

## 1. PROPOSED CHANGES TO RULE 11UA IN RESPECT OF ANGEL TAX

Press release dated 19.05.2023. :-

Rule 11 UA prescribes valuation methodology for arriving at FMV of immovable property, jewellery, quoted equity shares and unquoted equity shares, preference shares, etc. for the purposes of section 56(2)(viib) and 56(2)(x) of the Act.

Presently this provision is applicable only to money received from residents and non-residents were excluded. The amendment by the Finance Act, 2023 has included money received from non-resident investors also for the issue of shares within the ambit of section 56(2)(x).

In the Finance Act, 2023, an amendment has been introduced to bring the consideration received from non-residents for the issue of shares within the ambit of section 56(2)(viib) of the Act, which provides that if such consideration for the issue of shares exceeds the Fair Market Value of the shares, it shall be chargeable to income-tax under the head 'Income from other sources'.

Consequently, it becomes necessary to amend rule 11UA to provide a methodology of valuation of shares issued to non-residents and, hence, these proposals are released by the CBDT.

CBDT vide a Press Release dated 19.05.2023 proposes to introduce changes in Rule 11UA of the Income-tax Rules, 1962 for the determination of fair market value for consideration received from non-residents for the issue of shares under section 56(2)(viib) of the Income-tax Act, 1961. It also proposes to notify excluded entities under the said section.

### A. Changes proposed in Rule 11UA

- Rule 11UA currently prescribes two valuation methods with respect to valuation of shares namely, Discounted Cash Flow (DCF) and Net Asset Value (NAV) method for resident investors. It is proposed to include 5 more valuation methods, available for non-resident investors, in addition to the DCF and NAV methods of valuation.
- Consideration received by a company for issue of shares, from any non-resident entity notified by the Central Govt., 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 ninety days of the date of issue of shares which are the subject matter of valuation.

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

- It is proposed that the valuation report by the Merchant Banker for the purposes of this rule would be acceptable, if it is of a date not more than ninety days prior to the date of issue of shares which are subject matter of valuation.
- Further, to account for forex fluctuations, bidding processes and variations in other economic indicators, etc. which may affect the valuation of the unquoted equity shares during multiple rounds of investment, it is proposed to provide a safe harbor of 10 % variation in value.
- The draft Rules on the above lines will be shared for public comments for 10 days, after which these will be notified

### B. Notification for Excluded entities

It is also proposed to notify certain classes of persons being non-resident investors to whom clause (viib) of sub-section (2) of section 56 of the Act shall not be applicable

- Government and Government related investors such as central banks, sovereign wealth funds, international or multilateral organizations or agencies including entities controlled by the Government or where direct or indirect ownership of the Government is 75% or more.
- Banks or Entities involved in Insurance Business where such entity is subject to applicable regulations in the country where it is established or incorporated or is a resident.
- Any of the following entities, which is a resident of a certain countries or specified territories having robust regulatory framework:—
  - a. Entities registered with Securities and Exchange Board of India as Category-I Foreign Portfolio Investors.
  - b. Endowment Funds associated with a university, hospitals or charities,
  - c. Pension Funds created or established under the law of the foreign country or specified territory,
  - d. Broad Based Pooled Investment Vehicle or Fund where the number of investors in such vehicle or fund is more than 50 and such fund is not a hedge fund or a fund which employs diverse or complex trading strategies.

### C. For Investment in Start-ups

It is also proposed to modify Notification No. S.O. 1131(E), dated 5th March, 2019 so as to provide that the provisions section 56(2)(viib) of the Act shall not apply to consideration received from any person by start-ups covered in paras 4 & 5 of Notification, dated 19.2.2019 issued by the Ministry of Commerce and Industry in the Department for Promotion of Industry and Internal Trade (DPIIT).

## 2. Winning from online games – Guidelines for Removal of difficulties u/s 194BA of Income Tax Act.

CIRCULAR NO. 5 OF 2023 [F. NO. 370142/12/2023-TPL], DATED 22-5-2023

The new section 194BA inserted by Finance Act 2023, mandates a person, who is responsible for paying to any person any income by way of winnings from any online game during the financial year to deduct income-tax on the net winnings in the person's user account. Tax is required to be deducted at the time of withdrawal as well as at the end of the financial year. Net winning is required to be computed in the manner as prescribed in Rule 133 of the Income-tax Rules, 1962, vide notification no. 28/2023, dated 22nd May, 2023.

Section 194BA (3) of the Act authorises Central Board of Direct Taxes (CBDT) to issue guidelines, for the purposes of removal of difficulties with the previous approval of the Central Government. These guidelines are required to be laid before each House of Parliament and are binding on the income-tax authorities and the person liable to deduct income-tax. Accordingly, in exercise of the power conferred by section 194BA(3) of the Act, CBDT hereby issues the guidelines.

The guidelines are in FAQ format and explains the following questions?

Question (1) There are multiple wallets under one user. How "net winnings" is to be computed with respect to multiple wallets of one user

Question (2) If a user borrows some money and deposits in his user account, will it be considered taxable deposit or non-taxable deposit?

Question (3) How will bonus, referral bonus, incentives etc. be treated?

Question (4) At what point we consider that amount has been withdrawn?

Question (5) There are a large number of gamers who play with very insignificant amount and withdraw also very small amount. Deducting tax at source under section 194BA of the Act for each insignificant withdrawal would increase compliance for tax deduct or. Can there be relaxation to ease compliance?

