Valuation Rules under Income Tax Act, 1961

KRESTON SGCO

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Various sections under which valuation is required

Sr. No.	Relevant Section	Nature of Transaction	Introduction of Section	Applicable Rule
1.	*Section 9(1)(i)*	*Income deemed to accrue or arise in India in case of indirect transfer of shares*	*Finance Act, 2012 (w.r.e.f 1-4-2962)*	*Rule 11UB and Rule 11UC*
2.	Section 17(2)(vi)	Shares issued under ESOP	Finance Act, 2009 (w.e.f. 1-4-2010)	Rule 3(8)
3.	Section 28(via)	Valuation of inventory converted into Capital Asset	Finance Act, 2018 (w.e.f. 1-4-2019)	Rule 11UAB (Draft)
4.	Section 43CA	Valuation of assets transferred other than capital assets in certain cases	Finance Act, 2013 (w.e.f. 1-4 2014)	FVC - SDV
5.	*Section 50C*	*Transfer of immovable property*	*Finance Act, 2002 (w.e.f.1-4-2003)*	*FMV – SDV*
6.	Section 50CA	Transfer of shares other than quoted shares	Finance Act, 2017 (w.e.f. 1-4-2018)	Rule 11UAA r.w.r 11UA (1)(c)(b)/(c)
7.	*Section 50D*	*FMV deemed to be full value of consideration in certain cases.*	*Finance Act, 2012 (w.e.f. 1-4-2013)*	*FMV*
8.	Section 56(2)(viib)	Valuation of Equity Share in case of Issue of Shares (DCF valuation can be undertaken only by Merchant Banker as per Notification dated 25th May, 2018 issued by CBDT)	Finance Act, 2012 (w.e.f.1-4-2013)	Rule 11UA(2)
9.	Section 56(2)(x)	Receipt of property without Consideration/ < FMV	Finance Act, 2017 (w.e.f. 1-4-2017)	Rule 11UA(1)(c)(b)

Valuation of Shares issued under ESOP scheme

ESOP Valuation - Sub-rule 8 of Rule 3

Listed Equity Shares–
Rule 3 (8)(ii)

If traded on Exercise date

FMV= (opening + closing)/2

FMV= If listed on more than one RSEs, then average of the opening and closing price of the SE where highest volume is recorded

If not traded on Exercise date

FMV= Then closing price on any RSE on a date closest to the date of exercise of option and immediately preceding such date

FMV= If listed on more than one exchange then the RSE which records the highest volume of trading of such shares

Unlisted Equity Shares Rule 3(8)(iii) / other specified Security –
Rule 3 (9)

- FMV of shares as on the **specified date** shall be determined by the Category I Merchant Banker registered with the SEBI
- Here **specified date** means, -

i. the date of exercising of the option; or

ii. date earlier than exercising date but not earlier than 180 days of exercising date

Valuation of stock in trade converted into Capital Asset

Conversion of Stock-in-trade into Capital Asset – General Overview

- Section 45(2) of the ITA dealt with the taxation of capital asset is converted into stock-in-trade. however, there is no provision for taxing the conversion or treatment of inventory into a capital asset.

- Similarly, new Clause (via) has been inserted in section 28 which provide for taxability in the event of conversion of stock-in-trade into Capital Asset.

- Fair market value of inventory as on the date on which it is converted into, or treated as, a capital asset **<u>determined in the prescribed manner</u>** will be chargeable to tax under the head PGBP.

- The amendment in Section 2(24) is brought in way of insertion of Clause (xiia) which reads as under:

  "income includes-

  "the fair market value of inventory referred to in clause (via) of section 28".

- Also the respective amendment in following section is made:
  - Section 2(42A) – Period of Holding of Such converted Capital Assets
  - Section 49 - Cost of Acquisition of such capital Assets on subsequent sale

Determination of FMV for Stock-in-Trade converted into Capital Asset – Draft Rule 11UAB

Nature of Asset	Valuation Rule
(i) Immovable Property – land or Building or both	Value adopted/ assessed/ assessable either by CG or SG for the purpose of payment of Stamp Duty – value as on date of conversion/treatment as CA
(ii) Jewellery / Archaeological collection/ drawings/ sculptures/ any work of Art/ shares or securities referred to in rule 11UA	Sub – rule (1) of rule 11UA
(iii) Any property other than (i) and (ii) above	Price that would be fetched on sale in open market

