

INDIA LEGAL UPDATE

September 29, 2023

Rules for valuation of shares modified in respect of Angel Tax

Notification Date:
September 25, 2023
Effective Date:
September 25, 2023
Legal Framework:
Income-Tax Act, 1961; Income-Tax Rules, 1962
Government Authority:
Central Board of Direct Taxes
Weblink:
CBDT Notification

LEGAL UPDATE

Rule 11UA for the valuation of shares for the purposes of section 56(2)(viib) of the Income-tax Act, 1961 has been modified after considering feedback from stakeholders.

The Finance Act, 2023, brought the consideration received from non-residents for the issue of shares by an unlisted company within the ambit of section 56(2)(viib) of the Act. As per this amendment, if such consideration for the 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'.

Notable changes are:

- 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:
 - i. Comparable Company Multiple Method
 - ii. Probability Weighted Expected Return Method
 - iii. Option Pricing Method
 - iv. Milestone Analysis Method, and
 - v. Replacement Cost Method

- Where any consideration is received 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 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 90 days before or after the date of issue of shares which are the subject matter of valuation.

- Price matching for resident and non-resident investors will be available with reference to investment by Venture Capital Funds / Specified Funds.
- Valuation methods for calculating the FMV of Compulsorily Convertible Preference Shares (CCPS) have also been provided.
- A safe harbor of 10% variation in value has been provided.

The notified Rule provides for the expansion of the valuation methodologies to include globally accepted methodology and provide a broad parity to resident and non-resident investors. It will help avoid getting caught in the angel tax net, an anti-avoidance measure that was extended to non-residents in the Finance Act 2023.

Queries?

If you have any queries about this article, please reach out to our experts:



Manu Srivastava (マヌ スリバスタバ)
Managing Partner

Mobile: +91-99-7180-3336
Email: Manu@HLS-Global.in



Ejima Naoto (江嶋直人)
General Manager | Japan Desk

Mobile: +91-91-0803-0825
Email: nejima@HLS-Global.in



Priyanka Bhutani (プリヤンカブータニ)
Senior Manager | Knowledge Management

Mobile: +91-85-8797-2798
Email: Priyanka@HLS-Global.in

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.

HLS Global in India

New Delhi (Corporate Office)

Vegas Mall, Office Block-B, 8th Floor, Unit No.883, Sector-14, Dwarka, New Delhi 110075 | India
Tel.: +91-11-6134-0450
Email: Info@HLS-Global.in
JapanDesk@HLS-Global.in

Gurugram

Level 1, Building No. 10A, DLF Cyber City, Gurugram
Tel.: +91-79-8266-6136
Email: Info@HLS-Global.in

Japanese Zone - Neemrana

Office No. 206, Regent Square Mall, CP-4, Japanese Zone, Neemrana, Rajasthan - 301705
Tel.: +91-73-5732-0237
Email: JapanDesk@HLS-Global.in

Lucknow

Office No. 22/181, Indira Nagar, Lucknow, Uttar Pradesh - 226016
Tel.: +91-93-3536-3533
Email: Info@HLS-Global.in

Mumbai

WeWork Enam Sambhav, BKC, C-20, G Block, Bandra-Kurla Complex, Mumbai, Maharashtra - 400051
Tel.: +91-22-4880-8605
Email: Info@HLS-Global.in

Ahmedabad

A - 413, Titanium Business Park, Beside Railway underpass, Makarba, Ahmedabad-380051
Tel.: +91-79-8266-6136
Email: Info@HLS-Global.in

Connect with us on Social Media



www.HLS-Global.in

Noida

304, 3rd Floor, Tradex Tower-1, Alpha Commercial Belt, Alpha-1, Greater Noida, Uttar Pradesh-201310
Tel.: +91-79-8266-6136
Email: Info@HLS-Global.in

Bangalore

WeWork Galaxy, MG Road, 43, Residency Road, Bangalore, Karnataka 560025
Tel.: +91-79-8266-6136
Email: Info@HLS-Global.in

HLS Global Worldwide

Japan Office

Tokyo

www.HLS-Global.jp

US Offices

Los Angeles (Headquarters)
New York
Indianapolis
Chicago
Atlanta
San Jose

www.HLS-Global.com

Mexico Offices

Mexico City
Irapuato

www.HLS-Global.mx

Germany Office

Stuttgart

www.HLS-Global.de



ASTHOM

A member firm of ASTHOM Partners, Japan

<https://asthom.co.jp/>

Germany

Hong Kong

India

Japan

Malaysia

Philippines

Singapore

Thailand

USA

Vietnam