

Valuation of Shares under Income Tax



CA. PRAMOD JAIN

B. COM (H), FCA, FCS, FCMA, LL.B, MIMA, DISA, IP

Shared at

Direct Tax Workshop - AICAS

16th June 2023

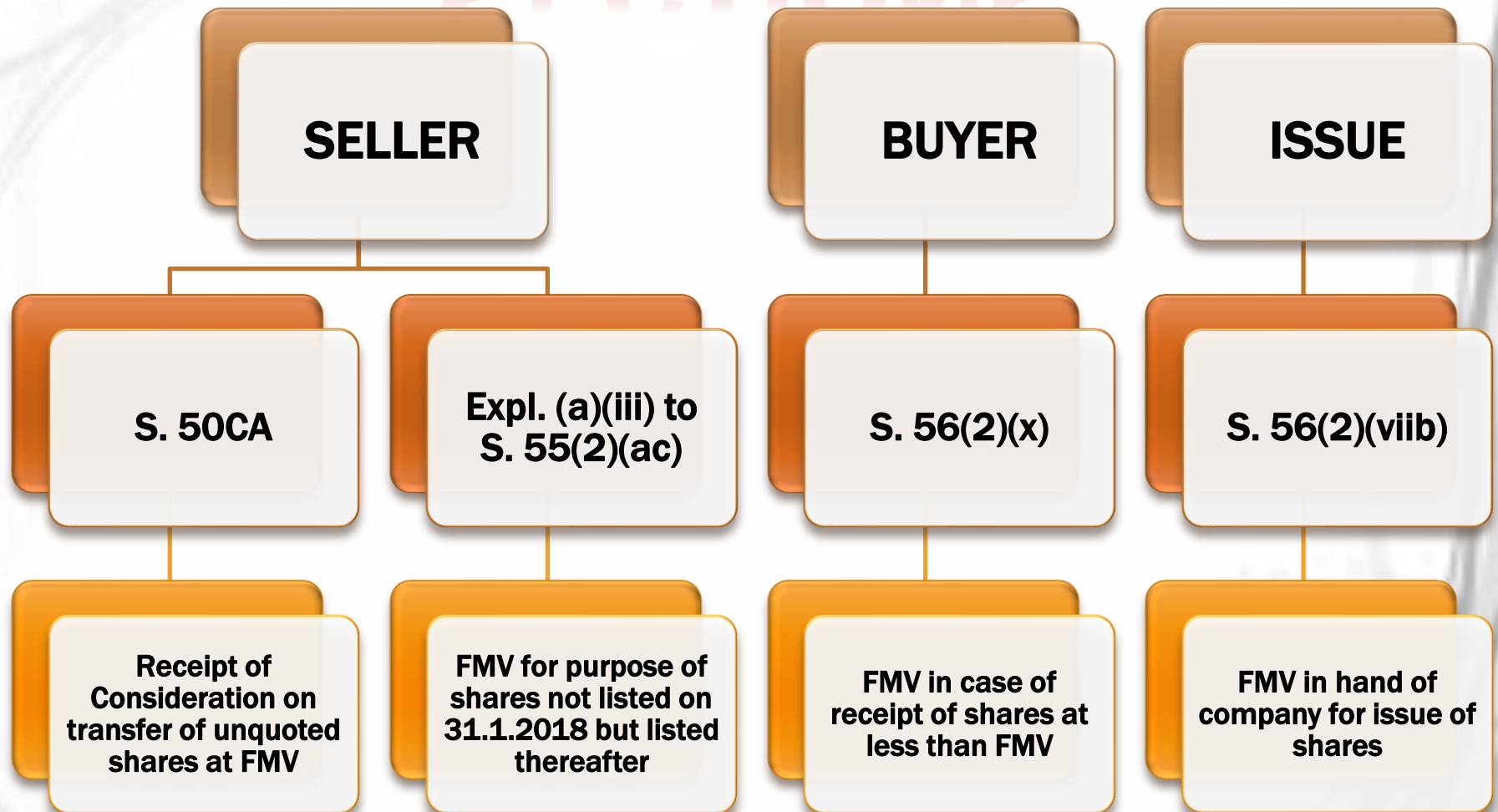
Valuation of SHARES & SECURITIES

```
graph TD; A[Valuation of SHARES & SECURITIES] --- B[Issue]; A --- C[Transfer]
```

Issue

Transfer

SECTIONS



TRANSFER OF SHARES - SELLER

- ✖ For S. 112A – to determine **cost of acquisition**, when shares were unlisted as on 31.1.2018 - Expl. (a)(iii) to 55(2)(ac)
- ✖ Higher of:
 - + Cost of acquisition ; and
 - + Lower of - FMV and Full consideration
- ✖ FMV - amount which bears to cost of acquisition the same proportion as Cost Inflation Index for FY 2017-18 (272) bears to CII for 1st year in which the asset was held by assessee or for year beginning on 1.4.2001, whichever is later

TRANSFER OF SHARES - SELLER

✖ S. 50CA w.e.f. AY 2018-19

- + Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being share of a company **other than a quoted share**, is less than FMV of such share determined in such manner as may be prescribed, the value so determined shall be deemed to be full value of consideration received or accruing as a result of such transfer

RULES

11U

- Definitions used in determination of FMV

11UA

- Determination of FMV.