FVC on transfer of shares other than quoted shares

FMV of transfer of unquoted shares – Section 50CA

- Where the consideration received or accruing as a result of transfer by an assessee of a capital asset, being share of a company other than a quoted share, is less than the FMV of such share ***determined in such manner (Rule 11UAA) as may be prescribed,*** the value so determined shall for the purpose of section 48 be deemed to be the full value of consideration
- Provisions of the section are from a perspective of the seller
- Applicable to transferor who holds shares as capital asset and not as stock-in-trade
- Applies to shares which are not quoted
  - Even if the company is listed and widely held
  - Also, the shares can be of a subsidiary of a listed company
  - The shares can be of a foreign company
- Applies to share which even if quoted and :
  - Is not traded with regularity
  - Quotation is not based on current transaction in the ordinary course of business

Rule 11UAA - Determination of Fair Market Value for Unquoted Shares

- For the purposes of section 50CA, FMV of Unquoted Shares shall be determined in the manner provided in of rule 11UA(1)(c)(b) or rule 11UA(1)(c)(c) as the case may be.

- Valuation date for the purpose of Rule 11U and Rule 11UA shall mean the date on which the capital asset, being share of a company other than a quoted share, referred to in section 50CA, is transferred.

- Where unquoted equity shares are contributed by a partner to a firm, Whether CG is calculated as per the provisions of section 50CA or section 45(3)?

Valuation on issuance of shares of closely held companies

Section 56(2)(viib) – General Overview

- 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 face value*** of such shares, the aggregate consideration received for such shares as exceed the FMV of shares

- The Finance Minister in the Budget Speech 2012 explained the object of introduction of section 56(2)(viib) as follows:

  "…… to deter the generation and use of black money, I propose to… increase the onus of proof on closely held companies for funds received from shareholders as well as taxing share premium in excess of fair market value"

Section 56(2)(viib) – General Overview

Taxability under section 56(2)(viib)

- Company (Not being a company in which public are substantially interested

  +
- Any person being a resident

  +
- Any consideration for issue of shares

  +
- The issue price exceeds face value of such shares

  +
- Income = Consideration – FMV of shares

Determination of FMV

- FMV of shares is **higher** of the following:
  - Value determined in accordance with method as may be prescribed (Rule 11UA) or
  - Value which company substantiates to the satisfaction of the tax authority based on value of assets (including goodwill and other intangible) on the date of issue of shares

Exclusions from the section

- Issue of shares by a widely held company
- Issue of shares to a Non Resident
- Issue by Venture Capital Units to Venture Capital Company/ Venture Capital Fund
- Issue of securities other than shares – CCDs, warrants etc.

Determination of FMV of shares and securities [Rule 11UA(2)]

Shares and securities (Unquoted Shares)

Option 1

FMV of Equity Shares=
(A-L)/(PE) X (PV)

A= Book Value of the assets in the Balance Sheet- [(TDS/TCS/Advance Tax) – (Refund + Deferred Expenditure)]
L= Book Value of Liabilities – (paid up equity capital + undeclared dividend + reserves and surplus + provisions for taxation + provision for unascertained liabilities + contingent liabilities)
PE= Total paid up equity share capital
PV= Paid up value of such equity shares

Option 2

FMV determined by the merchant banker* or an accountant as per Discounted Free Cash Flow Method (DCF)

*Category 1 merchant banker (registered with SEBI) or a FCA (other than present statutory/ tax auditor)

Note: DCF Valuation can be undertaken only by Merchant Banker as per Notification dated 24th May, 2018 issued by CBDT.

Case Study – Section 56(2)(viib)

Case	Fair Market Value (FMV) as per Rule	Issue Price (IP)	Applicability of Section 56(2)(viib)
I	1000	1000	NO – As Issue price matches with the FMV
II	1000	1500	Yes – As shares are issued at Higher than FMV
III	1000	500	NO – As 56(2)(viib) Applies only when Consideration > FMV
IV	(50)	100 (Face Value)	Section 53 of Companies Act, 2013 Prohibits the company to Issue shares at discount except in case of Sweat Equity Shares*

* Commissioner of Income – tax (Central) vs. O.P. Srivastava [2014] 42 taxmann.com 306 (Allahabad)

Interesting scenario

Whether AO can insist the assessee to adopt particular method for the purpose of valuation of Equity Shares?

- DCIT vs. Ozoneland Agro Pvt. Ltd (ITAT Mumbai)
- CIT Circle -2, vs. Safe Decore (P.) Ltd (ITAT Jaipur – 90 taxnann.com 161)
- Agro Portfoilo Pvt Ltd v. ITO (ITAT Delhi – 2018-TIOL -777-ITAT – DEL)

Relief to Startup from section 56(2)(viib)

At the Initial phase in addition to the funding by the entrepreneurs start-ups generally requires huge funding from other investors also to make investments in technology, human resources and infrastructure in the initial phase itself.

