

Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, 26th September, 2023

Press Release

CBDT notifies changes to Rule 11UA in respect of ANGEL TAX

Finance Act, 2023, brought in an amendment to bring the consideration received from non-residents for issue of shares by an unlisted company within the ambit of section 56(2)(viib) of the Income-tax Act, 1961(the Act), which provides that if such consideration for issue of shares exceeds the Fair Market Value(FMV) of the shares, it shall be chargeable to income-tax under the head 'Income from other sources'.

Keeping in line with the commitment of the Government to involve stakeholders in the drafting of the law, suggestions and feedback were invited from stakeholders and general public on the Draft Rule 11UA for valuation of methods for calculating the Fair Market price vide Press Release dated 19th May, 2023.

Taking into consideration the suggestions received in this regard and detailed interactions held with stakeholders, Rule 11UA for valuation of shares for the purposes of section 56(2)(viib) of the Act has been modified vide notification no. 81/2023 dated 25th September, 2023.

The key highlights of the changes in Rule 11 UA are:

a) In addition to the two methods for valuation of shares, namely, Discounted Cash Flow (DCF) and Net Asset Value (NAV) method, available to residents under Rule 11UA, five more valuation methods have been made available for non-resident investors, namely, Comparable Company Multiple Method, Probability Weighted Expected Return Method, Option Pricing Method, Milestone Analysis Method, Replacement Cost Method.

b) Where any consideration is received for issue of shares from any non-resident entity notified by the Central Govt., the price of the equity shares corresponding to such consideration may be taken as the FMV of the equity shares for resident and non-resident investors, subject to the following:

(i) To the extent the consideration from such FMV does not exceed the aggregate consideration that is received from the notified entity, and

(ii) The consideration has been received by the company from the notified entity within a period of ninety days before or after the date of issue of shares which are the subject matter of valuation.

c) On similar lines, price matching for resident and non-resident investors would be available with reference to investment by Venture Capital Funds or Specified Funds.

d) Valuation methods for calculating the FMV of Compulsorily Convertible Preference Shares(CCPS) have also been provided.

e) A safe harbor of 10% variation in value has been provided.

The notified Rule provides for expansion of the valuation methodologies to include globally accepted methodology and provide a broad parity to resident and non-resident investors.

The Notification No. 81/2023 dated 25th September, 2023 is available at www.incometaxindia.gov.in.

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