any one or more of associated operations relating to the relevant payment or other matter has been so applied or dealt with ;

(b) if any advantages received or to be received at any time by that person have been provided out of that payment or other matter, or out of any such property as aforesaid;

(c) if that person became able in any manner to control the application of relevant payment or other matter, or of any such property as aforesaid, otherwise than in a fiduciary capacity;

(d) if the relevant payment or other matter, or any such property as aforesaid, has been applied in any manner so as to increase the value to that person of any property in which he was beneficially interested; or

(e) as respects such income as is mentioned in sub-rule (1) of rule 5, if the receipt by, or accrual to, the company of that income operated in any manner so as to increase the value to that person of any property in which that person was beneficially interested, so however that the amount of the income which that person is to be treated as having received by virtue of this paragraph shall be limited to the amount of the increase in value of the property in question ; and references in these rules to the deceased's receiving or having or being or becoming entitled to receive or have, any such payment or other matter as aforesaid shall be construed accordingly.

(2) References in those rules to a disposition being made by any person to a power being exercised or exercisable by any person, or to any other act being done by any person, include references to its being made, or being exercised or exercisable, or being done, by

him and another jointly or by another at his direction or by a company of which he had control within the meaning of sub-rule (3) of rule 15 whether with or without the consent of any other person; references importing an omission on the part of any person in relation to any such matter as aforesaid shall be construed in like manner and references in relation to any such matter as aforesaid to its being made or being exercised or exercisable, or being done or omitted, with the consent of any person include reference to its being made, or being exercised or exercisable, or being done or omitted, at his request or with or subject to his acquiescence.

(3) References in these rules to a person having any power or control or doing any act in a fiduciary capacity shall be construed as references to his having that power or control or doing that act in a fiduciary capacity imposed on him otherwise than by a disposition made by him and in such a capacity only.

4. Dispositions or operations deemed to be transfers :-

A person shall be deemed for the purposes of Section 17 of the Act, to have made a transfer of property to a company if the property came to be included in the resources of the company by the effect of a disposition made by him or with his consent or of any associated operations of which such a disposition formed one.

5. Benefits accruing to deceased from company :-

(1) The following shall be treated as benefits accruing to the deceased from the company, that is to say-

(a) any income of the company, and any periodical payment out of the resources or at the expense of the company, which the deceased received for his own benefit whether directly or indirectly, and any enjoyment in specie of land or other property of the company or of a right thereover which the deceased had for his own benefit whether directly or indirectly;

(b) any such income or payment or enjoyment which the deceased was entitled to receive or have as aforesaid; and

(c) any such income or payment or enjoyment which the deceased could have become entitled to receive or have as aforesaid by an exercise in the three years ending with his death of any power exercisable by him or, with his consent; and where the deceased could by an exercise in the said three years of any such power as aforesaid, have become entitled to receive as aforesaid any

payment out of the resources or at the expense of the company not being a periodical payment, but did not in fact receive or become entitled to receive that payment, there shall be treated as a benefit accruing to the deceased from the company interest on that payment at the average rate from the earliest date on which he could have become entitled to receive it.

(2) For the purposes of these rules, the expression "periodical payment" means a payment by way of dividend or interest, a payment by way of remuneration not being a single lump-sum payment, and any other payment being one of a series of payments, whether interconnected or not, whether of the same or of varying amounts, and whether payable at regular intervals or otherwise.

6. Surrender of title to, or of power to, obtain benefits :-

(1) Subject to the provisions of sub-rule (3), if the deceased has made, whether for value or not, a surrender of his title to receive any such income or payment or enjoyment as is mentioned in the last preceding rule, or of any such power as is therein mentioned, the last preceding rule shall have effect as if the surrender had not been made.

(2) The deceased shall be deemed to have made such a surrender as aforesaid, if a right which he had to receive any such income or payment or enjoyment as aforesaid, or if any such power as aforesaid, has been extinguished or suspended by the effect solely or partly of any disposition made by him or with his consent of shares in or debentures of company or of any other property or right, or of the exercise or the leaving unexercised by him or with his consent of any power or right, otherwise than in a fiduciary capacity, or if apart from such a disposition or other act or omission he would have become entitled to receive any such income or payment or enjoyment as aforesaid but by the effect solely or partly thereof, he did not become entitled to receive it.