In such cases to raise the funds shares are generally issued to angel investors at a high premium over its FMV to have the ownership and control with the entrepreneurs.

This nature of funding has been exposing start-ups to tax under section 56(2)(viib) of the Act which provides that:

- Excess of premium received by a company (non-public) over its fair market value (FMV) as per rule 11UA of the Income-tax Rules, 1962 ('the Rules'), from a resident taxpayer would be taxable as the company's income from 'other sources' (not business income) this is popularly known as **'Angle Tax'**.
- The same income is also not eligible for the tax holiday / deduction under section 80-IAC of the Act as it is available only for business income.

Exclusion:

- Venture capital undertakings
- Share Issued to non-resident taxpayers by Startup company (i.e. foreign investment).

Eligible Startup – Criteria – Contd.

An entity shall be considered as a eligible "Start-up" if he satisfies the following condition:

- Up to 7 years from the date of incorporation/registration as a company/partnership Firm/ LLP; in case of non- biotechnological sectors (up to 10 years in case of biotechnological sector
- The Turnover in any of the Financial Years since incorporation should not exceed INR 25 Crores
- It should be working towards innovation, development or improvement of products or processes or services, or be a scalable business model with a high potential of employment generation or wealth creation.

Provisions of angel-tax do not apply to LLPs as they apply only to non-public companies. Accordingly, the issues discussed above under section 56(2)(viib) of the Act would not apply to a LLP.

Relief to Eligible Startup from 56(2)(viib) – Contd.

With the recent notification Dated **11 April 2018**, the DIPP has provided a mechanism by which an **eligible start-up** can claim exemption from applicability of Section 56(2)(viib) subject to certain conditions:

Paid up Share Capital + Share Premium after the proposed issue of shares should be less than or equal to INR 10 Crores.

AND

Has obtained a Merchant Banker's Report of FMV as per Rule 11UA of the Rules

Condition to be fulfilled by the Investors:

Average returned Income INR 25 lakhs or more for preceding 3 FY's

OR

Networth of INR 2 Crores or more as on the last day of the preceding FY

Note: The Start-ups in order to avail this exemption have to make an application with the Board for approval **(No time limit is prescribed for receipt of approval)**.

Valuation of certain classes of assets in hands of recipient

Section 56(2)(x) - General Overview

- Where an person receives in the previous year from any or person on or after the 1at April 2017:
  (a) any sum of money, without consideration, the aggregate value of which is INR 50,000, the whole of the aggregate value of consideration
  (b) any immovable property
    (i) without consideration, SDV of such property
    (ii) for consideration < SDV, difference between amount paid and SDV
  (c) any property other than immovable property
    (i) without consideration , FMV of such property
    (ii) for consideration < FMV, difference between amount paid and FMV

- Exceptions
  (a) from any relative
  (b) on the occasion of marriage of individual
  (c) under a will or by way of inheritance
  (d) in contemplation of the death of the payer or donor, as the case may be
  (e) transaction not regarded as transfer u/s. 47(i), (iv),(v), (vi),(via), (viaa), (vib), (vic), (vica),(vicb), (vid),(vii)
  (f) from an individual by a trust created or established solely for the benefit of the relative of the individual

Section 56(2)(x)- Transfer for no/ inadequate consideration

- The Finance Act, 2017 w. e. f. 1-4-2017 has widened the scope of taxation of property or any sum received with or without or for inadequate consideration

  ❑ Provision up to 31 March 2017

  - Individual/HUFs taxable if any sum of money or property received without or for inadequate consideration in excess of INR 50,000 [Section 56(2)(vii)]
  - Firm or company taxable on receipt of issue of shares of a closely held company if the same is without or for inadequate consideration in excess of INR 50,000 [Section 56(2)(viia)]

  ❑ The erstwhile anti-abuse provisions were applicable only in case of individual or HUF and firm or company in certain cases.

- Hence, in order to widen the scope to all taxpayers irrespective of residential status, a new section 56(2)(x) has been introduced, replacing section 56(2)(vii) and section 56(2)(viia)

  Consequential amendment made in section 2(24) to include the receipts covered under section 56(2)(x)

  ❑ Provision w.e.f. 1 April 2017 - Widened scope now extends to all assessees

Definition of Property as per Section 56(2)

“Property" means the following **capital asset** of the Assessee, namely:—

(*i*) immovable property being land or building or both;
(*ii*) shares and securities;
(*iii*) jewellery;
(*iv*) archaeological collections;
(*v*) drawings;
(*vi*) paintings;
(*vii*) sculptures;
(*viii*) any work of art; or
(*ix*) bullion;

