

TR 37

Facts

A private limited company engaged in the cultivation of sugar since its incorporation will undertake a restructuring exercise whereby a newly formed company will acquire all the shares of the private limited company and this new company will be in turn owned by the existing shareholders of the private limited company.

The sugar growing activities of the private limited company will be taken over by another newly formed company, which will pay a rent computed at an arm's length basis, for the use of the fixed assets including land belonging to the private limited company. After the restructuring exercise, the private limited company may parcel some or all of its agricultural land.

Points at issue

i. Tax losses

- (a) Whether the unrelieved tax losses of the private limited company will be available for carry forward irrespective of the fact that such losses arose partly from sugar growing activities and were partly transferred to the company by a related sugar milling company.
- (b) Whether the change in the shareholding of the private limited company will impact on the availability of the unrelieved tax losses for carry forward.

ii. Profit on Sale of Land

Whether the profit derived by the private limited company from parceling and sale of some or all of its agricultural land is taxable.

Ruling (issued in December 2004)

Tax losses

The unrelieved tax losses of the private limited company will be available for carry forward and set off against its future profits irrespective of the fact that there is a change in the nature of the trading activities of the private limited company.

On the understanding that as a result of the restructure, there will not be any change in the ultimate shareholding of the private limited company the unrelieved losses of the company will be available for carry forward.

Profit on Sale of Land

Land parceling is an undertaking or scheme entered into or devised for the purpose of making profits which, by virtue of the provisions of Section 10(2) (c) of the Income Tax Act 1995, form part of taxable business profits.

The cost of land to be taken into account for the computation of the taxable profit will be the market value of the land just before it is made available for the development project.