(3) This rule shall not apply to a surrender made bonafide before the beginning of the two years ending with the death of the deceased (or if it was made for public charitable purposes, before the beginning of the six months ending with his death), if the deceased was at all times during those two years or during those six months, as the case may be, entirely excluded from receiving, or being entitled to receive, or having any capacity by any exercise

of any power exercisable by him or with his consent to receive any periodical payment by virtue of the surrender or of any associated operations of which the surrender was one.

7. Determination of the amount of benefits :-

(1) The provisions of this rule shall have effect for the purposes of determining the amounts to be taken into account, for the purposes of sub-section (2) of Section 17 of the Act, as the amounts of benefits accruing to the deceased from the company.

(2) No amount shall be taken into account more than one .

(3) Where an amount is taken into account by reference to the deceased's having been entitled to a benefit which he did not in fact receive, or by reference to a power which was not in fact exercised or was surrendered, due regard shall be had to the effect that his receiving the benefit, or the powers being exercised would have had in relation to other benefits.

(4) The amounts that are to be taken into account by reference to the deceased's having been entitled to a benefit which he did not in fact receive, or by reference to a power which was not in fact exercised or was surrendered, shall be such as would have fallen to be taken into account as benefits received by the deceased if he had acted in relation to the claiming of benefits and the exercise of powers during the three years ending with his death to his greatest financial advantage, due regard being had to any consideration which he would have had to give in respect of a claim to any benefit or the exercise of any power.

(5) In making for the purposes of the last preceding sub-rule a computation of any diminution of income which the deceased would have sustained giving any such consideration as is therein mentioned, or of any increase of income which the company would have obtained from any such consideration to be given to the company, it shall be assumed that the consideration would have yielded income equal to interest at the average rate on the amount or value thereof.

(6) The amounts to be taken into account shall include any income tax or super-tax which the deceased paid or bore in respect of the benefits in question.

(7) The amount to be taken into account in respect of a benefit

consisting of any enjoyment in specie of land or other property of the company or of a right thereover shall be the value of the enjoyment thereof for the period during which the benefit subsisted.

8. Time of accrual of benefits :-

(1) The provisions of this rule shall have effect for the purpose of determining-

(a) whether a benefit accruing to the deceased from the company is to be treated as having accrued to him during the three years ending with his death, or during a particular accounting year, or at any other relevant time, and

(b) the period during which a benefit consisting of any enjoyment in specie of land or other property of the company or of a right thereover is to be treated as having subsisted.

(2) A benefit consisting of income of the company or a periodical payment which the deceased received, or became entitled to (but did not in fact) receive, shall be treated as having accrued to him at the earliest time at which he could have obtained receipt thereof.

(3) A benefit consisting of income of the company or a periodical payment which the deceased could have become entitled to receive by an exercise in the three years ending with his death of a power which was not in fact exercised or was surrendered shall be treated as having accrued to him at the earliest time at which he could have obtained receipt thereof if he had acted as mentioned in sub-rule (4) of the last preceding rule.

(4) A benefit consisting of interest on such a payment other than a periodical payment as is mentioned in rule 5 which the deceased could have become entitled to receive shall be treated as having accrued to him in any accounting year, to the extent to which the period during which the interest is to be treated as accruing fell within that year.

(5) A benefit consisting of any such enjoyment in specie as aforesaid shall be treated as having accrued to the deceased in the said three years if any part of the period during which it subsisted fell within those years, and shall be treated as having accrued to him in any accounting year to the extent to which the period during

which it subsisted fell within that year.

(6) A benefit consisting of any such enjoyment in specie as aforesaid shall be treated as having subsisted during the following period, that is to say-

(a) in the case of enjoyment that the deceased had, during the period for which he had it;

(b) in the case of enjoyment which he became entitled to (but did not in fact) have, during the period for which he could have had it;

(c) in the case of enjoyment which he could have become entitled to have by an exercise in the three years ending with the death of a power which was not in fact exercised or was surrendered, during the period for which he could have had it if he had acted as mentioned in sub-rule (4) of rule 7.

