

## **ANALYSIS OF PROVISIONS OF SCETIONS 50C & 50CA UNDER INCOME TAX ACT, 1961**

Dear Friends,

As you are aware that provisions of Section 50C are applicable to calculate capital gain on transfer of immovable property such as land or building or both.

**SECTION 50C(1)** provides that where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value of adopted or assessed or assessable by any authority of State Govt. for the purpose of payment of Stamp duty in respect of such transfer, the value of adopted or assessed or assessable shall be deemed to be full value of the consideration received or accruing as a result of such transfer.

Therefore, if the value adopted or assessed or assessable for stamp duty purposes is more than the consideration returned by the assessee then the value adopted or assessed or assessable for stamp duty purposes will be deemed as full value of consideration.

Section 50C of income tax act 1961 introduced vide Finance Act. 2002 w.e.f. 01.04.2003, which prescribes similar provisions in the case of transfer of land or building or both held in the nature of 'Capital Assets'. ( from assessment year 2003-2004).

The Finance Act, 2018 has provided relief to assesses in the sense that where the value adopted or assessed or assessable by the authority for the purposes of payment of stamp duty does not exceed one hundred and five per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of computing profit and gains from transfer of such asset, be deemed to be the full value of the consideration. The amendment is effective from the assessment year 2019-20.

The Finance act, 2020 has amended proviso Section 50C(1) from the assessment year 2021-22 so as to enhance the tolerance band from 5 per cent to 10 per cent. Therefore, where the value adopted or assessed or assessable by the authority for the purpose of payment of stamp duty does not exceed on hundred and ten per cent of consideration received or accruing as a result of the transfer, then consideration so received or accruing as a result of the transfer shall, for

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*the purposes of computing profit and gains or capital gains from transfer of such asset, be deemed to be full value of the consideration.*

*This amendment is effective from the assessment year 2021-22.*

### **APPLICABILITY OF SECTION 50C OF THE INCOME TAX ACT**

*Section 50C is applicable in the conditions given below:*

- 1. There is a transfer of land or building or both;*
- 2. The building/land is held as a capital asset;*
- 3. It is held as either Long Term Capital Asset or Short-Term Capital Asset;*
- 4. The asset can be depreciable or non-depreciable.*

### **LET'S ANALYSE**

- 1. The provisions of Section 50C will not apply in case the difference between the Stamp Duty Value and the Actual Consideration is not more than 10% of Actual Consideration.*

*For example: Mr. A sold his flat to Mr. B on consideration of Rs. 10,00,000/- where Stamp Duty Value of property is Rs. 11,00,000/- in this case ,since SDV is not more than 10% of Actual Consideration, here Actual Consideration will be considered for calculation of Capital Gain.*

- 2. Where date of the agreement fixing the amount of consideration and date of registration for the transfer of capital asset are not the same , the value adopted or assessed or assessable by the Stamp Duty department on the date agreement can be taken for the purposes of computing value of consideration of such transfer.*

***Provided that-*** *such benefit will be available only when the amount of consideration or part thereof, has been received by way of account payee cheque or other banking mode as specified on or before agreement for transfer.*

*For example; Mr. A has entered an agreement on 01.04.2023 and has paid Rs. 5.- Lakhs as token on the same date. The agreement was registered on 31.05.2023. In this case the date of agreement i.e. 01.04.2023 will be considered as date for calculation of Stamp Duty Value by the Authority.*

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3. An assessee may also dispute before the AO that the Fair Market Value is less than SDV in which case, the AO has to refer the valuation matter to the Departmental Valuer or Departmental Valuation Officer (DVO). The DVO then has to determine the fair value. If such value as per DVO is less than SDV, then the value determined by the DVO will be taken for the purpose of Section 50C. If value as per DVO is more than SDV, then SDV will be taken as full value consideration.
4. In case assessee disputes value calculated by DVO, he/she will have right to challenge the same before CIT(A) or ITAT and after that before High Court.
5. An Assessee cannot suo moto approach to the DVO. The AO, for the purposes of assessment or reassessment, make a reference to a Valuation Officer to estimate the value, including fair market value, of any asset, property or investment and submit a copy of report to him. And as per sub-section (2) of section 142A the AO may make a reference to the Valuation Officer under sub-section (1) whether or not he is satisfied about the correctness or completeness of the accounts of the assessee.
6. An assessee can submit valuation report of Registered Valuer. The AO is bound to follow valuation given by Registered Valuer or refer matter to DVO.

