Provisions for "Angel Tax" for start-ups under Income Tax Act

FIN VAL
Research & Consultancy

Section 56(2)(viib):

If a private/unlisted public company issues shares to a resident person for a consideration which exceeds the FMV of the shares, then the *excess amount* shall be chargeable under the head ‘Income from Other Sources”.

How to determine FMV: Rule 11UA(2)

- At the option of the assessee, any of the following method can be used:
    1. FMV $= Net\ Assets\ at\ Book\ Value \times \frac{Paid\text{–}up\ value\ of\ equity\ shares\ to\ be\ issued}{Total\ amount\ of\ paid\text{–}up\ equity\ share\ capital}$
    2. FMV determined by a Merchant Banker as per DCF Method.

- If the assessee can substantiate a higher FMV to the satisfaction of the AO, then it shall be considered as the FMV. *[Explanation to Section 56(2)(viib)]*

Calculation for Net Assets at Book Value

Net Book value of assets = A – L

Where,

A= BV of Assets less Any TDS/TCS paid less Any IT refunds receivables less Deferred Expenditure

L= BV of liabilities excluding the following amounts, namely

(i) The paid-up capital in respect of equity shares;

(ii) Dividends Payable or any provision for Dividends;

(iii) Reserves and surplus, excluding depreciation reserve;

(iv) Any Provision for Income Tax or IT Payables;

(v) Provisions for liabilities, other than ascertained liabilities;

(vi) Any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;

CONDITIONS TO BE FULFILLED BY START-UPS RECOGNIZED BY DPIIT FOR AVAILING EXEMPTION.

Section 56(2)(viib) is not applicable if the consideration for issue of shares is received

BY a Venture Capital Undertaking **FROM** a Venture Capital Company or a Venture Capital Fund or Category I or Category II AIF

FROM a non-resident

BY a start-up company recognised by DPIIT and fulfils certain conditions.

Paid Up Share Capital + Share Premium ≤ 25 crores

Non Resident

Venture Capital Company or Venture Capital Fund

Frequently traded listed entity whose networth exceeds 100 cr or turnover exceeds 250 cr

Investments Not included for calculation of 25 cr

Investment Criteria

Should not invest in the following:

1. A residential house, which is not in the ordinary course of business of that start-up;
2. Other Land or building, other than that occupied by the Startup for its business or used by it for purposes of renting or held by it as stock-in trade, in the ordinary course of business;
3. Loans and Advances, other than loans or advances extended in the ordinary course of business by the Start-up where the lending of money is substantial part of its business;
4. Capital contribution made to any other entity;
5. Shares and securities;
6. A motor vehicle, aircraft, yacht or any other mode of transport, > 10 lacs, other than that held by the Start-up for the purpose of plying, hiring, leasing or as stock-in-trade, in the ordinary course of business;
7. Jewellery, other than that held by the Start-up as stock-in-trade in the ordinary course of business;
8. Any other asset, whether in the nature of capital asset or otherwise, of the nature specified in sub-clauses (iv) to (ix) of clause (d) of Explanation to clause (vii) of sub-section (2) of section 56 of the Income Tax Act.

Terms and Conditions for qualifying as a Start-up

Formation

Should be

- Incorporated as a private limited company or as a partnership firm or as Limited liability partnership

Should not be

- formed by splitting up or reconstruction of an existing business

Period

Eligible up to a period of ten years from the date of incorporation / registration.

Turnover

Turnover of the entity for any of the financial years since incorporation/ registration has not exceeded 100 crore rupees.

Purpose

Entity is working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation.

About us

Founded in 2011, we are a boutique consulting firm focused on providing world class financial consulting, valuations and corporate finance services.

Managed and advised by Registered Valuers with more than 70 years of cumulative experience and more than 100 valuations in last one year.

Valuation Services

- Liquidation and Fair Value as per IBC
- Fair Value Valuations as per Ind AS and Companies Act
- Valuations for Regulatory requirements for SEBI, RBI and Income Tax
- Valuation of Securities for M&A and Fund Raising

Investment Banking Solutions

- Preparing IMs and Financial Models
- Financial Due Diligence
- M&A Transactions and Deal Structuring
- End to end solutions for Fund Raising
- Stressed Asset Consulting

Virtual CFO Solutions/Management Consulting

- Project Finance Consultancy
- General accounting and Book keeping
- Financial Planning and analysis
- Budgeting and Variance Analysis
- Business Restructuring/ Reorganization
- Strategy Consulting
- FEMA/RBI Compliance and Advisory

THANK YOU

VALUATION@FINVALRESEARCH.IN
+91 98 112 13275
WWW.FINVALRESEARCH.IN