



ERGO

Analysing developments impacting business

CBDT NOTIFIES RULES FOR COMPUTING FMV OF AN UNDERTAKING IN A SLUMP SALE

2 June 2021

The Central Board of Direct Taxes (CBDT) vide its notification dated 24 May 2021 (Notification), has introduced Rule 11UAE under the Income Tax Rules 1962 (IT Rules). Rule 11UAE prescribes the method for computing the fair market value (FMV) of an undertaking being transferred pursuant to a slump sale.

BACKGROUND

The Finance Act 2021 (FA) had introduced certain amendments to the provisions concerning a slump sale under the Income-tax Act, 1961 (IT Act), whereby the ambit of a slump sale was enlarged to cover not just "sale" transactions but all transactions which result in the "transfer" of an undertaking. Further the FA had also introduced an FMV concept for determining the sale consideration in a slump sale, as per which, the FMV of the undertaking, as on the date of transfer, will be deemed to be the sale consideration for the slump sale. However, the method for computing such FMV was not prescribed. Accordingly, the CBDT, vide the Notification, has introduced Rule 11UAE for computing such FMV.

RULE 11UAE

Rule 11UAE essentially states that the higher of: (A) the FMV of the assets and liabilities being transferred (ie FMV of the undertaking) pursuant to the slump sale (Fair Market Price); or (B) the actual sale consideration being received for such slump sale (Actual Sale Consideration), shall be deemed to be the sale consideration of such slump sale.

➤ Fair Market Price

Fair Market Price considers the inherent value of the undertaking being transferred on a net asset value basis. It provides for a hybrid method of computing the value of the assets and liabilities of the undertaking in the following manner:

- Book value of the assets and liabilities of the undertaking (subject to certain exceptions).
- Stamp duty value in case of immovable properties.
- FMV of certain assets:
 - FMV of shares and securities as per the prescribed method which is similar to the method prescribed under section 56(2)(x) ie the norms for computing minimum pricing value for sale of shares and securities.

- FMV of jewellery and artwork as per the price it would fetch if sold in an open market.

➤ Actual Sale Consideration

Actual Sale Consideration is the consideration amount being received for the acquisition of the undertaking. Where the consideration amount consists of only cash then that will be taken to be the Actual Sale Consideration value. If any part of the consideration amount consists of any non-monetary consideration ie consideration in kind, then the value of such assets has to be determined as per the following manner:

- FMV of properties such as shares, securities, jewellery, artwork etc as per the method prescribed under rule 11UA(1) of the IT Rules, ie norms for computing minimum pricing value for sale such properties.
- Stamp duty value of the immovable properties.
- Open market price for other properties not mentioned above.

COMMENTS

The Notification introducing Rule 11UAE was issued on 24 May 2021. Therefore, whether the rule becomes effective from 24 May 2021 or from any prior date, requires a deeper analysis, as this will have an impact on transactions that have already been consummated.

It is also important to note that as Rule 11UAE requires taking into consideration the assets and liabilities of the undertaking, it would be necessary to draw up the balance sheet of the Undertaking.

Further, given that the valuation needs to be done on the date of the Slump Sale, another aspect that needs to be closely relooked is if there is any timing gap between signing and closing of the sale.

Moreover, as per the IT Act, a Slump Sale is to be done for a lumpsum consideration without carrying out any itemized valuation. Whereas Rule 11UAE specifically requires determining values for certain assets. Therefore, the interplay between the valuation method prescribed by Rule 11UAE and the requirement of not carrying out any itemized valuation needs to be closely looked at.

- *Vinita Krishnan (Director), Sanket Shah (Principal Associate) and Milind Hasrajani (Associate)*

For any queries please contact: editors@khaitanco.com

We have updated our [Privacy Policy](#), which provides details of how we process your personal data and apply security measures. We will continue to communicate with you based on the information available with us. You may choose to unsubscribe from our communications at any time by clicking [here](#).

For private circulation only

The contents of this email are for informational purposes only and for the reader's personal non-commercial use. The views expressed are not the professional views of Khaitan & Co and do not constitute legal advice. The contents are intended, but not guaranteed, to be correct, complete, or up to date. Khaitan & Co disclaims all liability to any person for any loss or damage caused by errors or omissions, whether arising from negligence, accident or any other cause.

© 2021 Khaitan & Co. All rights reserved.

Mumbai

One Indiabulls Centre, 13th Floor
Tower 1 841, Senapati Bapat Marg
Mumbai 400 013, India

T: +91 22 6636 5000
E: mumbai@khaitanco.com

New Delhi

Ashoka Estate, 12th Floor
24 Barakhamba Road
New Delhi 110 001, India

T: +91 11 4151 5454
E: delhi@khaitanco.com

Bengaluru

Simal, 2nd Floor
7/1, Ulsoor Road
Bengaluru 560 042, India

T: +91 80 4339 7000
E: bengaluru@khaitanco.com

Kolkata

Emerald House
1 B Old Post Office Street
Kolkata 700 001, India

T: +91 33 2248 7000
E: kolkata@khaitanco.com