Determination of FMV for ‘movable property’ [Rule 11UA(1)(a)/ (b)]

Jewellery, archaeological collection, drawings, paintings, sculptures, any work of art

- Purchase from registered dealer - FMV = Invoice Value
- Purchase from Unregistered Dealer or by any other mode
  - Value exceeds Rs 50,000 then, FMV = Obtain the report of registered valuer in respect of the price it would fetch if sold in the open market
  - Value is less than Rs 50,000 then, FMV = Value that it would fetch if sold in open market

Determination of FMV of Quoted Equity shares [Rule 11UA(1)(c)(a)]

Quoted Shares and Securities as defined in Rule 11U: "quoted shares or securities" means a share or security quoted on any recognized stock exchange with regularity from time to time, where the quotations of such shares or securities are based on current transaction made in the ordinary course of business.

FMV of Quoted shares and securities

Received by way of transaction carried out through any RSE, the FMV shall be the transaction value as recorded in such RSE;

If transaction carried out other than through any RSE, the fair market value of such shares and securities shall be:

a) the lowest price of such shares and securities quoted on any RSE on the valuation date, and

b) If shares are not traded on Valuation date on any RSE then, the lowest price of such shares and securities on any RSE on a date immediately preceding the valuation date when such shares and securities were traded on such stock exchange

Determination of FMV of Unquoted Equity shares [Rule 11UA(1)(c)(b)]

$$\text{FMV of Unquoted Equity Share} = \frac{(A+B+C+D-L) \times (PV)}{(PE)}$$

(A)	Book Value of Assets (other than jewellery, artistic work, shares, securities and immovable property) reduced by income tax paid and un amortised amount of deferred revenue expenditure
(B) – Jewellery and artistic work	Price that would be fetch if sold in the open market on the basis of valuation report obtained from a registered valuer
(c)- Shares and Securities	Fair market value to be determined as provided in this rule
(D) – Immovable property	Value adopted or assessed or assessable by any authority for purpose of payment of stamp duty
(L)	Book value of liabilities in Balance sheet (excluding equity shares, amount set apart as dividend, reserves and surplus, provisions for tax, amount set aside for meeting liabilities other than ascertained liabilities and contingent liabilities)

Determination of Stamp Duty Value for 'immovable property'

Consideration (or part) paid by way of a/c payee cheque or a/c payee bank draft or by ECS	▪ Where there is difference between date of agreement (fixing consideration) and date of registration, stamp duty value on the date of agreement to be taken
By any mode other than the specified mode	▪ Stamp duty value on the date of registration to be taken
Purpose	▪ In several cases, there is a time gap between the booking of a property and the receipt of such property on registration, which results in a taxable differential (SDV on registration date is generally higher) ▪ This provision removes hardship in genuine cases. Hence, consideration received entirely in other than the specified mode is excluded

Determination of FMV of Unquoted shares other than Equity Shares [Rule 11UA(1)(c)(c)]

Unquoted Shares and Securities as defined in Rule 11U: "Unquoted shares and securities", means shares and securities which is not a quoted shares or securities.

FMV of Unquoted shares and securities: the fair market value of unquoted shares and securities other than equity shares in a company which are not listed in any recognized stock exchange shall be estimated to be price it would fetch if sold in the open market on the valuation date and the assessee may obtain a report from a merchant banker or ~~an accountant~~ in respect of such valuation.

Case Study – 56(2)(x)

Case	Fair Market Value (FMV)	Consideration paid (CP)	Implication
I	1000	1000	56(2)(x) is not attracted
II	1000	1500	56(2)(x) is not attracted
III	1000	500	50CA is applicable to the seller and 56(2)(x) to the Recipient

Example -

Mr. A acquired 1,00,000 shares of Winners Pvt. Ltd. for Rs. 5 per share. The shares were sold to Mr. B at Rs. 8 per share. The Book Value on the date of transfer was Rs. 10 per shares while the FMV on the date of transfer is Rs. 20 per share. The following will be impact of both Section 50CA and Section 56; under old provisions and as per the amended provisions:

Details	As per Old Provisions and Rule		Amended Provisions and Rule	
	Transfer of Shares	Sec 56(2)(vii)	Section 50CA	Sec 56(2)(x)
Computation of Capital Gains – Seller/ Transferor is taxed				
Sale Consideration	Rs. 8,00,000		Rs. 20,00,000	
Less: Cost of Acquisition	(Rs. 5,00,000)		(Rs. 5,00,000)	
Capital Gains	Rs. 3,00,000		Rs. 15,00,000	
Income from other sources – Buyer/ Transferee is taxed				
FMV of shares (Rs. 20*1,00,000)		Rs. 10,00,000		Rs. 20,00,000
Less: Actual cost of acquisition (Rs. 8*1,00,000)		(Rs. 8,00,000)		(Rs. 8,00,000)
Income from other Sources		Rs. 2,00,000		Rs. 12,00,000
Overall Tax Effect	Rs. 500,000		Rs. 27,00,000	

Interplay of section 50CA and 56(2)(x)- Creation of double whammy

- An interplay of section 50CA and section 56(2)(x) can create a whammy in circumstances where property is transferred for less than fair value.

