

Tax Flash News

22 May 2023

CBDT proposes to change valuation rules in respect of Angel Tax

Where a private company receives any consideration for the issue of shares from any resident exceeding the fair market value of the shares, then such excess amount is taxable under Section 56(2)(viib) of the Income-tax Act, 1961 (the Act). The Finance Act 2023, introduced an amendment in Section 56(2)(viib) to apply such provisions to the issuance of shares to a non-resident.

Subsequently, on the basis of the inputs of various stakeholders, valuation related rules (Rule 11UA) for Section 56(2)(viib) are proposed to be modified. Further, notification of excluded entities is proposed to be issued separately.

In this regard, the Central Board of Direct Taxes (CBDT), vide press release¹, has clarified as follows:

Proposed changes in Rule 11UA

- Rule 11UA currently prescribes two valuation methods with respect to the valuation of shares i.e., Discounted Cash Flow (DCF) and Net Asset Value (NAV) method for resident investors. It is proposed to include 5 more valuation methods available for non-resident investors in addition to the DCF and NAV.
- Further, where any consideration is received by a company for the issue of shares, from any non-resident entity notified by the Central Government, 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 per cent 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 these provisions shall not apply:

- 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 per cent or more.

¹ Press release dated 19 May 2023

- Banks or entities involved in the 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 certain countries or specified territories having robust regulatory framework:
 - Entities registered with the Securities and Exchange Board of India as Category-I 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

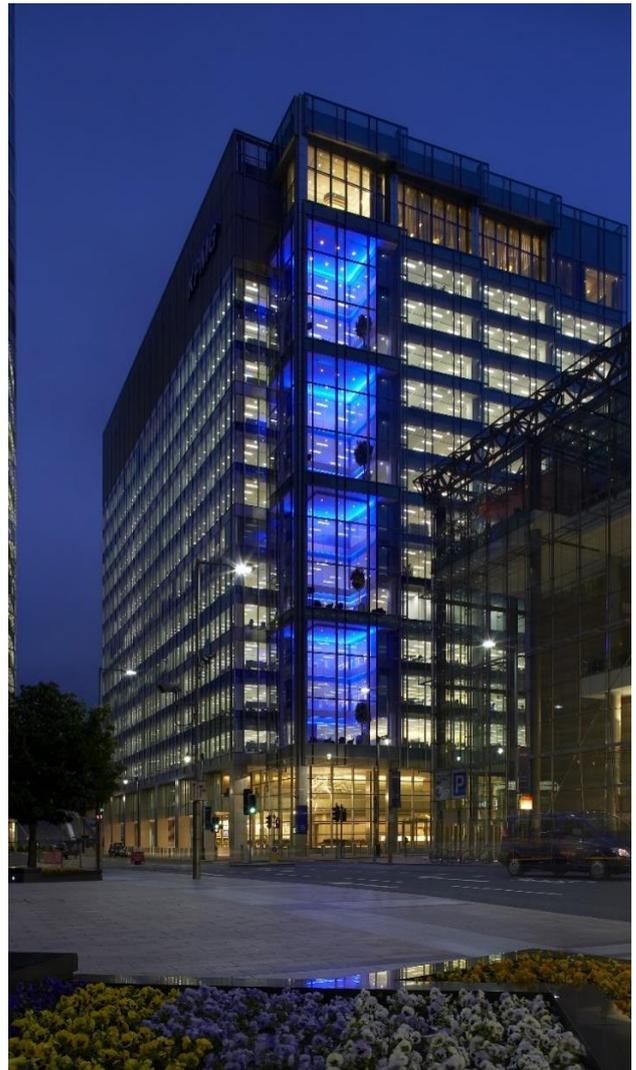
- It is also proposed to modify the earlier notification² so as to provide that the provisions Section 56(2)(viib) shall not apply to the consideration received from any person by specified start-ups³.

