

CBDT notifies rules for computing FMV of capital assets transferred through slump sale

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Summary

The Central Board of Direct Taxes (CBDT) has notified Income-tax (16th Amendment) Rules 2021¹. A new Rule² has been inserted to provide the method for computing Fair Market Value (FMV) of capital assets transferred as slump sale³.

As per the said rule, FMV of capital assets transferred shall be **higher of FMV1 or FMV2**, where

- FMV1 is the FMV of capital assets transferred by way of slump sale and
- FMV2 is the FMV of consideration received or accruing as a result of transfer of a capital asset.

The FMV determined as per the new rule shall be deemed to the full value of consideration for the purposes of computing capital gains arising out to slump sale.

Background

In case of a slump sale, the consideration recorded in the Business Transfer Agreement was treated as the consideration arising out of slump sale. The Finance Act 2021 amended the provisions to provide that, in case of slump sale, FMV of capital assets calculated in prescribed manner shall be deemed to be the full value of consideration for the purpose of computing capital gains.

¹ Notification 68 of 2021 dated 24 May 2021

² Rule 11UAE of the Income-tax Rules 1962

³ Section 50B of the Income-tax Act, 1961 (the Act)

Manner of computing FMV

It has been provided that FMV of capital assets shall be higher of FMV1 or FMV2. Following are the formula for determining FMV1 and FMV2:

FMV 1	FMV2
A+B+C+D – L	E+F+G+H
<p>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:</p> <p>(i) any amount of income tax paid, if any, less the amount of income tax refund claimed, if any and</p> <p>(ii) any amount shown as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset</p>	<p>E = Value of monetary consideration received or accruing pursuant to transfer</p>
<p>B = 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.</p>	<p>F = FMV of non-monetary consideration received or accruing as a result of the transfer, represented by property⁴. FMV of the said property to be determined in prescribed manner⁵.</p>

⁴ Property referred to in Rule 11UA(1) includes jewellery, archaeological collections, drawings, paintings, sculptures or any work of art and shares and securities

⁵ provided in Rule 11UA(1)

<p>C = FMV of shares and securities⁶</p>	<p>G = Value of the non-monetary consideration received or accruing as a result of transfer, represented by property other than immovable property and other than the property referred to in Rule 11UA(1). The value would be equal to the price which the property would fetch if sold in the open market on the basis of the valuation report obtained from a registered valuer.</p>
<p>D = Value adopted⁷ by any government authority for the purpose of stamp duty in respect of immovable property</p>	<p>H = Value adopted⁸ by any government authority 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.</p>
<p>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 which relates to such undertaking or division:</p> <ul style="list-style-type: none"> (i) equity paid-up share capital (ii) amount set apart for payment of dividends on preference shares and equity shares where such dividends 	

⁶ as determined in the manner provided in Rule 11UA(1)

⁷ or assessed or assessable

⁸ or assessed or assessable

<p>have not been declared before the date of transfer, at a general body meeting of the company</p> <p>(iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation</p> <p>(iv) any amount representing provision for taxation, other than amount of income-tax paid, if any, less the amount of income-tax claimed as refund, if any, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto</p> <p>(v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities</p> <p>(vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares</p>	
<p>FMV1 = A+B+C+D - L</p>	<p>FMV2 = E+F+G+H</p>
<p>Full value of sale consideration u/s 50B = Higher of FMV1 or FMV2</p>	

Our comments

The manner of determining FMV of undertaking or division being sold through the mechanism of slump sale is largely in line with the mechanism provided in the Tax Rules for determination of FMV of shares.

Further, the Rule also provides the formula for determination of the FMV of the consideration for slump sale as well (FMV2), since by virtue of the amendments propounded by the Budget, slump exchange is also now considered as a taxable transfer.

Introduction of these rules also puts to rest the controversy regarding manner of computing FMV of land and building transferred as part of an undertaking in a slump sale transaction.

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