- If a transaction is not carved out, the transferor may suffer notional taxation under section 50CA whereas the transferee may suffer notional taxation under section 56(2)(x).
- However, to avoid Double Tax, On subsequent sale of shares Cost of acquisition will be the FMV determined as per Section 56(2)(x) - section 49(4)

Interesting Scenarios – 1
Valuation of investment in Partnership Firm

A Ltd.	
Balance Sheet as on 31st March, 2018	
Particulars	**Amounts (Rs. In Lakhs)**
EQUITY AND LIABILITIES	
Equity	
Mr. X	50
Mr. Y	50
Liabilities	0
TOTAL EQUITY AND LIABILITIES	**100**
ASSETS	
Investment in Partnership Firm	50
Immovable Property	20
Other Non-Current Asset	30
TOTAL ASSETS	**100**

FMV of Immovable Property 50 Lakhs

Balance sheet of partnership firm as on 31st March, 2018			
Liabilities	**Amount**	**Assets**	**Amount**
Capital Accounts			
A Ltd.	50	Immovable Property	70
B Ltd.	50	Shares in XYZ Ltd.	30
	100		100

FMV of Immovable property Rs. 120
FMV of Shares in XYZ Ltd. be Rs. 50 Lakh

Now Mr. X Wants Transfer his 50% stake in A Ltd to Mr. Y at Rs. 100 Lakhs, How to Value such equity shares for the purpose of section 50CA and 56 (2)(x) as per 11UAA/ 11UA?

Investment in Partnership Firm – Contd.

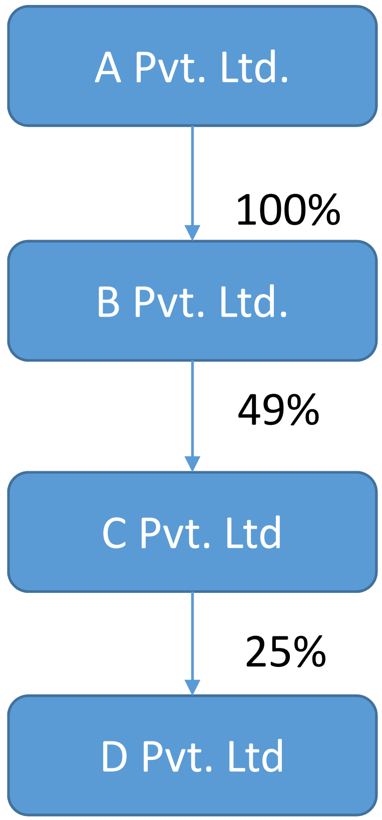
Meaning of the term "property": The term "property" is defined in Explanation to section 56(2)(x) read with section 56(2)(vii); which includes shares and securities .

The term "securities" is defined u/s 2(h) of Securities contracts (Regulation) Act, 1956- *to include "shares, scripts, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate".*

Interest in partnership firm or LLP is not covered in definition of Securities as defined u/s 2(h) of Securities contracts (Regulation) Act, 1956.

Hence if the company holds investment in Partnership firm or LLP, and company derive its substantial value from that investment in Partnership firm or LLP, then also for the purpose of valuation, investment in Partnership firm or LLP is to be considered at Book Value reflecting in the financials of the Company.

Issue 2-
Valuation in case of Multilayer Structure

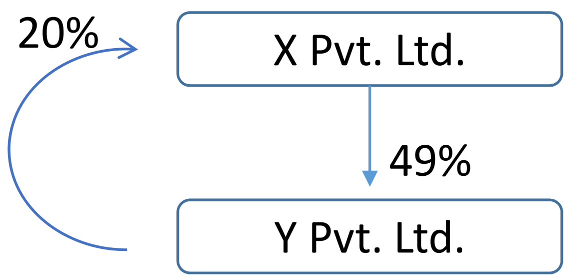


How to Value Equity Shares of A Pvt. Ltd. in case there is Multilayer Structure?

