



CBDT notifies certain classes of persons for non-applicability of Section 56(2)(x) and 50CA of the Income-tax Act

Receipt of the sum of money or the property received by a person without any consideration or for a less consideration is liable to tax in the hands of the receiver under the head 'Income from other sources' under Section 56(2)(x) of the Income-tax Act, 1961. The Finance Act, 2019 introduced new clause (XI) in the proviso to Section 56(2)(x) empowering the Central Board of Direct Taxes (CBDT) to prescribe a transaction undertaken by certain classes of persons to which Section 56(2)(x) shall not be applicable. Subsequently, the CBDT has introduced Rule 11UAC in the Income-tax Rules, 1962 providing exemption to certain class of persons from the applicability of Section 56(2)(x).

Section 50CA provides that in case of transfer of shares of a company other than quoted shares, the fair market value (FMV) of such shares determined in the prescribed manner shall be deemed to be the full value of consideration (if consideration is less than the FMV) for the purpose of computing income chargeable to tax as capital gains. The Finance Act, 2019 also introduced a new proviso that Section 50CA shall not apply to any consideration received or accruing as a result of transfer by such class of persons and subject to such conditions as may be prescribed.

Recently, CBDT has issued Notifications¹ prescribing certain classes of persons for non-applicability of Section 56(2)(x) and Section 50CA. CBDT amended Rule 11UAC [relating to Section 56(2)(x)] and introduced a new Rule 11UAD [relating to Section 50CA]. As per the amended/new Rule, these provisions shall not apply to:

- Any movable property, being unquoted shares, of a company and its subsidiary and the subsidiary of such subsidiary received by a shareholder/transferred by a taxpayer, where,

- The National Company Law Tribunal, on an application moved by the Central Government under Section 241 of the Companies Act, 2013, has suspended the Board of Directors of such company and has appointed new directors nominated by the Central Government under Section 242 of the Companies Act, 2013; and
- Share of company and its subsidiary and the subsidiary of such subsidiary has been received pursuant to a resolution plan approved by the Tribunal under Section 242 of the Companies Act, 2013 after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.

Further Section 56(2)(x) shall not apply to any movable property, being equity shares, of the reconstructed bank, received by the investor or the investor bank, where such shares have been allotted by the reconstructed bank under the scheme at a price specified in the scheme.

Our comments

In order to provide relief to certain type of transactions from the applicability of anti-abuse provisions of Sections 56(2)(x) and 50CA, CBDT has been empowered to prescribe transactions undertaken by certain classes of persons. Thus, CBDT has given relief to certain genuine transactions where such anti-abuse provisions will not apply.

In the light of raising litigation with respect to taxability under Section 56(2)(x) and Section 50CA, it would be helpful if CBDT also notifies certain other genuine transactions.

¹ Notification No. 40/2020, dated 29 June 2020 and Notification No. 42/2020, dated 30 June 2020

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