

MINISTRY OF FINANCE
(Department of Revenue)
(CENTRAL BOARD OF DIRECT TAXES)

NOTIFICATION

New Delhi, the 25th September, 2023

INCOME-TAX

G.S.R. 685(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 Board of Direct Taxes 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 (Twenty first 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, for sub-rule (2), the following sub-rules shall be substituted, namely:—

‘(2) Notwithstanding anything contained in sub-clause (b) or sub-clause (c), as the case may be, of clause (c) of sub-rule (1):—

(A) 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 shall be determined under sub-clause (a), sub-clause (b), sub-clause (c) or sub-clause (e), at the option of the assessee, where the consideration received by the assessee is from a resident ; and under sub-clauses (a) to (e) at the option of the assessee, where the consideration received by the assessee is from a non-resident, in the following manner:-

(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 unquoted equity 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 before or after the date of issue of shares which are the subject matter of valuation.

Explanation.— For the purposes of this clause,—

- (i) “specified fund” shall have the same meaning as assigned to it in clause (aa) of *Explanation* to clause (viib) of sub-section (2) of section 56;
- (ii) “venture capital company”, “venture capital fund” and “venture capital undertaking” shall have the same meaning assigned to them in clause (b) of *Explanation* to clause (viib) of sub-section (2) of section 56.

Illustration: If a venture capital undertaking receives a consideration of fifty thousand rupees from a venture capital company for issue of one hundred shares at the rate of five hundred rupees per share, then such an undertaking can issue one hundred shares at this rate to any other investor within a period of ninety days before or after 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 unquoted equity 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 before or after the date of issue of shares which are the subject matter of valuation.

(B) the fair market value of compulsorily convertible preference 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, as determined—

(i) in accordance with the provisions of sub-clause (b), sub-clause (c), or sub-clause (e) of clause (A), at the option of the assessee, or based on the fair market value of unquoted equity shares determined in accordance with sub-clause (a), sub-clause (b), sub-clause (c), or sub-clause (e) of clause (A), at the option of the assessee, where such consideration is received from a resident; and

(ii) in accordance with the provisions of sub-clauses (b) to (e) of clause (A), at the option of the assessee, or based on the fair market value of unquoted equity shares determined in accordance with sub-clauses (a) to (e) of clause (A), at the option of the assessee, where such consideration is received from a non-resident.

(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:

Provided that where such option is exercised under this sub-rule, the provisions of clause (j) of rule 11U shall not apply.

(4) For the purposes of clause (A) or clause (B) of sub-rule (2), where the issue price of the shares exceeds the value of shares as determined in accordance with -

(i) sub-clause (a) or sub-clause (b) of clause (A), for consideration received from a resident, by an amount not exceeding ten per cent. of the valuation price, the issue price shall be deemed to be the fair market value of such shares;

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

Explanation.— For the purposes of this sub-rule, 'issue price' means the consideration received by the company for one share.

[Notification No. 81 /2023/F. No. 370142/9/2023-TPL Part (1)]

AMRIT PRITOM CHETIA, Under Secy.

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) *vide* Notification Number S.O. 969 (E), dated the 26th March 1962 and was last amended *vide* Notification Number G.S.R. 637(E) dated 30th August, 2023.