



**KARNATAKA STATE  
CHARTERED ACCOUNTANTS ASSOCIATION (R.)**



CA Pramod Srihari  
President  
CA Vijaykumar M Patel  
Secretary

Date: Thursday, June 1, 2023

To,

The Chairman

Central Board of Direct Taxes

Respected Sir,

**SUBJECT: Suggestions on the proposed changes to Rule 11UA of the Income-tax Rules, 1962.**

Karnataka State Chartered Accountants Association (R) (in short 'KSCAA') is an association of Chartered Accountants, registered under the Karnataka Societies Registration Act, in the year 1957. In the past, we have written to your good selves many times populating various issues, challenges and hardships being faced by taxpayers and suggesting possible solutions to the same.

The Finance Act, 2023, has amended the provisions of section 56(2)(viib) of the Income-tax Act, 1961 ("the Act") to bring the non-residents within the ambit. In this regard, your good Office vide Notification (proposed) dated 26th May 2023 has invited comments to be submitted by 5th June 2023. We thank you for the opportunity and in this regard, please find our suggestions for your kind consideration.

1. Rule 11UA(2) presently prescribes two valuation methods for resident investors, viz. Net Asset Value Method ("NAV") and Discounted Cash Flow

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- Method (“DCF”). The new draft rules propose 5 different methods in addition to the existing methods and the new methods for valuation are proposed to be made applicable only to non-resident investors. In this regard, it is requested to expand its scope to make the new method applicable to residents as well. This is to avoid disparity in methodology and the price as a result.
2. The amendment to section 56(2)(viib) of the Act extending the applicability of the section to the issue of shares to non-residents has been made applicable from 01.04.2024 (relevant to the FY 2023-24) and considering that the notification is yet to be notified, it is suggested that it may be made applicable retrospectively i.e for the FY 2023-24 and not from the date of its gazetted publication as currently proposed.
  3. The commonly used valuation method by startups has been DCF. However, the same has been subjected to rigorous tax queries by the Revenue Authorities. The preferred method has been rejected on grounds of being unscientific and baseless. To avoid litigation over the choice of valuation method, the choice given to the Assessee should be made clearer and an express bar may be placed on the Revenue Authorities refraining from changing the method of valuation or directing them to use the same method of valuation as chosen by the Assessee in determining the FMV.
  4. It is also noted that the methodology prescribed is for equity shares, however, it is observed that the foreign investments are majorly through Compulsorily Converted Preference Shares (“CCPs”) and therefore it is requested to extend the same to Preference Shares as well.
  5. The safe harbour tolerance is set at 10 per cent. We welcome the same and, in this regard, we would like to highlight that given the valuation is based on a futuristic approach, an enhanced limit of 20% may be considered. Further, the relief of safe harbour as proposed by way of insertion of sub-rule (4) to Rule 11UA may be extended to the proposed clause (c) and (e) of sub-rule (2) as well as sub-rule (1) of Rule 11UA.

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6. We also request you enhance the validity period of the valuation report from 90 days to 180 days to promote ease of doing business and reduce the cost of obtaining reports/compliance.
7. On the comparability of the FMV of the issues of shares to the notified non-resident entity (NNE)/Venture Capital Funds (VCF) and Specified Funds (SF), it is also suggested that instead of restricting the same to the total value of the consideration received, which appears to be illogical, the same may be extended to all the issues made during the subject year if the investment by the NNE/VCF/SF is above a prescribed limit/substantial holding.
8. As per the provisions of the Companies Act, 2013, the issue of shares under private placement or preferential allotment requires a valuation report from a Chartered Accountant(CA)/ Registered Valuer. Even as per FEMA, the valuation report is to be issued by a CA. However, provisions of the Income-tax read with Rules mandate a report from Merchant Banker which hampers the ease of doing business and increases the cost of compliance. It is urged to the Board to consider **Chartered Accountants and/or Registered Valuers** to be eligible for the issue of a valuation report for the purposes of section 56(2)(viib) of the Act.
9. The proposed proviso to Rule 11UA(2)(c) is not consistent with the illustration provided thereunder as the proviso refers to the period of 90 days prior to the receipt consideration from VCF while the illustration refers to the period of 90 days subsequent the receipt consideration from VCF.

We are presenting before you the above suggestions. It is important to consider the same given fact that huge tax implications u/s 56(2)(vii) of the Act may cause serious prejudice to the interest of the taxpayers as tax is levied on capital receipts. Further, it is important to encourage investments in the private sector and not burden them with the highly subjective valuation exercise.

We the members of Karnataka State Chartered Accountants Association, on behalf

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of the entire Chartered Accountants fraternity and also on behalf of the trade and industry in the state of Karnataka appeal to your good selves to kindly consider our suggestions. Implementation of the above suggestions will be a major step in the direction of 'Ease of doing business'.

Yours sincerely,

**For Karnataka State Chartered Accountants Association ®**

CA PRAMOD SRIHARI

President

CA VIJAYKUMAR M  
PATEL

Secretary

CA SIDDESH NAGAR  
GADDI

Chairman  
Representation  
Committee