

Circular No. 6 of 2015

F. No. 133/39/2014-TPL
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
(TPL Division)

Dated 9th April, 2015

Subject: Capital gains in respect of units of Mutual Funds under the Fixed Maturity Plans on extension of their term.

As per the provisions of the Income-tax Act, 1961 (hereinafter referred to as the Act) prior to the amendment made by the Finance (No.2) Act, 2014, assets in the nature of shares, listed securities, units of mutual funds and zero coupon bonds qualified as long term capital assets if held for a period of more than twelve months as against the holding period of more than thirty-six months in case of other assets. Accordingly, units of a mutual fund under the Fixed Maturity Plans (FMPs) held for a period of more than twelve months qualified as long term capital asset. The amendment in sub-section (42A) of section 2 of the Act by the Finance (No.2) Act, 2014 changed the period of holding in case of unlisted shares and units of a mutual fund (other than an equity oriented fund) for their qualification as long term capital asset to more than thirty-six months. As a result, gains arising out of any investment in the units of FMPs made earlier and sold/redeemed after 10.07.2014 would be taxed as short-term capital gains if the unit was held for a period of thirty-six months or less.

2. FMPs are closed ended funds having a fixed maturity date wherein the duration of investment is decided upfront. The funds collected by FMPs are invested by the Asset Management Companies (AMCs) in securities having similar maturity period. To enable the FMPs to qualify as a long-term capital asset, some AMCs administering mutual funds have offered extension of the duration of the FMPs to a date beyond thirty-six months from the date of the original investment by providing to the investor an option of roll-over of FMPs in accordance with the provisions of Regulation 33(4) of the SEBI (Mutual Funds) Regulations, 1996. In this regard representations have been received in the Board seeking clarification regarding applicability of tax on capital gains in the hands of the unit holder at the time of roll over of FMPs that are closed ended schemes.

3. In this matter the Securities and Exchange Board of India (SEBI) has informed that Regulation 33(4) of the SEBI (Mutual Funds) Regulations, 1996 allows the roll over of close-ended schemes. Such regulation provides the following:

"(4) A close ended scheme shall be fully redeemed at the end of the maturity period: Provided that a close-ended scheme may be allowed to be rolled over if the purpose, period and other terms of the roll over and all other material details of the scheme including the likely composition of assets immediately before the

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roll over, the net assets and net asset value of the scheme, are disclosed to the unit holders and a copy of the same has been filed with the Board:

Provided further that such roll over will be permitted only in the case of those unit holders who express their consent in writing and the unit holders who do not opt for the roll over or have not given written consent shall be allowed to redeem their holdings in full at net asset value based price."

SEBI has clarified that in case of roll over in accordance with the aforesaid regulation the scheme remains the same and it does not constitute a different scheme.

In the case of mutual funds, the unit of a mutual fund constitutes a capital asset and any sale, exchange or relinquishment of such unit is a 'transfer' under clause (47) of section 2 of the Act. The roll over in accordance with the aforesaid regulation will not amount to transfer as the scheme remains the same. Accordingly, it is hereby clarified that no capital gains will arise at the time of exercise of the option by the investor to continue in the same scheme. The capital gains will, however, arise at the time of redemption of the units or opting out of the scheme, as the case may be.

(Gaurav Kanaujia)
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