

SLUMP SALE UNDER INCOME TAX ACT

along with Recent Amendments

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Agenda

- Introduction to Slump Sale
- Why Slump Sale
- Slump Sale under Indirect Tax
- Recent Amendments & Tax Computation
- Important Judgements

Meaning of Slump Sale

- The term 'Slump sale' means transfer of one or more undertaking by any means for a lump-sum consideration without values being assigned to individual assets and liabilities [Section 2(42C)]
- Purchase of whole undertaking on going concern & as-is-where-is basis



v/s

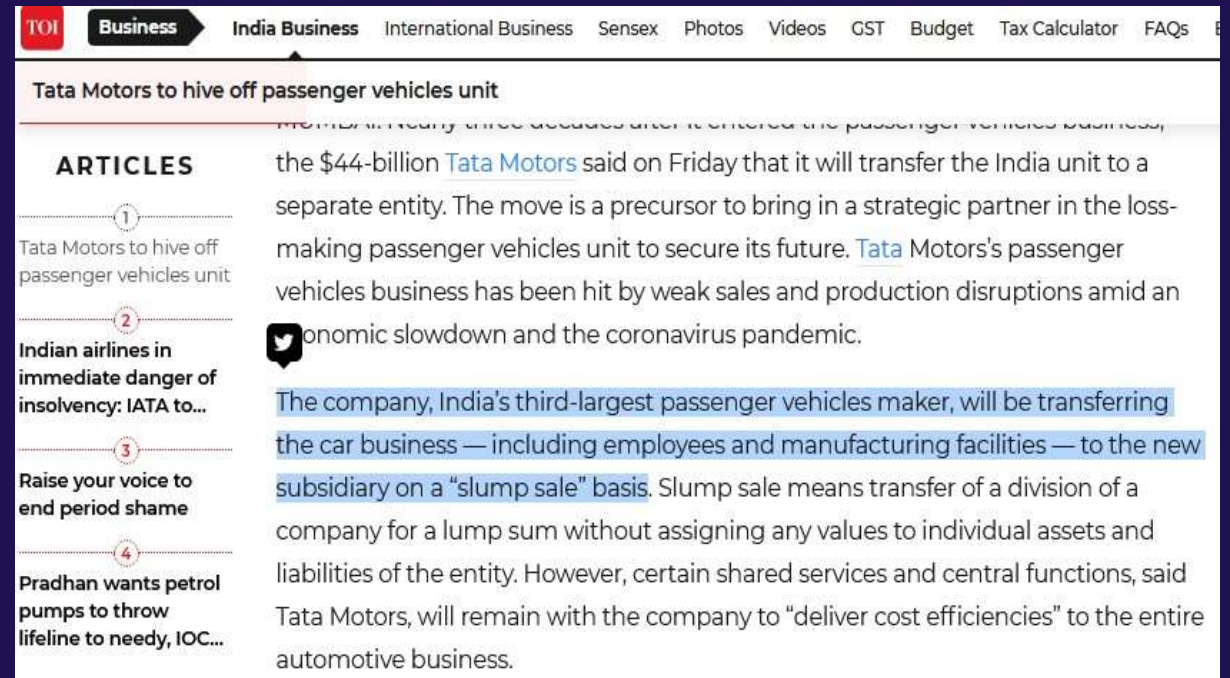


Introduction of Slump Sale

- The clause 42C of section 2 of Income Tax Act was introduced via Finance Act 1999, Prior to the insertion Courts have held that slump sale is a sale of a business on a going concern basis where the lumpsum price cannot be attributed to individual assets or liabilities.
- ***Was Not Charged to TAX*** (didn't fall under PGBP or Capita Gains) - That if the computation cannot be made in absence of cost of acquisition, then the charging section itself would not be applicable. (*PNB Finance v. CIT*, [2008])
- To plug in these tax loopholes, slump sale mechanism was introduced & computation was given under section 50B

Why Slump Sale

- To focus on specific business processes
- To hive off a business segment (Tata Motors)
- To purchase an existing business along with its customers & market (Ruchi Soya & Patanjali)
- To reduce compliance costs (multiple entities = more compliance)
- For better Tax administration



The screenshot shows a news article from the Times of India (TOI) Business section. The main headline is "Tata Motors to hive off passenger vehicles unit". The article text states that the \$44-billion Tata Motors said on Friday that it will transfer the India unit to a separate entity. The move is a precursor to bring in a strategic partner in the loss-making passenger vehicles unit to secure its future. Tata Motors's passenger vehicles business has been hit by weak sales and production disruptions amid an economic slowdown and the coronavirus pandemic. A highlighted portion of the text reads: "The company, India's third-largest passenger vehicles maker, will be transferring the car business — including employees and manufacturing facilities — to the new subsidiary on a 'slump sale' basis. Slump sale means transfer of a division of a company for a lump sum without assigning any values to individual assets and liabilities of the entity. However, certain shared services and central functions, said Tata Motors, will remain with the company to 'deliver cost efficiencies' to the entire automotive business."