As per the amendment to the companies act 2013, vide notification dt 20th September 2017

Company cannot have more than two tier subsidiaries

Issue 3 -
Valuation in case of Cross Holding



Mr. A holds 50% stake in X Ltd.
Now Mr. A wants transfer his stake to Mr. B
How to Value the Equity Share in such cases as per Rule 11UA(1) ?

<u>Step 1</u> : Calculate the Networth of each company ignoring the Book Value of the Investment in respective Company
(Assume Company X Networth – 300Cr. And Company Y Networth – 250Cr.)

<u>Step 2</u> : Forming of the Equation

300 + 0.49Y = X ……… **(Eq. 1)** 250 +0.20X = Y………. **(Eq. 2)**

<u>Step 3</u> : By Solving of the Equation

- Multiply Eq.1 by 100 and Eq. 2 by 49

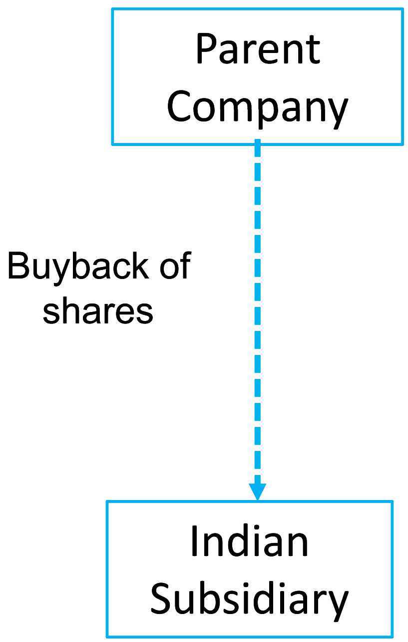
30000+ 49Y = 100X ………..**(Eq. 3)** 12250 + 9.8X = 49Y ………..**(Eq. 4)**

- Solving of the Equation 3 & 4

42250 =90.2X

X = 468.4 Cr.

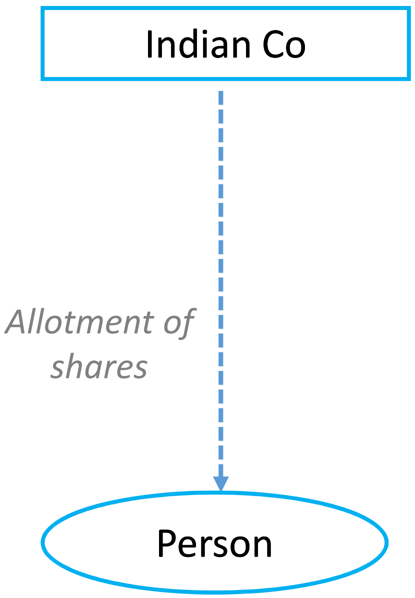
Issue 4 - Whether Buyback of shares at lower than FMV attract 56(2)(x) ?



Buyback of shares by Indian company from its shareholders at lower than FMV

- The intent of the section – to prevent the wrong abusive practice of "transferring" property at low values (and not for taxing normal transactions)
- Provisions applies to shares capable of further transfer resulting in capital gains
- Shares bought back cannot be transferred and must be mandatorily cancelled
- Shares received upon buyback not registered in the name of the company prior to cancellation thereof (from Companies Act perspective)
- Similar analogy applicable in case of capital reduction, redemption of preference shares
- Provisions of section 56(2)(x) of the Act should be not applicable
- Buyback of unlisted shares maybe subject to buyback tax
- Property is not in existence post the transfer.
- Therefore, Section 56(2)(x) is therefore not applicable.

Issue 5 – Fresh/ Right issue of shares



Issue

Whether fresh issue of shares taxable u/s 56(2)(x)?

Whether rights issue of shares taxable u/s 56(2)(x)?

What should be the Balance sheet Date for the purpose of valuation? – Rule 11UA

"Balance-Sheet Date " for the purpose of valuation as per Rule 11UA :

Rule 11UA(2): Incase of Issue of Shares- Section 56(2)(viib)