### **HOW IS CAPITAL GAIN CALCULATED UNDER SECTION 50C OF THE INCOME TAX ACT?**

<b>Particular</b>	<b>Amount</b>
<b>The full value of consideration: Sale value or stamp duty value (Higher)</b>	XXX
<b>Less:- Expenditure in relation to the transfer</b>	(XXX)
<b>Net Consideration</b>	XXX
<b>Less: Cost of Acquisition</b>	(XXX)
<b>Less: Cost of Improvement</b>	(XXX)
<b>Capital Gain/loss</b>	XXX

**PLEASE NOTE:** where the Stamp duty value does not exceed 110% of consideration, then sale consideration is treated as Full Value of Consideration

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**Example:** If sale consideration is Rs. 20,00,000/-. In this case, the stamp duty value assessed by the authority is Rs. 20,50,000/-

<b>Particulars</b>	<b>Amount</b>
<b>Sale value</b>	20,00,000
<b>Stamp Duty Value</b>	20,50,000
<b>Percentage of SDV/Sale value Acceptable Value (10% variation is allowed)</b>	102.5%
<b>The full value of consideration will be Sale value [since SDV is not more than 110% of sale value]</b>	20,00,000

**Example:** If sale consideration is Rs. 15,00,000/-. In this case, the stamp duty value assessed by the authority is Rs. 20,50,000/-

<b>Particulars</b>	<b>Amount</b>
<b>Sale value</b>	15,00,000
<b>Stamp Duty Value</b>	20,50,000
<b>Percentage of SDV/Sale value Acceptable Value (10% variation is allowed)</b>	113.7%
<b>The full value of consideration will be SDV [Since SDV is more than 110% of Sale Value]</b>	20,50,000

### **HOW IS THE STAMP DUTY VALUE CALCULATED UNDER SECTION 50C?**

Stamp duty value is to be taken as assessed by the Stamp Valuation Authority. However, it is quite possible that the stamp duty on the date of the agreement is different from the stamp duty value on the date of registration. In such a scenario, there are 2 possible cases:

#### **Case 1: Take stamp duty value on the date of the agreement**

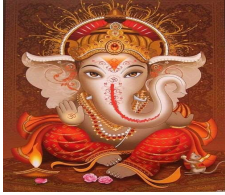
Full or part of consideration has been received up to the date of the agreement, and Payment has been made through account payee cheque/draft [prescribed electronic mode]

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**Case 2: Take stamp duty value on the date of registration;**

<b>Particulars</b>	<b>Situation 1</b>	<b>Situation 2</b>	<b>Situation 3</b>
<b>Stamp duty value on the date of the Agreement</b>	25,00,000	26,00,000	22,00,000
<b>Stamp duty value on the date of Registration</b>	28,50,000	30,50,000	28,50,000
<b>Payment of consideration</b>	Before the date of the agreement	After the date of the agreement	Before the date of the agreement
<b>Mode of payment</b>	Cash	A/c payee cheque	A/c payee cheque
<b>Stamp Duty value for the purpose of Section 50C</b>	28,50,000	30,50,000	22,00,000

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**SECTION 50CA OF INCOME TAX ACT, 1961-** Inserted w.e.f. 1<sup>st</sup> April , 2018 by Finance Act, 2017. It applies in case of transfer of Capital Assets being share of a company other than quoted shares. It is same as provisions of Section 50C , discussed in above paragraphs.