9. Determination of net income or loss of company :-

(1) In income of the company for any accounting year, or for the period between end of the last accounting year and the death of the deceased, shall, subject to sub-rules (2) and (3), be determined by computing the aggregate income the company from its various sources in accordance with the provisions of the Income-tax Act, 1922 (XI Of 1922), except for agricultural income which shall be computed, separately according to sub-rule (4), provided that there shall be excluded from the computation of the income of the company any income thereof which was neither bona fide earned in the ordinary course of business nor the produce of income yielding assets held by it.

(2) The computation shall always be made by reference to the income for that year or period and not by reference to the income of any other period notwithstanding anything in the Income-tax Act, 1922 (XI of 1922) to the contrary.

(3) In making the computation, no deduction from the income of the company shall be made in respect of-

(a) the amount of any loss sustained before the beginning of the year or period, which is admissible under the provisions of sub-section (2) of S.24 of the Income-tax Act, 1922 (XI of 1922); or

(b) the amount of any deduction admissible on account of depreciation under proviso (b) of Cl. (vi) of sub-section (2) of S.10

of the Indian Income-tax Act, 1922 (XI of 1922); or

(c) any dividend on shares of or interest on debenture in the company and liabilities incurred otherwise than for the purposes of the business of the company wholly and exclusively.

(4) The agricultural income of a company shall be computed in the manner provided in sub-section (2) of S.12 of the Indian Income-tax Act, 1922 (XI of 1922).

(5) There shall be deducted in arriving at the amount of the income any annual charge or interest not being interest on debentures, which would have been deducted irrespective of whether tax were recovered from it or not.

(6) Sub-rules (1), (2) and (3) shall apply with the necessary adaptations, to the determination of any loss sustained by a company as they apply to determination of the net any income of a company.

10. Determination of value of assets of company :-

(1) In determining the value of the estate for the purposes of estate duty the provisions of Section 44 of the Act as to making allowance for debts and incumbrances shall not have effect as respects any debt or incumbrance to which assets of the company passing on the death by virtue of Section 17 of the Act were liable but the Controller shall make an allowance from the principal value of those assets for all liabilities of the company (computed, as regards liabilities which have not matured at the date of the death, by reference to the value thereof at that date and, as regards contingent liabilities, by reference to such estimation as appears to the Controller to be reasonable) other than-

(a) liabilities in respect of shares in or debentures of the company, and

(b) liabilities incurred otherwise than for the purposes of the business of the company wholly, and exclusively.

(2) In estimating the principal value of the said assets the Controller shall fix the price thereof on the basis of a sale of the business of the company as going concern.

(3) Where the said assets include any distributed assets, if partial consideration (other than the extinguishment, or an alteration, of

right attaching to shares in or debentures of a company to which Section 17 of the Act applies) was given for the distribution in money or money's worth received by the company for its own use and benefit, a further allowance shall be made, in addition to the allowance specified in sub-rule (1) of an amount equal to the value of the consideration given.

(4) For the purpose of the estimation of the principal value of any distributed assets, Section 36 of the Act shall have effect with the substitution for the reference therein to the time of the death of the deceased of a reference to the time of the distribution and effect shall be given to the proviso to the said Section 36 (which relates to depreciation by reason of the death of deceased) as at the time of distribution only, due regard being had to the expectation of life of the deceased at that time.

11. Limitation on, and prevention of duplication of, charge

:-

(1) If it is shown to the satisfaction of the Controller that-

(a) the value of all such property as is mentioned in sub-section (1) of Section 17 of the Act of which the deceased made a transfer to the company, together with an amount equal to any excess of interest at the average rate, on the value thereof from the date or respective dates of transfer to the death of the deceased over the aggregate amount of the benefits received by the deceased, by virtue of the transfer, is less than,

(b) the value on which the estate duty would be chargeable on the death under the said section if all benefits accruing to him from the company other than the benefits received by him by virtue of the transfer were disregarded, an amount equal to the deficiency shall be deducted from the proportion of the value of the company's assets that corresponds to the benefits received by him by virtue of the transfer. Reference in this sub-rule to benefits received by the deceased by virtue of a transfer shall be construed as references to benefits accruing to him from the company which he received or had as consideration for the transfer, or in consequence of his having received as consideration therefor shares or debentures or other property which produced any of those benefits.