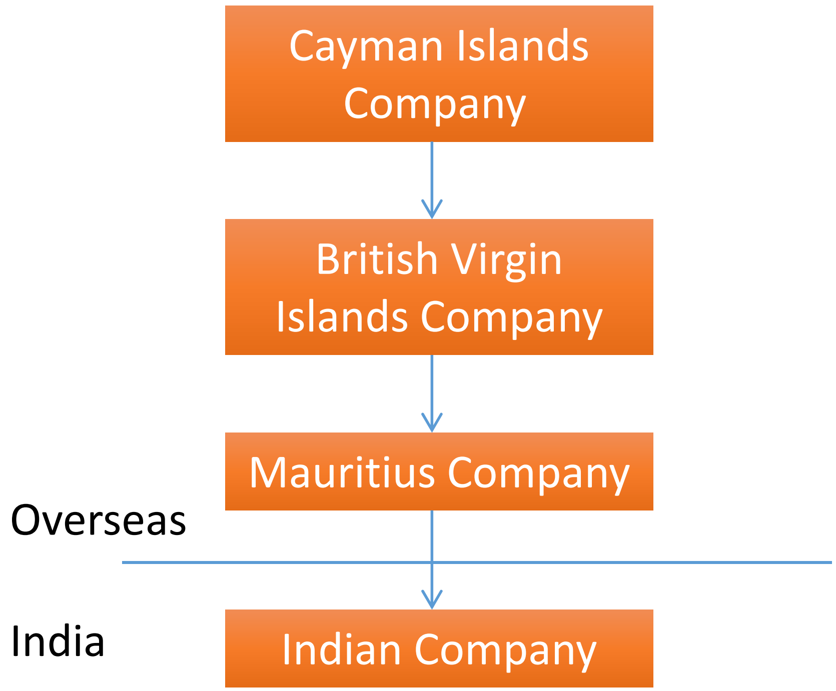
1. as drawn up on the valuation date which has been audited by the auditor of the company;
2. where balance sheet not drawn up, then balance-sheet drawn up as on a date immediately preceding the valuation date which has been approved and adopted in the annual general meeting of the shareholders of the company

Any Other Case

1. as drawn up on the valuation date which has been audited by the auditor

Valuation in case of indirect transfer

Section 9 - Example



Rule 11UC – Income attributable to assets in India

Income arising from transfer of share or interest in a company or entity incorporated or registered outside India is taxable in India if such share or interest derives substantial value from assets located in India

Derivation of substantial value from India: If the value of Indian Asset is Exceeding INR 10 Cr; and Representing at least 50% of value of all assets owned by the foreign entity

The income attributable to indirect transfer of assets shall be determined on the basis of the following formula:

$$A \times \frac{B}{C}$$ where:

A = Capital Gain from transfer of shares of foreign entity computed in accordance with Indian laws, as if such share/ interest is located in India.

B = FMV of the Indian assets on the Specified Date (as defined in Explanation 6 to Section 9(1)(i) of the Act)

C = FMV of all the assets of the company or entity as on the Specified Date (computed in terms of Rule 11UB)

Rule 11 UB –Fair Market Value–Assets located in India

Listed Shares	FMV = Observable price of such share on recognized stock exchange *(Higher of average of weekly high and low closing prices for 6 months preceding specified date or 2 weeks preceding specified date)*
Listed company Shares with managemnt /controlled rights	FMV = (A + B) / C A = Market capitalization (observable price on stock exchange) B = BV of liabilities C = Number of outstanding shares
Unlisted Shares	FMV determined by a merchant banker or accountant as per internationally accepted pricing methodology + Liability, if any, considered in such valuation
Interest in Partnership firm	FMV of partner's share = (Value determined by a merchant banker or accountant as per internationally accepted valuation methodology + Liability, if any, considered for such valuation) apportioned to the partners in capital ratio till the extent of total capital, and then in asset distribution ratio or profit sharing ratio
Other Assets	FMV = Expected price it can fetch in the open market (determined by merchant banker/ accountant) + Liability, if any, considered in such determination

Rule 11 UB –Fair Market Value–Assets of Foreign company

Transfer between non connected persons	FMV of all assets = A + B A = Market Capitalization of the foreign company or entity computed on the basis of the full value of consideration for transfer B = Book value of liabilities as on specified date, as certified by a merchant banker or an accountant
Other cases- Share of foreign company -listed on specified date	FMV = A + B A = Market capitalization of foreign company (based on observable price on stock exchange where it is listed on a stock exchange) B = Book value of liabilities as on specified date
Other cases- Share of foreign company - unlisted on specified date	FMV = A + B A = FMV of foreign company / entity & its subsidiaries (on a consolidated basis) computed by merchant banker or accountant as per internationally accepted valuation methodology B = Book value of liabilities as on specified date

Certain other Important Points in Relation to Rule 11UB

- *Where FMV has been determined on the basis of any interim balance sheet then the FMV shall be appropriately modified after finalization of the relevant financial statement in accordance with the applicable laws and rules.*

- *For determining the FMV of any asset located in India, being a share of an Indian company or interest in a partnership firm or association of persons, all the assets and business operations of the said company or partnership firm or association of persons shall be taken into account irrespective of whether the assets or business operations are located in India or outside.*