*It states that where the consideration received or accruing as a result of the transfer by an assessee of a capital assets, being share of a company other than quoted share, is less than the Fair Market Value of such share determined in manner prescribed , the value so determined shall, for the purposes of Section 48 , be deemed to be full value of consideration received pr accruing as a result such transfer.*

### **LET'S ANALYSE**

**Special provision for full value of consideration for transfer of share other than quoted share.**

**SECTION 50CA.** *Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being share of a company other than a quoted share, is less than the fair market value of such share determined in such manner as may be prescribed, the value so determined shall, for the purposes of section-48, be deemed to be the full value of consideration received or accruing as a result of such transfer.*

**Following proviso shall be inserted in section-50CA by the Act No. 23 of 2019, w.e.f. 1-4-2020 :**

**PROVIDED THAT** *the provisions of this section shall not apply to any consideration received or accruing as a result of transfer by such class of persons and subject to such conditions as may be prescribed.*

**IT MEANS THAT** – *the Board ,CBDT is empowered to prescribed transactions undertaken by certain class of persons to which provisions of Section 50CA will not apply. Explanatory Memorandum to the Finance (No. 2) Bill ,2019 says that consideration for certain transfer of shares are approved by certain authorities and person transferring the shares has no control over such determination.*

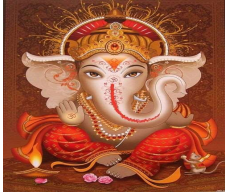
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**EXPLANATION.**—For the purposes of this section, "quoted share" means the share quoted on any recognised stock exchange with regularity from time to time, where the quotation of such share is based on current transaction made in the ordinary course of business.

The Board vide Notification No. 42/2020/F.No. 370149/143/2019-TPL dated 30<sup>th</sup> June, 2020, notified Rule 11UAD. According to the said Rule 11UAD one transaction is exempted from applicability of Section 50CA.

**IN THE INCOME-TAX RULES, 1962, FOR RULE 11UAC, THE FOLLOWING RULE SHALL BE SUBSTITUTED, NAMELY:**

Prescribed class of persons for the purpose of clause (XI) of the proviso to clause (x) of sub-section (2) of section 56.

**SECTION 11UAC. The provisions of clause (x) of sub-section (2) of section 56 shall not apply to,-**

(1) any immovable property, being land or building or both, received by a resident of an unauthorised colony in the National Capital Territory of Delhi, where the Central Government by notification in the Official Gazettee, regularised the transactions of such immovable property based on the latest Power of Attorney, Agreement to Sale, Will, possession letter and other documents including documents evidencing payment of consideration for conferring or recognising right of ownership or transfer or mortgage in regard to such immovable property in favour of such resident.

**Explanation.**—For the purposes of this sub-rule,-

(a) "resident" means a person having physical possession of property on the basis of a registered sale deed or latest set of Power of Attorney, Agreement to Sale, Will, possession letter and other documents including documents evidencing payment of consideration in respect of a property in unauthorised colonies and includes their legal heirs but does not include tenant, licensee or permissive user;

(b) "unauthorised colony" shall have the same meaning as assigned to it in clause (b) of section 2 of the National Capital Territory of Delhi (Recognition of Property Rights of Residents in Unauthorised Colonies) Act, 2019 (45 of 2019).

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(2) any movable property, being unquoted shares, of a company and its subsidiary and the subsidiary of such subsidiary received by a shareholder, where,—

- (i) the Tribunal, on an application moved by the Central Government under section 241 of the Companies Act, 2013, has suspended the Board of Directors of such company and has appointed new directors nominated by the Central Government under section 242 of the said Act; and
- (ii) share of company and its subsidiary and the subsidiary of such subsidiary has been received pursuant to a resolution plan approved by the Tribunal under section 242 of the Companies Act, 2013 after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.

**Explanation.**— For the purposes of this sub-rule,-

(a) a company shall be a subsidiary of another company, if such other company holds more than half in nominal value of the equity share capital of the company;

(b) “Tribunal” shall have the meaning assigned to it in clause (90) of section 2 of the Companies Act, 2013 (18 of 2013).