(2) Where the following conditions are satisfied, that is to say, that the deceased has within three years before his death, disposed of any shares in or debentures of the company for consideration in

money or money's worth paid to him for his own use or benefit, and that any benefits accrued to the deceased from the company by virtue of those shares or debentures or by virtue of a power having been exercisable by him or with his consent in relation to those shares or debentures, then-

(a) if the value of the said consideration is equal to or greater than the proportion of the value of the company's assets that corresponds to the benefit that so accrued to him, or if the Controller is satisfied that the proportion would not, if fully ascertained, be found to be substantially in excess of the value or the said consideration, duty on the said proportion shall not be payable;

(b) in any other case, the amount on which duty is to be charged in respect of the said proportion shall be reduced by the amount of value of the said consideration : Provided that, in the case of any shares or debentures-

(i) this sub-rule shall not apply where estate duty is payable on the death on their value or any part thereof or would be so payable but for an exemption from estate duty; and

(ii) for the purpose of determining to what extent, if any, the disposition of them satisfies the conditions of this sub-rule, rule 16 (which relates to transactions through the medium of a company) shall apply as it applies for the purposes of Section 26 of the Act.

(3) Where the following conditions are satisfied, that is to say, that any benefits accrued to the deceased from the company by virtue of any interest that he at any time had in shares in or debentures of the company, or by virtue of a power having at any time been exercisable by him or with his consent in relation to shares in or debentures of the company, and apart from this sub-rule estate duty would be payable on the death both on the value of those shares or debentures by virtue of any provisions other than Section 17 of the Act, and on the proportion of the value of the company's assets that corresponds to the benefits that so accrued to him by virtue of that section then-

(a) if the value of shares or debentures is equal to, or greater than, the proportion, or if the Controller is satisfied that the said proportion would not, if fully ascertained, be found to be substantially in excess of the value of the shares or debentures,

duty on the said proportion shall not be payable;

(b) in any other case the amount on which duty is to be charged in respect of the said proportion shall be reduced by the amount of the value of the shares or debentures.

(4) Where the conditions set out in the last preceding sub-rule would be satisfied but for the fact that, by reason of an exemption from estate duty (not being an exemption on the ground that the deceased or other person having an interest in the shares or debentures ceasing on the death of the deceased had only an interest as the holder of an office), estate duty is not payable on the value of the shares or debentures, paragraphs (a) and (b) of that sub-rule shall apply as if that exemption did not operate and as if the duty had been payable on the value of the shares and debentures accordingly :

Provided that where-

(a) the exemption in question depends on a payment of any duty on an earlier death, or does not depend on such a payment but depends wholly or partly on any dispositions having been made; and

(b) since the date of that death or disposition, as the case may be the shares or debentures have been substantially increased in value by reason of a transfer of property to any company by any person or by reason of the extinguishment of, or any alteration of the rights attaching to, shares in or debentures of any company; then, unless the exemption takes the form of a deduction from the value of the shares or debentures of a fixed amount which is independent of the value of the shares or debentures, the references in paragraph (a) and (b) of last preceding sub-rule to the value of the shares or debentures, therein mentioned shall have effect as if they were references to the value thereof reduced to the extent to which, in the opinion of the Controller, that value is attributable to that transfer, extinguishment or alteration.

(5) Where by reason of an exemption from estate duty, that duty is payable on part only of the value of the shares or debentures, sub-rule (3) shall, with the necessary adaptations, be applied to the part of the value of the shares or debentures on which duty is payable and sub-rule (4) shall be applied to the part of the value of the shares or debentures affected by the exemption; and, where there are two or more exemptions from estate duty each of which

operates on part only of the value of the shares or debentures and the exemptions are such that the said sub-rule (4) would operate differently in relation to them, then, whether or not there is any part of the value of the shares or debentures on which estate duty is payable, the said sub-rule (4) shall, with the necessary adaptation, be applied separately in relation to the parts of the value of the shares or debentures affected by each exemption.