Question (6) When the net winnings is in kind how will tax deduction under section 194BA operate?

Question (7) How will the valuation of winnings in kind required to be carried out?

Question (8) These guidelines have been issued after 1.4.2023 while the law has come into effect from 1.4.2023. Will there be any relaxation on penal consequences in the intervening period i.e. between 1.4.2023 and the date on which the Rules / guidelines are issued?

Reader may refer to full text of Circular for further details.

### **3. FREQUENTLY ASKED QUESTIONS (FAQS) REGARDING THE INCLUSION OF INTERNATIONAL CREDIT CARDS (ICCS) UNDER LRS**

The Ministry of Finance has released the Frequently Asked Questions (FAQs) on 18th May 2023 with respect to Tax Collection at Source (TCS) on Foreign Remittance through the Liberalised Remittance Scheme (LRS). The Central Government in consultation with the Reserve Bank of India included International Credit Card transactions into the LRS through amendment which will affect travellers planning for the trip abroad and who use credit cards for transactions. The consequence of the amendment is that 20% TCS shall be applicable to such transactions from July 1st 2023.

The ministry has released FAQs in two parts i.e. Part A and B. Part A provided the clarifications on the Tax Collection at Source and Part B clarified the Liberalised Remittance Scheme.

#### **Part A - Clarifications on the Tax Collection at Source**

The ministry clarified in the FAQ that only such remittances which are covered under LRS are liable to TCS. The reasons for the amendment stated are:

- The payment of TCS is not a final tax
  - ◆ If the TCS payee is a taxpayer, he can claim credit for the TCS as his tax payment against regular income and adjust it against the advance tax etc., payments accordingly.
  - ◆ If the TCS is of a person not being a taxpayer, then the 20% rate on such presumed income is not high. The tax rate slab of 20% starts in the new regime for incomes over Rs. 12 lakhs and is 30% for incomes over Rs. 15 lakhs.
  - ◆ Instances have come to notice where the LRS payments are disproportionately high when compared to the disclosed incomes.
  - ◆ No changes in medical or Education expenses- Position stays as it was before the Finance Act, 2023.
  - ◆ Primary Impact only on investment in assets such as real estate, bonds, stocks outside India by HNI and tour travel packages or gifts to non-residents.
  - ◆ Those individuals remitting from their own funds are normally expected to be higher-income taxpayers, and for those remitting through institutional loans for education, a concessional rate of 0.5 % is provided.

#### **Part B - Clarifications on the Liberalized Remittance Scheme**

According to the Ministry of Finance's frequently asked questions, there have been no changes regarding remittances for education and medical purposes. If the remittance is not facilitated through a loan from a financial institution, the Tax Collected at Source (TCS) rate will be 5%. However, if the remittance is made using a loan from a financial institution under Section 80E of the Income Tax Act, the TCS rate will be 0.5%.

The percentage of the sale of overseas tour packages and any other remittance for bonds, shares, real estate gifts. Etc has increased to 20%. There is no change in the threshold limit also. It will be still Rs. 7 Lakhs.

The Ministry of Finance issued a clarification regarding recent changes to the Foreign Exchange Management (Current Account Transaction) Rules. They explained that Rule 7, which allowed the use of foreign credit cards for travel expenses, is omitted from the notification dated May 16, 2023. The Ministry emphasized that the use of international credit cards by foreign nationals in India remains unaffected. They highlighted that foreign credit cards can still be used for expenses incurred during travel outside India, exempt from the Liberalized Remittance Scheme (LRS) under Rule 7 of the Foreign Exchange Management (Current Account Transaction) Rules.

The notification aimed to ensure fairness and consistency in foreign exchange withdrawal methods, treating debit and credit cards equally. It also aimed to capture comprehensive data on LRS expenditures, promote responsible foreign exchange management, and prevent exceeding LRS limits. The Reserve Bank of India has advocated for ending discriminatory treatment between debit and credit cards in their communications with the government.

Under the Foreign Exchange Management (Current Account Transaction) Rules, individuals can draw foreign exchange from authorized entities and use international credit cards, debit cards, or ATM cards. All withdrawals are subject to the \$250,000 annual

limit set by the Ministry. Rule 5 of the rules allows foreign exchange usage for various purposes listed in Schedule III, including private visits, gifts, employment abroad, emigration, supporting relatives abroad, business travel, medical expenses, and studying abroad. Remittances exceeding the specified limits require prior approval from the Reserve Bank.

Expenses related to business travel by employees are not covered by the LRS and are considered residual current account transactions. These expenses can be approved by Authorized Dealers without restrictions if they confirm the genuineness of the transaction and if the employer covers the expenses.

#### **4. CLARIFICATION REGARDING APPLICABILITY OF TAX COLLECTION AT SOURCE TO SMALL DEBIT/CREDIT TRANSACTIONS UNDER LRS**

PRESS RELEASE, DATED 19-5-2023

Concerns have been raised about the applicability of Tax Collection at Source (TCS) to small transactions under the Liberalized Remittance Scheme (LRS) from July 1, 2023. To avoid any procedural ambiguity, it has been decided that any payments by an individual using their international Debit or Credit cards upto Rs. 7 lakhs per financial year will be excluded from the LRS limits and hence, will not attract any TCS.

Existing beneficial TCS treatment for education and health payments will also continue.

The necessary changes to the Rules (Foreign Exchange Management (Current Account Transactions Rules), 2000) will be issued separately.