

CBDT proposes changes to Rule 11UA in respect of “ANGEL TAX” – Also proposes to notify Excluded Entities

CBDT vide Press Release dated May 19, 2023 has proposed several changes in Rule 11UA as well as has excluded some entities from applicability of this rule, details of which is as under:

Proposed Changes in Rule 11UA

- Rule 11 UA currently prescribes two valuation methods with respect to valuation of shares namely, Discounted Cash Flow (DCF) and Net Asset Value (NAV) method for resident investors. It has been proposed to include five more valuation methods, available for non-resident investors, in addition to the DCF and NAV methods of valuation.
- Further, where any consideration is received by a company 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:

- To the extent the consideration from such FMV does not exceed the aggregate consideration that is received from the notified entity, and;
- The consideration has been received by the company from the notified entity within a period of ninety days of the date of issue of shares which are the subject matter of valuation.

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.

- It is proposed that the **valuation report by the Merchant Banker** for the purposes of this rule would be acceptable, if it is of a date not more than ninety days prior to the date of issue of shares which are subject matter of valuation.
- Further, **to account for forex fluctuations**, bidding processes and variations in other economic indicators, etc. which may affect the valuation of the unquoted equity shares during multiple rounds of investment, it is proposed to provide a safe harbor of 10 % variation in value.
- The draft Rules on the above lines will be shared for public comments for 10 days, after which these will be notified.

Notification for Excluded entities

It is also proposed to notify certain classes of persons being non-resident investors to whom clause (viib) of sub-section (2) of section 56 of the Act shall not be applicable. This includes:

- Government and Government related investors such as central banks, sovereign wealth funds, international or multilateral organizations or agencies including entities controlled by the Government or where direct or indirect ownership of the Government is 75% or more.
- Banks or Entities involved in Insurance Business where such entity is subject to applicable regulations in the country where

it is established or incorporated or is a resident.

- Any of the following entities, which is a resident of a certain countries or specified territories having robust regulatory framework:
 - Entities registered with Securities and Exchange Board of India as Category-1 Foreign Portfolio Investors.
 - Endowment Funds associated with a university, hospitals or charities,
 - Pension Funds created or established under the law of the foreign country or specified territory,
 - Broad Based Pooled Investment Vehicle or Fund where the number of investors in such vehicle or fund is more than 50 and such fund is not a hedge fund or a fund which employs diverse or complex trading strategies.

For Investment in Start-ups

It is also proposed to modify **Notification No. S.O 1131 (E) dated 5th March, 2019** so as to provide that the provisions section 56(2)(viib) of the Act shall not apply to consideration received from any person by start-ups covered in para 4 & 5 of Notification dated 19-02-2019 issued by the Ministry of Commerce and Industry in the Department for Promotion of Industry and Internal Trade (DPIIT).

Source: CBDT vide Press Release dated May 19, 2023

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