

TAX FLASH NEWS

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CBDT notifies a new rule for computation of fair market value of capital assets transferred in the case of slump sale

Recently, the Central Board of Direct Taxes (CBDT) has issued a Notification¹ introducing a new Rule 11UAE for computation of fair market value (FMV) of capital assets in the case of slump sale to determine full value of consideration received or accrued as a result of transfer of such capital assets.

Background

The Finance Act, 2021 amended Section 50B of the Income-tax Act, 1961 (the Act) dealing with computation of capital gains in case of slump sale. The amendment provides that the FMV of capital assets as on the date of transfer, calculated in the prescribed manner, shall be deemed to be the full value of consideration received or accruing as a result of transfer of such capital assets.

Recently, CBDT has issued a Notification introducing a new Rule 11UAE in the Income-tax Rules, 1962 for computation of FMV of capital assets in the case of slump sale.

CBDT Notification

- The FMV of the capital assets shall be the **FMV1** [determined under Rule 11UAE(2)] or **FMV2** [determined under Rule 11UAE(3)], whichever is higher.
- **FMV1** shall be the FMV of the capital assets transferred by way of slump sale determined in accordance with the formula – **A+B+C+D-L**, where,
 - A= book value of all the assets (other than jewellery, artistic work, shares, securities and immovable property) as appearing in the books of accounts of the undertaking or the division transferred by way of slump sale as reduced by the following amount which relate to such undertaking or the division –

- any amount of income-tax paid reduced by the amount of income-tax refund claimed
- any amount shown as asset including the unamortized amount of deferred expenditure which does not represent the value of any asset
- B = The price which the jewellery and artistic work would fetch if sold in the open market on the basis of the valuation report obtained from a registered valuer
- C = FMV of shares and securities as determined in the manner provided in Rule 11UA(1)²
- D = The value adopted or assessed or assessable by any authority of government for the purpose of payment of stamp duty in respect of the immovable property
- L= Book value of liabilities as appearing in the books of accounts of the undertaking or the division transferred by way of slump sale, but not including the following amounts which relates to such undertaking or division:
 - The paid-up capital in respect of equity shares
 - The amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company
 - Reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation

¹ CBDT Notification No. 68/2021, dated 24 May 2021

² Rule 11UA(1) is applicable in case of Section 56 of the Act for determining the FMV of the property other than immovable property.

- Any amount representing provision for taxation, other than amount of income-tax paid reduced by the amount of income-tax claimed as refund, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto
 - Any amount representing provisions made for meeting liabilities, other than ascertained liabilities
 - Any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares.
- **FMV2** shall be the FMV of the consideration received or accruing as a result of transfer by way of slump sale determined in accordance with the formula - **E+F+G+H**, where,
 - E = Value of the monetary consideration received or accruing as a result of the transfer
 - F = FMV of non-monetary consideration received or accruing as a result of the transfer represented by property referred to in Rule 11UA(1) determined in the manner provided in Rule 11UA(1) for the property covered in that sub-rule
 - G = The price which the non-monetary consideration received or 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 if sold in the open market on the basis of the valuation report obtained from a registered valuer, in respect of property
 - H = The value adopted or assessed or assessable by any authority of the government for the purpose of payment of stamp duty in respect of the immovable property in case the non-monetary consideration received or accruing as a result of the transfer is represented by the immovable property.
 - The above FMV of the capital assets are to be determined on the date of slump sale and for this purpose valuation date referred to in Rule 11UA shall also mean the date of slump sale.
 - For the purposes of this rule, the expression 'registered valuer'³ and 'securities'⁴ shall have the same meanings as respectively assigned to them in Rule 11U.

Our comments

In the pre-amended Section 50B, there was neither specific provision nor any standard mechanism prescribed for determining full value of consideration for computation of fair value of capital assets forming part of business undertaking that is transferred in slump sale. The new rule provides for uniform formula for determining the full value of consideration for computation of fair value of capital assets forming part of business undertaking that is transferred in slump sale. It will provide clarity to taxpayers and will also help to reduce litigation even at the time of assessment.

New rule provides a hybrid formula, where all assets of the business undertaking other than five specific categories of assets (namely, immovable property, jewellery, shares, securities and artistic work) are valued, essentially based on book value.

Though Finance Act, 2021 has made amendment with respect to computation mechanism in case of slump sale, there is no amendment with respect to allowability of indexation benefit in case of slump sale where the undertaking is held for more than 36 months.



³ 'Registered valuer' shall have the same meaning as assigned to it in Section 34AB of the Wealth-tax Act, 1957 (27 of 1957) read with rule 8A of Wealth-tax Rules, 1957

⁴ 'Securities' shall have the same meaning as assigned to it in Section 2(h) of the Securities Contracts (Regulation) Act, 1956 (42 of 1956)

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