(3) any movable property, being equity shares, of the reconstructed bank, received by the investor or the investor bank, as the case may be, where the said share has been allotted by the reconstructed bank under the scheme at a price specified in sub-paragraph (3) of paragraph 3 of the scheme.

**PLEASE NOTE THAT:**

THE CBDT has prescribed Rule 11UAA , it states that Fair Market Value shall be determined in the matter in Rules 11UA(1)( c)(b) which deals with determination of value in case of equity shares and Rule 11UA(1)( c)( c) ,which provides for the fair market value of in case of shares other than Equity Shares. Further Rule 11UAA also states that, for such purpose the reference to valuation date in Rule 11U and Rule 11UA shall mean the date on which the Capital Asset is transferred.

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## **RULE 11UA OF INCOME TAX RULES, 1962**

### **DETERMINATION OF FAIR MARKET VALUE.**

*(1) For the purposes of section 56 of the Act, the fair market value of a property, other than immovable property, shall be determined in the following manner, namely-*

#### ***(a) valuation of jewellery,-***

*(i) the fair market value of jewellery shall be estimated to be the price which such jewellery would fetch if sold in the open market on the valuation date;*

*(ii) in case the jewellery is received by the way of purchase on the valuation date, from a registered dealer, the invoice value of the jewellery shall be the fair market value;*

*(iii) in case the jewellery is received by any other mode and the value of the jewellery exceeds rupees fifty thousand, then assessee may obtain the report of registered valuer in respect of the price it would fetch if sold in the open market on the valuation date;*

#### ***(b) valuation of archaeological collections, drawings, paintings, sculptures or any work of art,-***

*(i) the fair market value of archaeological collections, drawings, paintings, sculptures or any work of art (hereinafter referred as artistic work) shall be estimated to be price which it would fetch if sold in the open market on the valuation date;*

*(ii) in case the artistic work is received by the way of purchase on the valuation date, from a registered dealer, the invoice value of the artistic work shall be the fair market value;*

*(iii) in case the artistic work is received by any other mode and the value of the artistic work exceeds rupees fifty thousand, then assessee may obtain the report of registered valuer in respect of the price it would fetch if sold in the open market on the valuation date;*

#### ***(c) valuation of shares and securities,-***

***(a) the fair market value of quoted shares and securities shall be determined in the following manner, namely,-***

*(i) if the quoted shares and securities are received by way of transaction carried out through any recognized stock exchange, the fair market value of such shares and securities shall be the transaction value as recorded in such stock exchange;*

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*(ii) if such quoted shares and securities are received by way of transaction carried out other than through any recognized stock exchange, the fair market value of such shares and securities shall be,-*

*(a) the lowest price of such shares and securities quoted on any recognized stock exchange on the valuation date, and*

*(b) the lowest price of such shares and securities on any recognized stock exchange on a date immediately preceding the valuation date when such shares and securities were traded on such stock exchange, in cases where on the valuation date there is no trading in such shares and securities on any recognized stock exchange;*

*(c) the fair market value of unquoted equity shares shall be the value, on the valuation date, of such unquoted equity shares as determined in the following manner, namely:-*

***THE FAIR MARKET VALUE OF UNQUOTED EQUITY SHARES = (A+B+C+D - L) × (PV)/(PE),***

*Where, A= book value of all the assets (other than jewellery, artistic work, shares, securities and immovable property) in the balance-sheet as reduced by,-*

*(i) any amount of income-tax paid, if any, less the amount of income-tax refund claimed, if any; and*

*(ii) any amount shown as asset including the unamortised 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 = fair market value of shares and securities as determined in the manner provided in this rule;*

*D = 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;*

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**L = book value of liabilities shown in the balance sheet, but not including the following amounts, namely:-**

- (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 the 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 = the paid up value of such equity shares;**

**PE = total amount of paid up equity share capital as shown in the balance-sheet;**

c) the fair market value of unquoted shares and securities other than equity shares in a company which are not listed in any recognized stock exchange shall be estimated to be price it would fetch if sold in the open market on the valuation date and the assessee may obtain a report from a merchant banker or an accountant in respect of which such valuation.