11UAA

- Determination of FMV for unquoted share u/s 50CA – R. 11UA(1)(c) (b)/(c)

11UAC

- Prescribed class of persons for purpose of clause (XI) of proviso to s. 56(2)(x)

11UAD

- Prescribed class of persons to whom s. 50CA would not apply

11UB(3)

- FMV of assets for unquoted shares u/s 9(1)(i)

11UC

- Determination of Income attributable to assets in India u/s 9(1)(i)

Shares & Securities

Rule 11UA(1)(c)

(a)

Quoted

(b)

Unquoted equity

(c)

Unquoted other than equity

Rule 11UA(2)
(Notwithstanding only
for 56(2)(viib)

(a)

NAV

(b)

DFCF

**Transfer - Quoted Shares
& Securities**
R. 11UA(1)(c)(a)

**Received
through SE**

**Transaction
value on SE**

Other mode

**Quoted on SE on
transaction date**

**Lowest price on
that date**

**Not Quoted on
SE on
transaction date**

**Lowest price of
last trade**

TRF. OF SHARES - SELLER (S.50CA)

- ✗ **FMV – as per R. 11UAA:**
 - + R. 11UA(1)(c)(b) or
 - + R. 11UA(1)(c)(c)
- ✗ **Exception (R. 11UAD) - company & its subsidiary & subs. of such subs. where:**
 - + NCLT on application moved by CG u/s 241 of Cos. Act, 2013, has suspended BoD of such company & appointed new directors u/s 242; and
 - + Share of such company & its subs. and subs. of such subs. has been transferred pursuant to resolution plan approved by NCLT u/s 242 after affording a reasonable opportunity to jurisdictional Pr. CIT or CIT

TRANSFER OF SHARES - BUYER

- ✖ **S. 56(2)(x)(c) – Diff with FMV exceed 50K**
 - + **R. 11UA(1)(c)(b)**
 - + **R. 11UA(1)(c)(c)**
- ✖ **Exception (R. 11UAC) - company & its subsidiary & subs. of such subs. where:**
 - + **NCLT on application moved by CG u/s 241 of Cos. Act, 2013, has suspended BoD of such company & appointed new directors u/s 242; and**
 - + **Share of such company & its subs. & subs. of such subs. has been transferred pursuant to resolution plan approved by NCLT u/s 242 after affording a reasonable opportunity to jurisdictional Pr. CIT or CIT**

UNQUOTED EQUITY SHARES – TRF.

- ✖ Rule 11UA (1)(c)(b) w.e.f. AY 2018-19
- ✖ $FMV = (A+B+C+D-L) \times (PV)/(PE)$
- ✖ A= Book value of all assets (other than jewellery, artistic work, shares, securities and immovable property) in B/S as reduced by
 - + any amount of IT paid less IT refund claimed, if any
 - + any amount shown as asset including unamortised amount of deferred expenditure which does not represent the value of any asset
- ✖ B = Price which jewellery & artistic work would fetch if sold in open market on regd valuer report

UNQUOTED EQUITY SHARES – TRF.

- ✗ **C = FMV of shares and securities as determined in this rule**
- ✗ **D = Stamp duty value adopted or assessed or assessable by any authority of the Government in respect of the immovable property**
- ✗ **L= Book value of liabilities in B/S not including:**
 - + **Equity paid-up capital**
 - + **Amount set apart for payment of dividends on preference and equity shares where such dividends have not been declared before the date of transfer at AGM**

UNQUOTED EQUITY SHARES – TRF.

- ✗ **L= Book value of liabilities in B/S not including:**
 - + **R&S, including negative balance, other than set apart towards depreciation**
 - + **Provision for tax, other than IT paid less IT Refund to the extent of excess over the tax payable u/s 115JB**
 - + **Unascertained liabilities**
 - + **Contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares**
- ✗ **PV= Paid up value of such equity shares**
- ✗ **PE = Paid up equity share capital**

UNQUOTED SECURITIES OTHER THAN EQUITY – TRF.

