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Global Tax Update

India

Deloitte Tohmatsu Tax Co.

August 2017

1. CBDT[1] issues final notification[2] in respect of valuation of unquoted equity shares[3]

Finance Act 2017 introduced additional anti-avoidance measures under the domestic tax law/ Act[4] regarding taxability on transfer of unquoted shares below fair market value ('FMV')[5]. It introduced deeming fiction where FMV of unquoted shares is deemed to be its consideration for purpose of computing capital gains in the hands of transferor.

Further, to widen scope of taxability of receipt of money or property for nil/ inadequate consideration in the hands of transferee, certain old provisons[6] were replaced[7]. The said section brings to tax, the difference between the FMV of the covered property and the actual consideration paid for it, in the hands of the transferee[8]. One of the property covered under the said section is unquoted shares.

In July 2017, CBDT issued a notification to amend Rule 11UA which now lays down rules for computing value of shares for above newly introduced provisions. Key features are as under:

(1) Amendment in Rule 11UA

FMV of unquoted equity shares shall be determined in the following manner:

(A+B+C+D-L) × (PV) / (PE), where,

- A is the book value of all assets (other than jewellery, artistic work, shares, securities and immovable property) in the balance-sheet as reduced by certain items[9]
- B is 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 is FMV of shares and securities as determined in the manner provided in this rule;
- D is 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;
- L is book value of liabilities shown in the balance sheet, but not including certain items[10].

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1 Central Board of Direct Taxes

2 Notification No. 61/2017/F. No. 149/136/2014-TPL

3 Amending Rule 11UA of the Income tax Rules, 1962

4 Income-tax Act, 1961

5 Section 50CA of the Income tax Act, 1961

6 Section 56(2)vii/ (viia)

7 By section 56(2)(x)

8 Except in cases where the difference amount exceeds Rs. 50,000

9 Amount of income-tax paid, if any, less the amount of income-tax refund claimed, if any; and any amount shown as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;

10 i.) the paid-up capital in respect of equity shares; ii.) 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; iii.) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation; 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 book profits in accordance with the law applicable thereto; v.) any amount representing provisions made for meeting liabilities, other than ascertained liabilities; vi.) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;

- PV is the paid up value of such equity shares; and PE is total amount of paid up equity share capital as shown in the balance sheet.

(2) Valuation date

The Rule further provides that the reference to valuation date shall mean the date on which unquoted share is transferred.

2. CBDT issues modified circular[11] clarifying no TDS with respect to component of GST on services

Indirect taxes in India have been replaced by a unified tax called Goods and Services Tax (GST) w.e.f 1 July 2017.

With the introduction of new taxation regime, the CBDT has clarified that if in terms of any agreement/contract between the payer and the payee, the component of GST on services included in the total amount payable to a resident is indicated separately, tax shall be withheld without including GST on services.

GST for the above purposes shall include Integrated Goods and Services Tax, Central Goods and Services Tax, State Goods and Services Tax and Union Territory Goods and Service Tax.

3. SEBI[12] tightens norms for P-notes[13]

In an endeavor to tighten norms for P-Notes[14] in India, SEBI[15] issued a circular[16] stating that the P-Note/ offshore derivative instruments (ODIs) issuing FPI shall not be allowed to issue ODIs with derivatives as underlying except where those derivative positions that are taken by the ODI issuing FPI for hedging the equity shares held by it, on a one to one basis. For existing ODIs, the FPIs need to liquidate such ODIs latest by the date of maturity of the ODI instrument or by 31st December 2020, whichever is earlier.

4. Regulatory fee levied by SEBI17

SEBI has levied a 'regulatory fee' of USD 1,000 on each ODI subscriber which would be collected and deposited by the issuing FPI to the Board once in every three years, starting from 1st April 2017.

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11 Circular No. 23/2017 dated 19 July, 2017

12 Securities & Exchange Board of India

13 Promissory note

14 In the context of the Indian Market, P-Notes/ (ODI) are instruments issued by the FPIs to various foreign investors who cannot make investment in Indian capital market directly. P-Notes/ ODIs are instruments with Indian security as the underlying. Further, the ODI route is relevant for foreign investors who want an Indian exposure with lower overall costs and administrative overheads including engaging a custodian and filing tax returns in India and without getting registered with SEBI

15 Securities & Exchange Board of India - the securities market regulator in India

16 Circular: CIR/IMD/FPI&C/76/2017 dated 7th July 2017

17 No. SEBI/LAD-NRO/GN/2017-18/012 dated 20th July 2017

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