

TT Alert

September 2023

Amendment to Rule 11UA for determination of Fair Market Value ('FMV') of Shares

- Considering the amendment made by Finance Act, 2023 extending the applicability of S.56(2)(viib) to non-residents, CBDT has issued a draft notification on 26th May 2023 proposing amendment to Rule 11UA which was opened up for public comments.
- CBDT has finally issued Notification No. 81/2023 dated 25th September 2023 and amended Rule 11UA. We have provided a brief overview of the draft vis-à-vis final notification.

Sr. No.	Particulars	Amendment Proposed in Draft Notification	Amendment as per Final Notification
1	New Valuation methods for non-resident investors	<p>Non-resident investors can invest in shares of closely held Indian company, if it is backed by a valuation report obtained from the merchant banker and the FMV is computed basis the additional methodologies prescribed hereunder:</p> <ul style="list-style-type: none"> • Comparable Company Multiple Method; • Probability Weighted Expected Return Method; • Option Pricing Method; • Milestone Analysis Method; • Replacement Cost Method; 	No change

Sr. No.	Particulars	Amendment Proposed in Draft Notification	Amendment as per Final Notification
2	<p>FMV computed for notified entities¹ and venture capital undertaking can be treated as FMV for other companies</p>	<p>If a company receives any consideration for the issue of shares from notified entity, the price of the equity shares corresponding to such consideration, may be taken as the FMV of the equity shares for other investors, subject to fulfillment of the below mentioned conditions:</p> <ul style="list-style-type: none"> • The above benchmarking applies only to the extent of aggregate consideration that is received from the notified entity; and • The company has received consideration from the notified entity within 90 days of date of the issue of shares. <p>On similar lines, venture capital undertaking can use the price of equity shares issued to a venture capital fund, venture capital company or specified fund.</p> <p>For example, if a venture capital undertaking receives a consideration of INR 50,000 from a venture capital company for the issue of 100 shares at the rate of INR 500 per share, then such an undertaking can issue 100 shares at this rate to any other investor within 90 days of the receipt of consideration from venture capital company.</p>	No Change
3	<p>Merchant Banker report to not be older than 90 days</p>	<p>The valuation report by the Merchant Banker would be acceptable if it is of a date not more than 90 days prior to the date of issue of shares which are the subject matter of valuation.</p>	No Change
4	<p>Safe harbor limit</p>	<p>Further, the price at which shares are issued is higher than value determined as per Rule 11UA, by not more than 10%, the issue price will be held as the FMV. This would take into account the foreign fluctuations, bidding processes and variations in other economic indicators, etc. which may affect the valuation of the unquoted shares.</p>	No Change
5	<p>Fair market value in case of Compulsorily Convertible Preference Shares ('CCPS')</p>	<p>There was no such provision</p>	<p>The FMV of CCPS can be determined as per (i) or (ii) at the option of the assessee:</p> <ol style="list-style-type: none"> i. The value of Equity Shares derived as per the prescribed method can be considered as the FMV of CCPS; OR ii. The value of CCPS can be determined in accordance with the prescribed method for valuation of Equity Shares (other than book values method);

RBSA Comments

Considering the substance, CBDT has specified that the FMV of Equity Shares can be taken as the value of CCPS at the option of assessee. Other amendments made in Rule 11UA to allow the same valuation report if not older than 90 days will ease multiple round of fund raising. Further, providing the safe harbor limit of 10% will reduce the litigation pertaining to valuation. However, the CBDT should establish means to compute FMV under each of the prescribed valuation method to bring about uniform approach in its application.

¹Government 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;

The Banks or entities involved in Insurance Business where such entity is subject to 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 specified countries / territories and such entity is subject to applicable regulations in the country where it is incorporated or is a resident:

- *Entities registered with SEBI as Category-I Foreign Portfolio Investors.*
- *Endowment Funds associated with a university, hospitals or charities,*
- *Pension Funds created or established under 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.*

The specified countries / territories as per the notification are Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Iceland, Israel, Italy, Japan, Korea, New Zealand, Norway, Russia, Spain, Sweden, United Kingdom and United States.

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