

Agricultural lands in India
CBDT Circulars & Notifications

CBDT Circular No. 36 of 2016 - F. No. 225/S8/2016-ITA.II

Government of India, Ministry of Finance, Department of Revenue,
Central Board of Direct Taxes, Dated: 25th October 2016

Subject: Taxability of the compensation received by the landowners for the land acquired under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('RFCTLAAR Act')-reg.

Under the existing provisions of the Income-tax Act 1961 ('the Act'), agricultural land which is not situated in the specified urban area, is not regarded as a capital asset

Hence, **capital gains arising from the transfer (including compulsory acquisition) of such agricultural land are not taxable.** Finance (No. 2] Act, 2004 inserted section 10(37) in the Act from 01.04.2005 to provide a specific exemption to the capital gains arising to an Individual or a HUF from compulsory acquisition of agricultural land situated in the specified urban limit, subject to fulfilment of certain conditions.

Therefore, compensation received from compulsory acquisition of agricultural land is not taxable under the Act (subject to fulfilment of certain conditions for specified urban land).

2. The RFCTLARR Act which came into effect from 1st January 2014, in section 96, inter alia provides that income-tax shall not be levied on any award or agreement made [except those made under section 46) under the RFCTLARR Act

Therefore, compensation received for compulsory acquisition of land under the RFCTLARR Act (except those made under section 46 of RFCTLARR Act), is exempted from the levy of income tax.

3. As no distinction has been made between compensation received for compulsory acquisition of agricultural land and non-agricultural land in the matter of providing an exemption from income-tax under the RFCTLARR Act, the exemption provided under section 96 of the RFCTLARR Act is wider in scope than the tax-exemption provided under the existing provisions of Income-tax Act, 1961.

This has created uncertainty in the matter of taxability of compensation received on compulsory acquisition of land, especially those relating to the acquisition of non-agricultural land.

The matter has been examined by the board and it is hereby clarified that compensation received in respect of award or agreement which has been exempted from levy of income-tax vide section 96 of the RFCTLARR Act shall also not be taxable under the provisions of income-tax Act, 1961 even if there is no specific provision of exemption for such compensation in the Income-tax Act, 1961.

(Rohit Garg), Deputy Secretary to the Govt. of India

CBDT Circular No. 17/2015 / F.No.279 / Misc. /140 / 2015 -ITJ

Government of India / Ministry of Finance / Department of Revenue /
Central Board of Direct Taxes / New Delhi, 06.10.2015

Subject: - Measurement of the distance for section 2(14) (iii) (b) of the Income-tax Act for the period before Assessment year 2014-15

"Agricultural land" is excluded from the definition of the capital asset as per section 2(14) (iii) of the Income-tax Act based, inter-alia, on its proximity to a municipality or cantonment board.

The method of measuring the distance of the said land from the municipality has given rise to considerable litigation. Although the amendment by the Finance Act, 2013 with effect from 1.04.2014 prescribes the measurement of the distance is taken aerially, ambiguity persists in respect of earlier periods.

2. The matter has been examined in light of judicial decisions on the subject. The Nagpur Bench of the Hon. Bombay High Court vide order dated 30.03.2015 in ITA 151 of 2013 in the case of Smt. Maltibai R Kadu has held that the amendment prescribing distance to be measured aerially, applies prospectively i.e. concerning the assessment year 2014-15 and subsequent assessment years.

For the period before the assessment year 2014- 15, the High Court held that the distance between the municipal limit and the agricultural land is to be measured having regard to the shortest road distance. The said decision of the High Court has been accepted and the aforesaid disputed issue has not been further contested.

3. Being a settled issue, no appeals may henceforth be filed on this ground by the officers of the department, and appeals already filed, if any, on this issue before various Courts/ Tribunals may be withdrawn/ not pressed upon. This may be brought to the notice of all concerned.

Sd/ (D.S. Chaudhry) CIT (A&J), CBDT, New Delhi

Notification No. [SO 9447] (File No. 164 / 3 / 87-ITA.I)], dt. 6-1-1994

Notification under section 2(1A) (C), clause (II) (B) and section 2(14)(III)(B)

Urbanisation of areas

Whereas a draft notification was published by the Central Government in the exercise of the powers conferred by item (B) of clause (ii) of the proviso to sub-clause (c) of clause (1A), and item (b) of sub-clause (iii) of clause (14), of section 2 of the Income-tax Act, 1961 (43 of 1961), in the Gazette of India, Extraordinary, Part II, section 3, sub-section (ii), dated February 13, 1991, under the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. S.O. 91(E), dated February 8, 1991, for specifying certain areas for the purposes of the said clauses and objections and suggestions were invited from the public within a period of 45 days from the date the copies of the Gazette of India containing such notification became available to the public; And whereas copies of the said Gazette were made available to the public on February 13, 1991; And whereas the objections and suggestions received from the public on the said draft notification have been considered by the Central Government;

Now, therefore, in the exercise of the powers conferred by item (B) of clause (ii) of the proviso to sub-clause (c) of clause (1A) and item (b) of sub-clause (iii) of clause (14) of section 2 of the Income-tax Act, 1961 (43 of 1961), and in supersession of the notification of the Government of India in the erstwhile Ministry of Finance (Department of Revenue and Insurance) No. S.O. 77(E), dated February 6, 1973, the Central Government having regard to the extent of, and scope for the urbanization of the areas concerned and other relevant considerations, hereby specifies the areas shown in column (4) of the Schedule hereto annexed and falling outside the local limits of municipality or cantonment board, as the case may be, shown in the corresponding entry in column (3) thereof and against the State or Union Territory shown in column (2) thereof for the purposes of the above-mentioned provision of the Income-tax Act, 1961 (43 of 1961).
(Schedules – full list of places can be download from the website)