

Tax Alert | Delivering clarity

2 July 2020

Certain persons excluded from applicability of provisions relating to income from other sources and full value of consideration

The Central Board of Direct Taxes vide Notification No. 40 dated 29 June 2020 and Notification No. 42 dated 30 June 2020, has prescribed / updated the class of persons who would be excluded from applicability of certain provisions relating to income from other sources and deemed full value of consideration.

Background:

- The Finance Act, 2017 (FA 2017) had introduced section 50CA of the Income tax Act, 1961 (ITA), whereby for the purposes of computing capital gains, in cases where the consideration for transfer of unquoted shares of a company is less than the Fair Market Value (FMV), the FMV is deemed as the full value of consideration.
- The FA 2017 had also introduced section 56(2)(x) under the ITA, to tax (as income from other sources), the receipt of sum of money or property without / for inadequate consideration.
- Both sections 50CA and 56(2)(x) of the ITA provide that the provisions would not apply to such class of persons and subject to such conditions, as may prescribed.
- The Central Board of Direct Taxes (CBDT) vide Notification No. 40 dated 29 June 2020¹ and vide Notification No. 42 dated 30 June 2020², has prescribed the classes of persons excluded from the applicability of the provisions of sections 50CA and 56(2)(x) of the ITA.

Highlights of the Notifications:

- The provisions of both the sections viz. 50CA and 56(2)(x) of the ITA would not apply to the following class of person(s):

A shareholder who receives movable property, being unquoted shares of a company or of its subsidiary or of its step-down subsidiary, where:

- The National Company Law Tribunal (NCLT) on an application (for relief in cases of oppression, mismanagement, etc.) moved by the Central Government (CG) under section 241 of the Companies Act, 2013 (Cos Act), has suspended the existing Board of Directors of such company and appointed new directors nominated by the CG; and

¹ <http://egazette.nic.in/WriteReadData/2020/220248.pdf>

² <http://egazette.nic.in/WriteReadData/2020/220275.pdf>

- Such unquoted shares have been received pursuant to a resolution plan approved by the NCLT under section 242 of Cos Act, after affording reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.

The above has been implemented through replacement of existing Rule 11UAC of the Income-tax Rules, 1962 (Rules) and introduction of new Rule 11UAD of the Rules.

- Additionally, the provisions of section 56(2)(x) of the ITA would not apply to the following class of persons:
 - Investor (viz. any person other than State Bank of India who is willing to invest in the reconstructed Yes Bank Ltd.); or
 - The investor bank (viz. State Bank of India)

who is allotted shares of reconstructed Yes Bank Ltd at a price of INR 10 (face value of INR 2 and share premium of INR 8) under the Yes Bank Limited Reconstruction Scheme, 2020.

The above has been implemented through replacement of existing Rule 11UAC of the Rules.

Comments:

- The notifications will provide relief to shareholders who receive shares under resolution plan approved by the NCLT in cases of oppression, mismanagement, etc. and to the investors in the Yes Bank Reconstruction Scheme 2020.
- The two notifications would come into effect retrospectively from 1 April 2020 and accordingly, will be applicable from assessment year 2020-21 onwards.



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