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New Slump Sale Valuation Rules Prescribed

Background

Section 50B of the Income Tax Act, 1961 ('Act') dealing with Slump Sale has been substantially amended by the Finance Act, 2021. One of the amendments made to these provisions is around the Fair Market Value ('FMV') of the Undertaking (that is being transferred) which can be considered as the Full Value of Consideration for computing capital gains. These amendments were retroactive in nature, being applicable from FY20-21.

The CBDT, vide Notification No 68/2021/F.No 370142/16/2021-TPL; dated 24th May 2021, have notified a new rule - viz. Rule 11UAE - under the Income tax Rules 1962 for the purpose of determining FMV on a Slump Sale. -.

New Rule 11UAE

The New Rule 11UAE lays down the following two computational formulas:

Determination of FMV of the Undertaking [Rule 11UAE(2)]	Determination of the FMV of the consideration received/accrued on account of the transfer of the Under-taking [Rule 11UAE(3)]
FMV 1 = A+B+C+D – L	**FMV 1 = A+B+C+D – L**
A= book value of all the assets except for assets given under B, C and D below transferred by way of slump sale as reduced by — (i) income-tax paid (net of refund claimed); and (ii) Unamortised deferred expenditure not representing the value of any asset;	E = value of the monetary consideration received or accruing as a result of the transfer;
B = the open market price of the jewellery and artistic work, if any, as determined by a registered valuer;	F = FMV of non-monetary consideration received/accruing as a result of the transfer represented by property referred to in Rule 11UA(1) valued as per the mechanism laid down in that Rule;

Determination of FMV of the Undertaking [Rule 11UAE(2)]	Determination of the FMV of the consideration received/accrued on account of the transfer of the Under-taking [Rule 11UAE(3)]
C = FMV of shares and securities as determined under Rule 11UA(1);	G = the price which any non-monetary consideration received /accruing as a result of the transfer represented by property, other than immovable property, which is not referred to in Rule 11UA(1) would fetch in the open market as determined by a Registered Valuer;
D = Value of Immoveable Property as assessed for Stamp Duty purposes	H = Value of Immoveable Property as assessed for Stamp Duty Purposes, if the non-monetary consideration is discharged by transfer of an immovable property.
L= book value of liabilities of the undertaking transferred by way of slump sale, excluding the following:- (i) the paid-up equity capital; (ii) Amount set aside towards undeclared Dividends for preference and equity shares; (iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than depreciation reserve; (iv) Tax provisions to the extent of the excess over the tax payable with reference to the book profits determined as per the law; (v) provisions made for meeting unascertained liabilities; (vi) any contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares.	

The value to be considered as 'Full Value of Consideration' for capital gain purposes is either of the two, whichever is higher.

The value of the undertaking as per Rule 11UAE is to be determined as on the date of slump sale. Respective terms such as registered valuer, securities have been appropriately defined.

RBSA Comments

While the Section 50B amendment has been made retroactively from FY20-21, the CBDT Notification remains silent on the effective date of the applicability of the Rules. While a natural assumption would be that these rules too would applicable retroactively, a suitable clarification on the application date would have averted any confusion for the taxpayers.

The new rules effectively consider the Section 50C-value as the minimum value of immovable property transferred under a slump sale. Till the introduction of these new rules, the applicability of Section 50C of ITA, in a situation of slump sale was verboten. This could impact the transaction costs, esp. in case of internal restructuring transactions.

No different valuation treatment prescribed for hybrid instruments like CCPS, CCDs, etc.

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