**RULE 11UA(2)** Notwithstanding anything contained in sub-clause (b) of clause (c) of sub-rule (1), the fair market value of unquoted equity shares for the purposes of sub-clause (i) of clause (a) of Explanation to clause (viib) of sub-section (2) of section 56 shall be the value, on the valuation date, of such unquoted equity shares as determined in the following manner under clause (a) or clause (b), at the option of the assessee, namely:-

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(a) **THE FAIR MARKET VALUE OF UNQUOTED EQUITY SHARES =  $| (A-L) / (PE) | \times (PV)$**

**Where, A=book value of the assets** in the balance-sheet as reduced by any amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act and any amount shown in the balance-sheet as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;

**L=book value of liabilities shown in the balance-sheet, but not including the following amounts, namely:-**

(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 tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act, to the extent of the excess over the tax payable with reference to the 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;

**PE=total amount of paid-up equity share capital as shown in the balance sheet;**

**PV=the paid-up value of such equity shares; or**

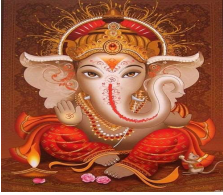
(b) the fair market value of the unquoted equity shares determined by a merchant banker as per the Discounted Free Cash Flow method.

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**LET'S ANALYSE**-from above we find that no safeguard has been provided in Section 50CA in the matter provided in Section 50C except for the one inserted by Finance Act, 2019. This makes Section vulnerable. We can say that all transfer of unquoted shares of a company has to be at a value which is more than or equal to the value prescribed in the Rule and if not so, then adverse consequences of taxability of such FMV would follow.

**SECTION 56(2)(X) PROVIDES THAT-**

Section 56(2)(X) – The Finance Act of 2017 added a new clause (x) to section 56's sub-section (2) that stipulates that any person who receives money or property on or after January 1, 2017, without proper consideration or for a small sum of money, will be subject to tax under the heading 'Income from Other Sources. This was done in order to prevent the practice of receiving money or property without consideration or for insufficient consideration.

**WHAT FALLS UNDER SECTION 56(2)(X) OF INCOME TAX ACT?**

Clause (X) was added to section 56(2) to ensure that the following receipts during the preceding year are taxed as income in the hands of any person under the head 'Income from Other Sources, subject to the other requirements contained in the clause:

1. Any sum of money received without consideration, the aggregate value of which exceeds ₹50,000 during the financial year;
2. Any immovable property received without consideration, the stamp duty value of which exceeds ₹50,000;
3. Any immovable property received for a consideration that is less than stamp duty value by an amount exceeding ₹50,000;
4. Any movable property received without consideration wherein the aggregate fair market value whereof exceeds ₹50,000;
5. Any movable property received for a consideration that is less than fair market value by an amount exceeding ₹50,000.

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## **INTERPLAY OF SECTIONS 50C & 50CA WITH SECTION 56(2)(x)**

### **Let's understand with an example;**

1. Mr. A transfer a plot of land to Mr. B for Rs. 60 Lakhs on 21.06.2019.
2. Stamp Duty Value of such plot of land was Rs. 100 Lakhs on 21.06.2019.
3. While calculating Capital Gains in the hands of Mr. A , the value taken Rs. 60 Lakhs.

Now in this case according to the provisions of Section 50C, full value of consideration must be Rs. 100 Lakhs and hence Rs. 40 Lakhs should be added in the hands of both transferor and transferee i.e. Mr. A & Mr. B.

Similar be the case when in above transfer the subject matter was Unquoted Equity Shares, the provisions of Section 50CA are applicable here.

So taxability in both hands of Rs. 40 Lakhs leads to double taxation, as two persons cannot be said to have earned income of the same account as a result of the same transaction. It is a settled thing that one person's gain is another person's loss. This such difference of Rs. 40 lakhs which is nothing but a notional income can be taxed either in hand of transferor or in hands of transferee but not in both persons hands.

**DISCLAIMER:** the article presented here is only for sharing information with readers. In case of necessity do consult with professionals.

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