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TAX ALERT

Slump Sale - CBDT prescribes mechanism of computation of Fair Market Value of Capital Assets

Slump Sale provisions as per Section 50B and Notification of Rule 11UAE

- On March 23, 2021, Lok Sabha had passed the Finance Bill 2021 with more than 100 curative amendments. One of the amendments related to computation of capital gains in the case of transfer of undertaking under slump sale arrangement.
- Section 50B of the **Income Tax Act, 1961 ("ITA") provides** for computation of capital gain arising from slump sale of an undertaking. The erstwhile Section 50B had no provision for determination of full value of consideration in relation to the transfer of the undertaking under a slump sale.
- Amended section 50B (2)(ii) requires the Fair Market Value ("**FMV**") of the capital asset (undertaking) to be considered as the full value of consideration for the purposes of computing capital gain on the transfer of the capital asset.
- The rules for such computation of FMV of the capital asset for the purpose of Section 50B(2), are now notified by CBDT on May 24, 2021, by inserting Rule 11UAE to the Income Tax Rules, 1962 ("**ITR**").

Computation Methodology of Fair Market Value:

- Undertaking for the purpose of Section 50B of the ITA is considered to be a capital asset.
- The FMV of the capital asset will be determined using two methods as provided under Rule 11UAE and FMV of the capital assets would be either FMV1 or FMV2, whichever is higher,

FMV1 :

Is the fair market value of the capital assets transferred by way of slump sale:

A	Book value of all the assets of the undertaking/division (other than jewellery, artistic work, shares, securities and immovable property)	XXX	
(i)	Less: Income Tax Paid Less Refund	(XX)	
(ii)	Less: unamortised amount of deferred expenditure and assets which does not represent the value of any asset	(XX)	XX
B	Jewellery and artistic work - Price that would fetch if sold in the open market (supported by registered valuers' valuation report)		XX
C	Shares and securities – value as Rule 11U & 11UA of ITR		XX
D	Immovable Property -The value as may be adopted the purpose of payment of stamp duty in respect of the immovable property		XX
L	Book Value of Liabilities of the undertaking/division	XXX	
	Less: Equity Share capital	(XX)	
	Less: Proposed dividends on preference and equity shares (pending declaration before the date of transfer at AGM)	(XX)	
	Less: Reserves and surplus other than depreciation reserves	(XX)	
	Less: Provision for tax, other than Income Tax paid less Refund to the extent of excess over the tax payable u/s 115JB	(XX)	
	Less: Unascertained liabilities	(XX)	
	Less: Contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares	(XX)	XX
FMV1 =A+B+C+D-L			XXXX

Note that the calculation under FMV1 is more or less similar to the computation provisions under Rule 11UA.

FMV2 is the fair market value of the consideration received or accruing against Slump Sale

Sr. No.	Type of Consideration received or accruing	Value to be taken	Amount (Rs.)
E	Monetary consideration	Amount received or accrued	XX
F	Non-Monetary Consideration: Represented by property as referred to in 11UA(1) (jewellery, archaeological collections, paintings etc. and unquoted shares)	FMV of the property computed as per rule 11UA(1) of Income Tax Rules	XX
G	Non-Monetary Consideration: Represented by property other than property referred to in 11UA(1) & immovable property	Price that would fetch if sold in the open market based on the valuation report obtained from a registered valuer	XX
H	Non-Monetary Consideration: Represented by immovable property	The value as may be adopted for the purpose of payment of stamp duty in respect of the immovable property	XX
FMV2= E+F+G+H			XXX

Our Comments:

Earlier section 50B did not provide the manner in which the sales consideration for the transfer of capital asset being undertaking would be determined/ compared. Also, there were judicial precedents which upheld that in case of slump exchange the provisions of section 50B are inapplicable. With the amendment to Section 50B(2) and insertion of Rule 11UAE, the rule for determining the fair market value of capital asset has been notified, clarifying the valuation mechanism and further nullifying certain judicial precedents which stated that section 50B is not applicable in case of slump exchange.¹

¹ CIT v. Bharat Bijli Ltd., [2014] 46 taxmann.com 257 (Bombay HC)

Areva T & D Ltd. v. CIT, [2020] 119 taxmann.com 171(Madras HC)

SREI Infrastructure Finance Ltd. v. IT Settlement Commission, [2012] 20 taxmann.com 476 (Delhi HC)

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