(6) In this rule the expression "exemption from estate duty" includes any exemption conferred by any provision of the Act which has the effect of exempting property, in whole or in part, from the duty, whether that provision takes the form that the property is not to be deemed to pass, or the form that the duty is not to be payable or the form that a deduction is to be made from the value of the property, or any other form; and the reference in paragraph (b) of the proviso to sub-rule (4) to an increase in the value of shares or debentures includes, where those shares or debentures have been acquired in substitution for any other property, any increase in the value of any property which those shares or debentures directly or indirectly represent.

(7) References in this rule to the proportion of the value of the company's assets that corresponds to any particular benefits shall be construed as references to so much of the value on which estate duty is chargeable on the death by virtue of Section 17 of the Act as is chargeable by reason of the bringing of these benefits into the computation made under sub-section (2) of that section.

(8) So much of any income or periodical payment or enjoyment of kind mentioned in rule 5 as is shown to the satisfaction of the Controller to have represented or to have been such that it would if received have represented reasonable remuneration to the deceased for any services rendered by him as the holder of an office under the company shall, notwithstanding anything in that rule, not be treated for the purposes of these Rules as a benefit accruing to the deceased from the company; and any liability of the company in respect of the remuneration of any person as the holder of an office under the company shall be treated for the purposes of these Rules as incurred for the purposes of the business of the company wholly and exclusively to the extent to which it is shown to the satisfaction of the Controller that the amount thereof was reasonable and to that extent only.

(9) For the purposes of sub-rule (3) where the benefits that

accrued to the deceased from the company in the relevant accounting years included benefits that accrued to him otherwise than as mentioned in that sub-rule but the deceased had at any time an interest in, or a power was at any time exercisable in relation to shares in or debentures of the company in respect of which estate duty would be payable on his death apart from anything in that sub-rule and by virtue of that interest or power benefits accrued to the deceased from the company in those years, or would so have accrued to him if any payments had been made by virtue of rights attached to those shares or debenture, then-

(a) if the first-mentioned benefits consisted to any extent of payments made out of moneys which, if not so applied, could have been applied in increasing the last-mentioned benefits, or as payments which would have constituted such benefits ; or

(b) if the first-mentioned benefits are brought into the computation made under sub-section (2) of Section 17 of the Act to the exclusion to any extent of the last-mentioned benefits; the first-mentioned benefit shall to that extent be treated as if they had accrued to the deceased by virtue of his interest in, or of the power exercisable in relation to, the said shares or debentures.

12. Adjustments as to distributed assets :-

(1) Where the assets of the company passing on the death of the deceased by virtue of Sec.17 of the Act include any distributed assets, or by reason of the company's having been wound up or dissolved before the death, consist of distributed assets, the following provisions of this rule shall have effect.

(2) The net income of the company shall be determined as if the income of the company had included, or the company had had income equal to, interest on a sum equal to the value of each distribution at the average rate from the date thereof.

(3) If on any distribution the deceased received beneficially an interest in any, of the distributed assets, the benefit accruing to the deceased from the company shall be ascertained as if the amount brought into the income of the company under the last preceding sub-rule by reference to the value of the distribution of those assets had been income of the company which the deceased was entitled to receive immediately on its accrual to the company, or, where the interest in those assets which the deceased received was

less than an absolute interest, had been such income to an extent corresponding to the proportion which the value of the interest in those assets received by him bore to the value of those assets.

(4) Where sub-rule (3) has effect-

(a) the value on which, apart from this provision, estate duty would be payable on the death of the deceased by virtue of Section 17 of the Act shall be reduced by an amount equal to the value of the distribution of the assets in question, or, where the interest in those assets which the deceased received was less than an absolute interest, by an amount equal to the proportion aforesaid of that value ; and

(b) any amount which is treated as a benefit accruing to the deceased from the company by virtue of that sub-rule shall be treated for the purposes of sub-rule (1) of rule 11, as a benefit received by him.

