

**Note – Tax-treatment of receipt of immovable property for inadequate consideration –  
Amendment, vide Finance Bill, 2010**

A number of clients have raised a query whether any amendment of section 50C of the Income-Tax Act, 1961 (the Act), has been proposed by the Finance Bill, 2010. The aforesaid query, has got its genesis in the amendment of sub-clause (b) of section 56(2)(vii) of the Act, as proposed by the Finance Bill, 2010. As per the aforesaid amendment, the stipulation regarding transactions involving cases of consideration lower than its stamp duty value in respect of immovable property; has been removed. It may also be stated here that section 50C deals with cases of transfer of capital asset for a consideration which is lower than its stamp duty value. It is in the light of the aforesaid reason that a wrong impression has gained ground, as if amendment of section 50C is being proposed by the Finance Bill, 2010.

Under the existing provisions of section 56(2)(vii), any sum of money or any property in kind, which is received without consideration or for inadequate consideration (in excess of the prescribed limit of Rs.50,000), is chargeable to income-tax, in the hands of the recipient under the head, “*Income from other sources*”. However, receipts from relatives or on the occasion of marriage or under a will are outside the scope of this provision.

It may also be understood here that inadequate consideration here means, a consideration which is less than the stamp duty value of the immovable property.

We may now correctly understand the implications of the amendment proposed in respect of sub-clause (b) of section 56(2)(vii) of the Act, by the Finance Bill, 2010. In this context, we will be required to refer to the existing provisions of sub-clause (b) of section 56(2)(vii). For the sake of ready reference, the existing sub-clause (b) of section 56(2)(vii) is reproduced as follows :

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***Income from other sources.***

**56. (1) \*\*\*\*\***

(2) *In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head “Income from other sources”, namely :—*

*(vii) where an individual or a Hindu undivided family receives, in any previous year, from any person or persons on or after the 1st day of October, 2009,—*

*(b) any immovable property,—*

*(i) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;*

*(ii) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration.*

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From the aforesaid provisions of section 56(2)(vii)(b)(ii), where an individual or HUF receives, in any previous year, from any person or persons on or after 1.10.2009, any immovable property for a consideration which is less than the stamp duty value of the property by an amount exceeding Rs.50,000, the difference between the stamp duty value of such property and the aforesaid consideration shall be chargeable to tax under the head, “*Income from other sources*”.

Vide the Finance Bill, 2010, the aforesaid sub-clause (b) is proposed to be amended by deleting the part (ii) of the same, so as to provide that section 56(2)(vii) would apply only if the immovable property is received without any consideration and to remove the stipulation as regards inadequate consideration. This amendment will take effect retrospectively from 1.10.2009 and will, accordingly, apply in relation to the AY 2010-11 and subsequent AYs.

In this regard, a recent judgement of the Delhi Bench of the Tribunal in the case of *ITO Vs Fitwell Logic System P. Ltd. [2010] 1 ITR (Trib) 286 (Del)*, is very relevant. In this case, the assessee purchased a property for a consideration of Rs.1,25,00,000. The Assessing Officer (AO), noticed that the valuation for the purpose of payment of stamp duty was shown as Rs.1,34,79,780, and made an addition of the difference of Rs.9,79,780, by invoking the provisions of section 50C of the Act. The Commissioner (Appeals) deleted the addition made, on the ground that there was no material to establish that the actual consideration paid by the assessee was higher than what was declared in the sale deed.

On appeal by the Department, dismissing the appeal, the Hon. Tribunal held that admittedly there was no evidence or material to establish that the assessee made actual investment to the extent of Rs.1,34,79,780, as against Rs.1,25,00,000, as shown in the sale deed. Therefore, there was no reason to interfere with the order of the Commissioner (Appeals), in deleting the addition of Rs.9,79,780.

The aforesaid amendment will remove the aforesaid anomaly, which may otherwise lead to double taxation of the same amount in the hands of the transferor as well as the transferee on the transfer of a capital asset.

**Conclusion**

From the aforesaid discussion, it may be clearly understood that in view of the proposed amendment of section 56(2)(vii)(b), the cases involving receipt of immovable property for a consideration lower than its stamp duty value will fall outside the purview of the provisions of section 56(2)(vii) of the Act. In other words, if the value of an immovable property received by an assessee is lower than its stamp duty value, then the difference between them, will not be brought to tax in the hands of the recipient of immovable property.

Thus, the proposed amendment of section 56(2)(vii)(b), which involves the stamp duty valuation of an immovable property, has already been explained in the preceding paras.

For the sake of a layman, the aforesaid amendment will withdraw the tax levied in the hands of the recipient of immovable property being purchased on or after 1.10.2009, at a rate lower than the stamp duty valuation. This will remove the double taxation, as the transferor (seller) was, in any case, subject to capital gains. If the sale value was less than the stamp duty valuation, for the purpose of capital gains, the stamp duty valuation was treated as the consideration.

To illustrate: Mr. A is the buyer of property for Rs.20 lakh, and the stamp value of the same is Rs.25 lakh. Earlier, Mr. A would have to pay tax on the difference of Rs. 5 lakh and at the same time, Mr. B, the seller would have paid capital gains tax taking the value to be Rs. 25 lakh. Now only Mr. B will be subject to capital gains tax.

Place : Pune

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