CBDT clarifies on taxability of income from the transfer of unlisted shares

With a view to reduce litigation and maintain consistency in approach in assessments, the Central Board of Direct Taxes (CBDT) had issued a Circular¹ regarding characterisation of income from transactions in listed shares and securities.

For determining the tax treatment of income arising from the transfer of unlisted shares, the CBDT felt that there was a need to have a consistent view in assessments pertaining to such income. Accordingly, the CBDT has issued a clarification² that the income arising from the transfer of unlisted shares would be considered under the head 'capital gain', irrespective of the period of holding, with a view to avoid disputes/litigation and to maintain uniform approach. Further, the above clarification would not be necessarily applied in the following situations:

- The genuineness of transactions in unlisted shares itself is questionable or
- The transfer of unlisted shares is related to an issue pertaining to lifting of corporate veil; or
- The transfer of unlisted shares is made along with the control and management of the underlying business.

The Assessing Officer (AO) would take the appropriate view in such situations.

Our comments

The CBDT provides clarity with respect to taxability of income from transfer of unlisted shares. It will reduce unwarranted litigation and maintain consistency in approach.

The CBDT clarification has provided certain exceptions viz. genuineness of transactions in unlisted shares itself is questionable, or the transfer of unlisted shares is for the purpose of the lifting of corporate veil or transfer is made along with the control and management of the underlying business. The CBDT has given power to the AO to take appropriate action in such situations.

¹ Circular No. 6/2016, dated 29 February 2016
² CBDT Clarification F No. 225/12/2016/ITA.II, dated 2 May 2016