13. Adjustments as to additions to assets :-

(1) Where the principal value of the assets of the company passing on the death of the deceased by virtue of Section 17 of the Act is increased by reason of an addition having been made to the assets of the company, otherwise than by way of receipts representing income in respect of which the company was liable to pay or bear income tax or super-tax between the beginning of the first of the relevant accounting years and the death of the deceased, either-

(a) in consideration of an issue of shares in or debentures of the company, or

(b) otherwise, howsoever, except by way of purchase for full consideration in money or money's worth given by the company, the following provisions of this rule shall have effect in relation to the added assets.

(2) The net income of the company shall be determined as if the income of the company had included interest on a sum equal to the value of the additions at the average rate from the beginning of the first of the relevant accounting years to the date of the addition.

(3) If a transfer of any of the added assets or of any interest in any of them was made to the company by the deceased, the benefits accruing to the deceased from the company shall be ascertained as if the amount brought into the income of the company under the

last preceding sub-rule by the reference to the value of the addition of those assets had been income of the company which the deceased was entitled to receive immediately on its accrual to the company or had been such income to an extent corresponding to the proportion which the value of the interest transferred bore to the value of those assets, as the case may be.

(4) Where sub-rule (3) has effect, if the deceased received as consideration for the addition of assets in question an interest in any shares in or debentures of the company in respect of which estate duty would be payable on his death apart from anything in sub-rule (3) of rule 11 any amount which is treated as a benefit accruing to him from the company by virtue of the last preceding sub-rule shall be treated for the purposes of sub-rule (3) of rule 11 as a benefit accruing to him by virtue of his interest in those shares or debentures.

(5) In this rule the expression "value of the addition" means, in relation to any added assets, the value thereof or, if partial consideration (other than an issue of, or an alteration of rights attaching to, shares in or debentures of the company) was given therefor in money or money's worth out of the resources or at the expense of the company, the value thereof less the value of the consideration given.

14. Accounting year :-

(1) The expression "accounting year" means if the company has, before the death of the deceased, made up accounts for a period of twelve months ending in the last year of his life, that period and each previous period of twelve months or other period ending on the date corresponding to that to which the accounts were made up, or if not, a period of twelve months or other period ending on such date in the last year of his life as the Controller may determine and each previous period of twelve months or other period ending on the date corresponding to the date determined.

(2) The expression "relevant accounting years" means the accounting years by reference to which the extent of the passing of the assets of the company is to be determined under Section 17 of the Act.

(3) Where an accounting year does not coincide with a period for which accounts of the company were made up, the Controller may, for the purpose of determining the income or net income of the

company for that accounting year, divide any such period and made such apportionments and aggregations of the income of the company as may be necessary, so, however, that any apportionments so made shall be made in proportion to the number of months or fractions of months in the respective period for which the appointment is made.

15. Valuation for estate duty of shares and debentures of certain companies :-

(1) Where for the purposes of estate duty there pass, on the death of a person, shares in or debentures of a controlled company, then if-

(a) the deceased had the control of the company at any time during the three years ending with his death ; or

(b) dividends which were declared by the company for any period falling wholly or partly within those three years, or which, not having been declared for any particular period, were declared at a time within those three years together with any amounts which accrued due during any period falling wholly or partly within those three years for interest on debentures of the company, are, as to amounts forming in the aggregate more than one-half of the total amount of such dividends and interest to be treated by virtue of any of the provisions of rules 5 and 6 as benefits accruing to the deceased from the company, or would have fallen to be so treated if the deceased had made a transfer of property to the company ; or

(c) the deceased had at that time during those three years a beneficial interest in possession in shares in or debentures of the company, or in both, of an aggregate nominal amount representing one-half or more of the aggregate nominal amount of the shares in and debentures of the company then issued and outstanding, and no one other person had at that time the control of the company ; the principal value of the shares or debentures in lieu of being estimated in accordance with the provisions of sub-section (1) of Section 36 of the Act shall be estimated by reference to the net value of the assest of the company in accordance with the provisions of the next succeeding sub-rule

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(2) For the purposes of such ascertainment as aforesaid-

