

F. No. 370142/9/2023-TPL(Part-I)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, dated the 26th of May 2023

Subject: Inviting comments on the draft rule 11UA for implementing the amendment made by the Finance Act, 2023- reg.

Clause (viib) of sub-section (2) of section 56 of the Income-tax Act, 1961 (the Act), prior to amendment vide Finance Act 2023, inter alia, provided that where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the fair market value of the shares, it shall be chargeable to income-tax under the head 'Income from other sources'. Rule 11UA of the Income-tax Rules, 1962 (the Rules) provides the method for computation of the fair market value of unquoted equity shares for the purposes of the Clause (viib) of sub-section (2) of section 56 of the Act.

2. In the Finance Act, 2023, an amendment was introduced in this provision to bring the consideration received from non-residents within the ambit of Clause (viib) of sub-section (2) of section 56 of the Income-tax Act, 1961.

3. As a result of the above amendment, representations were received from various stakeholders raising their concerns that genuine non-resident investors may have to face undue hardship in matters related to valuation of shares etc. In view of this, rule 11UA of the Rules is proposed to be amended.

4. The draft notification with proposed amendment to rule 11UA of the Rules is enclosed. It is requested that all the stakeholders as well as the general public may provide suggestions/ comments on the same and send them at the email address **ustpl2@nic.in** latest by 5th June, 2023.

Enclosed: As above


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[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II,

SECTION 3, SUB-SECTION (i)]

MINISTRY OF FINANCE

DEPARTMENT OF REVENUE

CENTRAL BOARD OF DIRECT TAXES

Notification

New Delhi,May, 2023

Income-tax

G.S.R. (E).— In exercise of the powers conferred by sub-clause (i) of clause (a) of the Explanation to clause (viib) of sub-section (2) of section 56 read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:—

1. Short title and commencement: - (1) These rules may be called the Income tax(Amendment), Rules, 2023.

(2) They shall come into force from the date of publication of the notification in the Official Gazette.

2. In the Income-tax Rules, 1962, in rule 11UA,-

(i) For sub-rule (2), the following sub-rule shall be substituted, namely:-

“ (2) Notwithstanding anything contained in sub-clause (b) of clause (c) of sub-rule (1), the fair market value of unquoted equity shares for the purposes of sub-clause (i) of clause (a) of the Explanation to clause (viib) of sub-section (2) of section 56 shall be the value, on the valuation date, of such unquoted equity shares as determined in the following manner :-

(i) under clause (a) or clause (b) or clause(c) or clause (e), at the option of the assessee, where the consideration received by the assessee is from a resident ; and

(ii) under clause (a), clause (b), clause (c), clause (d) or clause (e) at the option of the assessee, where the consideration received by the assessee is from a non-resident, namely:—

(a) the fair market value of unquoted equity shares = $(A - L) \times [PV/PE]$,

where,

A = book value of the assets in the balance-sheet as reduced by any amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act and any amount shown in the balance-sheet as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;

L = book value of liabilities shown in the balance-sheet, but not including the following amounts, namely:—

- (i) the paid-up capital in respect of equity shares;
- (ii) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;
- (iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;
- (iv) any amount representing provision for taxation, other than amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;
- (v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;

(vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;

PE = total amount of paid up equity share capital as shown in the balance-sheet;

PV = the paid up value of such equity shares; or

(b) the fair market value of the unquoted equity shares determined by a merchant banker as per the Discounted Free Cash Flow method.

(c) where any consideration is received by a venture capital undertaking for issue of shares, from a venture capital fund or a venture capital company or a specified fund, the price of the equity shares corresponding to such consideration may, at the option of such undertaking, be taken as the fair market value of the equity shares to the extent the consideration from such fair market value does not exceed the aggregate consideration that is received from a venture capital fund or a venture capital company or a specified fund ;

Provided that the consideration has been received by the undertaking from a venture capital fund or a venture capital company or a specified fund, within a period of ninety days of the date of issue of shares which are the subject matter of valuation.

Explanation: for the purposes of this clause, “venture capital undertaking”, “venture capital fund” , “venture capital company” and “specified fund” shall have the same meaning as respectively assigned to them in the Explanation to clause (viib) of sub-section (2) of section 56.

Illustration: If a venture capital undertaking receives a consideration of Rs 50000 from a venture capital company for issue of 100 shares at the rate of Rs. 500 per share , then such an undertaking can issue 100 shares at this rate to any other investor within a period of 90 days of the receipt of consideration from venture capital company.

(d) the fair market value of the unquoted equity shares determined by a merchant banker in accordance with any of the following methods:

- (i) Comparable Company Multiple Method;
- (ii) Probability Weighted Expected Return Method;
- (iii) Option Pricing Method;
- (iv) Milestone Analysis Method;
- (v) Replacement Cost Methods;

(e) where any consideration is received by a company for issue of shares, from any entity notified under clause (ii) of the first proviso to clause (viib) of sub-section (2) of section 56, the price of the equity shares corresponding to such consideration may, at the option of such company, be taken as the fair market value of the equity shares to the extent the consideration from such fair market value does not exceed the aggregate consideration that is received from the notified entity:

Provided that the consideration has been received by the company from the entity notified under clause (ii) of the first proviso to clause (viib) of sub-section (2) of section 56, within a period of ninety days of the date of issue of shares which are the subject matter of valuation.”

(ii) after sub-rule 2, the following sub-rules shall be inserted, namely:-

“(3) Where the date of valuation report by the merchant banker for the purposes of sub-rule (2) is not more than ninety days prior to the date of issue of shares which are the subject matter of valuation, such date may, at the option of the assessee, be deemed to be the valuation date.

(4) Where the issue price of the shares exceeds the value of shares as determined in accordance with -

- (i) clause (a) or (b) of sub-rule (2), for consideration received from a resident, by an amount not exceeding ten percent of the valuation price, the issue price shall be deemed to be the fair market value of such shares.
- (ii) clause (a) or (b) or (d) of sub-rule (2), for consideration received from a non-resident, by an amount not exceeding ten percent of the valuation price, the issue price shall be deemed to be the fair market value of such shares.”

[Notification no...../2023/F. No.370142/9/2023-TPL Part (1)]

, Under Secretary