Our comments

The proposed changes to the valuation rules especially increasing the valuation methods to include five more options, will provide flexibility to investors. Further, the provision to account for forex fluctuations, bidding processes, and economic indicators will also help investors to cope with the unpredictability in the value of unquoted equity shares. It would be interesting to analyze the draft rules and new valuation methodologies once they are available for public comments.

² Notification No. S.O 1131(E), dated 5 March 2019

³ Covered in para 4 and 5 of Notification dated 19 February 2019 issued by the Ministry of Commerce and Industry - Department for Promotion of Industry and Internal Trade (DPIIT).



KPMG in India addresses:

Ahmedabad

Commerce House V, 9th Floor,
902, Near Vodafone House, Corporate Road,
Prahlad Nagar,
Ahmedabad – 380 051.
Tel: +91 79 4040 2200

Bengaluru

Embassy Golf Links Business Park,
Pebble Beach, 'B' Block,
1st & 2nd Floor,
Off Intermediate Ring Road, Bengaluru – 560071
Tel: +91 80 6833 5000

Chandigarh

SCO 22-23 (1st Floor),
Sector 8C, Madhya Marg,
Chandigarh – 160 009.
Tel: +91 172 664 4000

Chennai

KRM Towers, Ground Floor,
1, 2 & 3 Floor, Harrington Road,
Chetpet, Chennai – 600 031.
Tel: +91 44 3914 5000

Gurugram

Building No.10, 8th Floor,
DLF Cyber City, Phase II,
Gurugram, Haryana – 122 002.
Tel: +91 124 307 4000

Hyderabad

Salarpuria Knowledge City,
6th Floor, Unit 3, Phase III,
Sy No. 83/1, Plot No 2, Serilingampally
Mandal,
Ranga Reddy District,
Hyderabad – 500 081.
Tel: +91 40 6111 6000

Jaipur

Regus Radiant Centre Pvt Ltd.,
Level 6, Jaipur Centre Mall,
B2 By pass Tonk Road,
Jaipur – 302 018.
Tel: +91 141 - 7103224

Kochi

Syama Business Centre,
3rd Floor, NH By Pass Road,
Vytila, Kochi – 682 019.
Tel: +91 484 302 5600

Kolkata

Unit No. 604,
6th Floor, Tower – 1,
Godrej Waterside,
Sector – V, Salt Lake,
Kolkata – 700 091.
Tel: +91 33 4403 4000

Mumbai

2nd Floor, Block T2 (B Wing),
Lodha Excelus, Apollo Mills Compound, N M
Joshi Marg, Mahalaxmi, Mumbai- 400011
Tel: +91 22 3989 6000

Noida

Unit No. 501, 5th Floor,
Advant Navis Business Park,
Tower-A, Plot# 7, Sector 142,
Expressway Noida,
Gautam Budh Nagar,
Noida – 201 305.
Tel: +91 0120 386 8000

Pune

9th floor, Business Plaza,
Westin Hotel Campus, 36/3-B,
Koregaon Park Annex,
Mundhwa Road, Ghorpadi,
Pune – 411 001.
Tel: +91 20 6747 7000

Vadodara

Ocean Building, 303, 3rd Floor,
Beside Center Square Mall,
Opp. Vadodara Central Mall,
Dr. Vikram Sarabhai Marg,
Vadodara – 390 023.
Tel: +91 265 619 4200

Vijayawada

Door No. 54-15-18E,
Sai Odyssey,
Gurunanak Nagar Road, NH 5,
Opp. Executive Club, Vijayawada,
Krishna District,
Andhra Pradesh – 520 008.
Tel: +91 0866 669 1000

30 years
and beyond

<https://kpmg.com/in/en/home/social>

kpmg.com/in/en/home/social



The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

KPMG Assurance and Consulting Services LLP, Lodha Excelus, Apollo Mills Compound, N M Joshi Marg, Mahalaxmi, Mumbai - 400 011 Phone: +91 22 3989 6000, Fax: +91 22 3983 6000

© 2023 KPMG Assurance and Consulting Services LLP, an Indian Limited Liability Partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.

This document is meant for e-communication only.