(a) the net value of the assets of the company shall be taken to be the principal value thereof estimated in accordance with sub-section(l) of Section 36 of the Act less the like allowance for liabilities of the company as is provided by sub-rule (1) of rule 10 in relation to the assets of a company passing on a death by virtue of Section 17 of the Act but subject to the modification that allowance shall be made for such a liability as is mentioned in paragraph (b) of that sub-rule unless it also falls within paragraph (a) thereof;

(b) the aggregate value of all the shares and debentures of the company issued and outstanding at the death of the deceased shall be taken to be the same as the net value of the assets of the company;

(c) in a case in which there are both shares in and debentures of the company issued any outstanding at the death, or different classes of either, the net value of the assets of the company shall be apportioned between them with due regard to the rights attaching thereto respectively ; and

(d) the value of any share, or of any debenture, or of a share or debenture of any class shall be a rateable proportion,ascertained by reference to nominal amount,of the net value of the assets of the company as determined under paragraph (a) of this sub-rule or,in the case mentioned in paragraph (c) of this sub-rule,of the part thereof apportioned under that paragraph to the shares of the company, or to its debentures.or to that class thereof, as the case may be.

(3) For the purposes of this rule a person shall be deemed to have had control of a company at any time if he then had-

(a) the control of powers of voting on all questions or on any particular question, affecting the company as a whole which if excised would have yielded a majority of the votes capable of being exercised thereon ; or

(b) the capacity to exercise, or to control the exercise, of any of the following powers, that is to say, the powers of a Board of Directors or of a governing directors of the company, power to nominate a majority of directors or a governing director thereof, power to veto the appointment of a director thereof, or powers of a like nature ; or if he could have obtained such control or capacity by an exercise at that time of a power exercisable by him, or with his consent.

(4) This rule shall not apply to the valuation of shares or debentures of a class as to which permission to deal has been granted by a recognised stock exchange and dealings in the ordinary course of business on that stock exchange have been recorded during the year ending with the death of the deceased, and in making an apportionment under paragraph (c) of sub-rule (2) in the case of a company having shares or debentures of such a class, the part of the value of the assets of the company to be apportioned to shares or debentures of that class shall be determined by reference to the prices recorded on such dealings.

(5) Control of a company which a person had in a fiduciary capacity shall be disregarded for the purposes of this rule.

(6) In this rule references to the assets of a company shall be construed as references to the assets that it had at the death of the deceased.

16. Limitation of exceptions for consideration, and for exclusion of deceased, where company concerned :-

(1) For the purposes of Section 26 of the Act (which relates to exceptions for transactions for money consideration), if a controlled company was concerned in a transaction in relation to which it is claimed that the provisions of that section have effect, or in any one or more of associated operations of which that transaction formed one, those provisions shall have effect in relation thereto if, and only if, and to the extent only to which, the Controller is satisfied that those provisions would have had effect in the following circumstances, namely, if the assets of the company had been held by it on trust for the members thereof and any other person to whom it is under any liability incurred otherwise than for the purposes of the business of the company wholly and exclusively, in accordance with the rights attaching to the shares in and debentures of the company and the terms on which any such liability was incurred and if the company had acted in the capacity of a trustee only with power to carry on the business of the company and to employ the assets of the company therein. Where a controlled company was concerned in the disposition or determination of an interest limited to cease on a death, effected or suffered as mentioned in sub-section (2) of Section 11 of the Act or in a surrender made as mentioned in sub-rule (3) of rule 6 or was concerned in any one or more of associated operations of which the

disposition or determination or surrender formed one, the conditions as to the entire exclusion of the person who had the interest or of the deceased, and of any benefit to him, specified in the said sub-section (2) or in the said sub-rule (3), as the case may be, shall be treated as having been satisfied if and only if they would have been so treated in the circumstances aforesaid.

17. What is investment company :-

For the purpose of Cl. (iv) of sub-section (4) of Section 17 of the Act a company is an investment company if its income is derived mainly from investments in stocks, shares, bonds and debentures, that is to say, the income is of a nature which, if the company were an individual, would not be earned income as defined in C1.(6-AA) of S.2 of the Indian Income-tax Act, 1922, provided that any income apportioned to the company under S.23A of the Indian Income-tax Act, 1922, shall be deemed to be income of the company and to be its income from investment.