FLASH ALERT

Direct Tax

CBDT amends Rule 11UA in respect of "Angel Tax"

Background

- The Finance Act, 2023, brought in an amendment to bring the consideration received from non-residents for issue of shares by an unlisted company within the ambit of section 56(2)(viib) of the Income-tax Act, 1961 ('the Act'), which provides that if such consideration for 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'.
- Rule 11UA of the Income-tax Rules, 1962 ('Rules'), inter alia, provides the method for computation of FMV of shares in relation to aforesaid section 56(2)(viib) of the Act.
- The Central Board of Direct Taxes ('CBDT') had issued a draft notification[1] proposing an amendment to Rule 11UA of the Rules for public comments.
- Taking into consideration the suggestions received in this regard, Rule 11UA for valuation of shares for the purposes of section 56(2)(viib) of the Act has been modified vide notification no. 81/2023[2] dated 25 September 2023.

Changes notified in the Rule 11UA

1. Inclusion of five new valuation methods for non-resident investors:

- 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, CBDT has introduced following five more valuation methods for non-residents for calculating the FMV of unquoted shares (as determined by the merchant banker):

  a) Comparable Company Multiple Method;

  b) Probability Weighted Expected Return Method;

  c) Option Pricing Method;

  d) Milestone Analysis Method; and

  e) Replacement Cost Method

AURTUS CONSULTING

1. Notification F. No. 370142/9/2023-TPL (Part - I), dated 26-05-2023

2. Notification No. 81 /2023/F. No. 370142/9/2023-TPL Part (1) , dated 25-09-2023

2. **Methodology for calculating FMV of Compulsorily Convertible Preference Shares (‘CCPS’):**

- The FMV of CCPS shall be determined either according to the methods prescribed in the amended rule or, alternatively based on the FMV of unquoted equity shares, at the option of the assessee.

3. **Price matching guidelines:**

- Where any consideration is received for issue of shares from any specified entity, 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 following:

  (i) To the extent the consideration from such FMV does not exceed the aggregate consideration that is received from the notified entity, and

  (ii) 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.

- On similar lines, price matching for resident and non-resident investors is available with reference to investment by Venture Capital Funds or Specified Funds.

4. **Valuation report should not be older than 90 days:**

- Where the date of valuation report by merchant banker for the purpose of methods of valuation is not more than 90 days prior to the date of issue of shares then such date at the option of the assessee shall be deemed to be the valuation date.

5. **Safe harbor limit :**

- Safe harbor limit of 10% has been introduced. In other words, if the issue price of shares (i.e. the consideration received by the company for one share) exceed the FMV by not more than 10%, then issue price shall be deemed to be the FMV of such shares.