ARTICLES

- 1 Tata Motors to hive off passenger vehicles unit
- 2 Indian airlines in immediate danger of insolvency: IATA to...
- 3 Raise your voice to end period shame
- 4 Pradhan wants petrol pumps to throw lifeline to needy, IOC...

Slump Sale under Indirect Tax



ITC of transferor company will be available to the transferee company.

Computation of Tax

| Particulars | Rs. |
|-------------------------------------|-------------|
| Full Value of Consideration | XXXXXX |
| (-) Expense in Relation to transfer | (XXX) |
| Net Consideration | XXXXXX |
| (-) Cost of Acquisition/Net Worth | (XXXX) |
| Capital Gain or (Loss) | XXXX |

Age of Undertaking > 36 Months → LTCG
Age of Undertaking < 36 Months → STCG

NO INDEXATION AVAILABLE

Recent amendments in Slump Sale Provisions (applicable w.e.f. 1st April 2020)

1. Change in the definition (amendment to clause 42C of sec 2)
 - Earlier the clause read “"slump sale" means the transfer of one or more "undertaking as a result of the sale“
 - New Clause reads “"slump sale" means the transfer of one or more [*undertaking, by any means,*]”
 - **Effect – Transactions of Slump Exchange also covered in the definition of Slump Sale.**
(Hon’ble Bombay HC in Bharat Bijlee (supra) & Areva T & D Ltd. v. CIT, [2020] reversed)

Recent amendments in Slump Sale Provisions (applicable w.e.f. 1st April 2020)

2. Valuation for Goodwill Changed (amendment to sec 50B)

- If the goodwill is other than purchased from previous owner – value of such goodwill will be deemed to be zero.
- Department may contend that the intangible assets of similar nature viz. customer lists, brands etc. are nothing but goodwill and might disallow their value.
- **Effect -** Net worth will be reduced which means more capital gains.

Recent amendments in Slump Sale Provisions (applicable w.e.f. 1st April 2020)

3. Change in “Full value of Consideration” (amendment in sec 50B)

- Full value of consideration is higher of FMV 1 & FMV 2—

$$\text{FMV 1} = \text{A} + \text{B} + \text{C} + \text{D} - \text{L}$$

Where,

A: Book value of all asset (other than valuable assets) appearing in the books of transferor after adjusting Income Tax paid/refund & Deferred Tax assets

B: Price of Jewellery and Artwork

C: FMV of Shares

D: Value of Immovable Property

L : Book value of liabilities after adjusting shareholder fund, certain reserves, taxes and contingent liabilities (only real liabilities considered)

Recent amendments in Slump Sale Provisions (applicable w.e.f. 1st April 2020)

3. Change in “Full value of Consideration” (amendment in sec 50B)

- Full value of consideration is higher of FMV 1 & FMV 2—

$$\text{FMV 2} = \text{E} + \text{F} + \text{G} + \text{H}$$

Where,

E: Monetary Consideration for Slump transfer

F: Fair value of non-monetary & non immovable property assets (Artwork, jewellery, quoted & unquoted shares) as per Rule 11UA

G: Price by Registered valuer for assets other than immovable property & covered under rule 11UA

H: Stamp Duty value of Immovable Property

Recent amendments in Slump Sale Provisions (applicable w.e.f. 1st April 2020)

3. Change in “Full value of Consideration” (amendment in sec 50B)

- **Effect-** The “**Full value of consideration**” will be higher of following
 - FMV 1 – Fair Value of the assets received during the slump transfer
 - FMV 2 – Fair Value & Monetary considerations given up during the slump transfer

REAL LOSS IS NOT POSSIBLE NOW

Revisit: Computation of Tax

| Particulars | Rs. |
|--|--------|
| <i>Full Value of Consideration* (amended)</i> | XXXXXX |
| (-) Expense in Relation to transfer | (XXX) |
| <i>Net Consideration* (amended)</i> | XXXXXX |
| <i>(-) Cost of Acquisition/Net Worth* (amended)</i> | (XXXX) |
| <i>Capital Gain or (Loss) - <u>CHANGED</u></i> | XXXX |

Age of Undertaking > 36 Months → LTCG
Age of Undertaking < 36 Months → STCG

NO INDEXATION AVAILABLE

Important Judgements

- If the value of each asset & liabilities is allocated then it won't be qualified as Slump Sale - *CIT Vs Shiva Distilleries Limited (Madras High Court)*
- The seller can retain certain defunct or unwanted assets of the undertaking and still the transaction will be of Slump Transfer – *Triune Projects Pvt. Ltd vs. DCIT (Delhi High Court)*
- Negative net worth for Slump Sales will be considered as zero – *Zuari Industries Ltd. [(2007) 105 ITD 569 (Mumbai)]*
- Transfer of undertaking for non-monetary considerations is not slump sale – *Areva T&D India Limited (Madras High Court)** (now amended)

Conclusion

- The government is surely making meaningful and valid efforts in plugging in the loopholes exploited in the past.
- These amendments may result in increase in revision in deals, litigations & increased collections in taxes.
- One of the important observation is that the calculation of fair market value requires assessing the value of assets which is against the spirit of slump transaction.
- It will be interesting to see what future holds for such deal transactions.

THANK YOU

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