- *The rate of exchange for the calculation in foreign currency, of the value of assets located in India and expressed in rupees shall be the telegraphic transfer buying rate of such currency as on the specified date.*

Important Definition of Terms used in Rule 11UB & Rule 11UC

"observable price" in respect of a share quoted on a stock exchange shall be the higher of the following:

(a) the average of the weekly high and low of the closing prices of the shares quoted on the said stock exchange during the six months period preceding the specified date; or

(b) the average of the weekly high and low of the closing price of the shares quoted on the said stock exchange during the two weeks preceding the specified date

"specified date" shall have the meaning as assigned to it in clause (d) *of* Explanation *6 to clause* (i) *of sub-section (1) of section 9 which says,—*

(i) date on which the accounting period of the company or, as the case may be, the entity ends preceding the date of transfer of a share or an interest; or

(ii) date of transfer, if the book value of the assets of the company or, as the case may be, the entity on the date of transfer exceeds the book value of the assets as on the date referred to in sub-clause (i), by fifteen per cent.

"balance sheet",

a) in relation to an Indian company, means the balance-sheet of such company (including the notes annexed thereto and forming part of the accounts) as drawn up on the specified date which has been audited by the auditor of the company appointed under the laws relating to companies in force; and

b) in any other case, means the balance-sheet of the company or the entity (including the notes annexed thereto and forming part of the accounts) as drawn up on the specified date and submitted to the relevant authority outside India under the laws in force of the country in which the foreign company or the entity is registered or incorporated

Companies (Registered Valuers and Valuation) Rules, 2017

Various Provision of Companies Act, 2013 Under which Valuation is Required

Section	Valuation Requirement
54(1)(d)	Issue of Sweat Equity Shares in case of unlisted companies
62(1)(c)	Issue of shares / convertible securities on preferential basis by unlisted company for cash or for consideration other than cash
67(3)(b)	Provision of money by company for purchase of its own shares by employees or by trustees for the benefit of employees
192(2)	Transactions involving transfer of assets for non-cash consideration to / from directors
230 & 232	Scheme of Compromise/Arrangement or Scheme of Corporate Debt Restructuring
234	Cross border merger of an Indian Co. into Foreign Co. or vice versa
236	Purchase of minority share holding
281	Winding up of a company

REGISTERED VALUER RULES

STRUCTURE:

IBBI

The Powers and functions under Section 247 of Companies act has been assigned to **Insolvency and Bankruptcy Board of India (IBBI)**. It is the Authority specified in the Rules.

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RVO

Registered Valuer Organization (RVO) is the organization that meets specified criteria. **ICAI** is one of the registered RVO. It acts as a intermediary for course training .

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RV

Registered Valuer (RV) can be an Individual, Firm, LLP or Company.

RV should be a **member of RVO** and should be **registered with IBBI**.

Post Implementation Era

Pre Requisite: Rule 3 (Eligibility) & Rule 4 (Qualification and Experience)

Condition 1 :

All partners/directors should have **passed the examination** as conducted by IBBI and should possess the **qualification and experience** as prescribed.

Condition 2 :

The firm/ company should have the **objects of rendering professional or financial services, including valuation services only**

Condition 3 :

Three or all the partners whichever is **lower** should be **registered valuers** (i.e should be valuer member of RVO and should be recommended by RVO to IBBI)

Bachelors Degree/ Diploma + 5 years Experience

Post Graduate Degree/ Diploma + 3 years Experience

Member of Professional Institute + a) or b) + 3 years Experience

Post Implementation Era

Pre Requisite: Rule 3 (Eligibility) & Rule 4 (Qualification and Experience)

Condition 4 : Other Ancillary conditions

- Resident in India (as per FEMA)
- Not a minor
- Not declared as unsound
- Not an undischarged bankrupt
- Not been levied a penalty under section 271J of Income tax Act
- Not convicted for an offence punishable with imprisonment for a term > 6 Months
- Not applied to be adjudged as bankrupt
- Fit and Proper person
- Have passed examination within preceding 3 years of making application

Process

Step to be undertaken by Individual/partners to get registration

Satisfy the criteria of eligibility and qualification as prescribed

Seek enrolment as valuer member of RVO

Complete the 50 hours educational course provided by RVO

Register and pass Computer based valuation exam

Submit prescribed form and fees to RVO

RVO shall verify the requirements and send recommendation to IBBI

IBBI shall process the application and grant registration

Process

Step to be undertaken by Partnership firm to get registration

1. Satisfy the criteria of eligibility and qualification as prescribed
2. Submit prescribed form and fees to RVO
3. RVO shall verify the requirements and send recommendation to IBBI
4. IBBI shall process the application and grant registration

THANK YOU…