- ✗ **Rule 11UA(1)(c)(c)**
- ✗ **FMV value of unquoted shares and securities other than equity shares in a company which are not listed**
- ✗ **Price it would fetch if sold in the open market on the valuation date**
- ✗ **Assessee may obtain a report from a merchant banker or an accountant in respect of which such valuation**

ISSUE OF SHARES

✖ **S. 56(2)(viib)–w.e.f. AY 2013-14 - Company receives consideration for issue of shares exceeding FMV**

+ **Exemption for receipt by**

✖ **Co. in which public are substantially interested**

✖ ~~Company from Non Resident~~ (from AY 2024-25)

✖ **Venture Capital undertaking from**

✖ **VC company or VC fund as defined in 10(23FB)**

✖ **Specified Fund - Category I / II Alternative Investment Fund by SEBI**

✖ **Notified persons – start-up companies – Not. No. 45/2016 dated 14.6.2016 later 2019**

START - UP

- ✖ **Notification No. G.S.R. 127(E) dated 19th February, 2019. Start-up would be for**
 - + **Upto a period of 10 years from date of incorporation/ reg., if it is a pvt. Ltd. or registered as a partnership firm or a LLP.**
 - + **Turnover for any of the FYs since has not exceeded Rs. 100 Crs.**
 - + **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.**

START - UP

✗ Exemption only if:

- + it has been recognised by DPIIT
- + aggregate of paid up share capital & share premium after issue or proposed issue of share, does not exceed Rs. 25 Crs. However, shall not include issue to:
 - ✗ a non-resident; or
 - ✗ a VC company or a VC fund
 - ✗ Listed co. whose net worth on last date of FY preceding the year in which shares are issued exceeds Rs 100 Cr or turnover for FY preceding the year in which shares are issued exceed Rs.250 Crs
- + Other investment criteria too

OTHER EXEMPTIONS

- ✖ Notification dt. 24th May 2023
- ✖ Govt. and Govt. related investors such as central banks, sovereign wealth funds, international or multilateral organizations or agencies including entities controlled by Govt. or where direct or indirect ownership of the Govt. 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;

OTHER EXEMPTIONS

- ✖ **Entities, which is resident of any country or specified territory (Annexure) & such entity is subject to applicable regulations in country where it is established/incorporated/ is resident:**
 - + **entities registered with SEBI as Category-I FPIs;**
 - + **endowment funds associated with a university, hospitals or charities;**
 - + **pension funds created or established under law of the foreign country or specified territory;**
 - + **Broad Based Pooled Investment Vehicle/fund where no. of investors in such vehicle/fund is > 50 & such fund is not a hedge fund or a fund which employs diverse or complex trading strategies.**

SPECIFIED ENTITIES IN COUNTRIES

1. Australia
2. Austria
3. Belgium
4. Canada
5. Czech Republic
6. Denmark
7. Finland
8. France
9. Germany
10. Iceland
11. Israel
12. Italy
13. Japan
14. Korea
15. New Zealand
16. Norway
17. Russia
18. Spain
19. Sweden
20. United Kingdom
21. United States

FMV FOR ISSUE OF SHARES

- ✖ **S. 56(2)(viib) - FMV to be on the date of issue of shares **higher of** :**
 - + Method prescribed i.e. Rule 11UA(2) ; or
 - + As substantiated by assessee to satisfaction of AO based on the date of issue of shares on value of its assets including intangible assets being:
 - ✖ goodwill, know-how, patents, copyrights, trademarks, licences, franchises or
 - ✖ any other business or commercial rights of similar nature

UNQUOTED SHARES – ISSUE 11UA(2)

✗ Notwithstanding R.11UA(1)(c) (b)/(c) – **at option of the assessee**

1. $FMV = (A - L) \times (PV)/(PE)$

✗ A = Book value of all assets in B/S as reduced by

✗ any amount of IT paid less IT refund claimed, if any

✗ any amount shown as asset including unamortised amount of deferred expenditure which does not represent the value of any asset

✗ L = Book value of liabilities in B/S not including ... same as for Transfer

2. Merchant Banker or **Accountant** as per DFCF –

Accountant not allowed w.e.f. 24th May 2018

CBDT CIRCULAR

- ✗ **Circular No. 10/2018 dt. 31.12.2018**
- ✗ **Issued and withdrawn**
- ✗ **S. 56(2)(viiia) of the Act shall apply in cases where a specified company or firm receives the shares of the specified company through transfer for no or inadequate consideration. Hence, the provisions of s. 56(2)(viiia) of the Act shall not be applicable in cases of receipt of shares by the specified company or firm as a result of fresh issuance of shares by the specified company**

CBDT ANOTHER CIRCULAR

- ✖ **View stated in Circular No. 10/2018 shall be considered to have never been expressed and accordingly, the said circular shall not be taken into account by any income-tax authority in any proceedings under the Act.**

Proposed Amendment Rule 11UA(2) only

Resident

Non-Resident

a, b, c or e

a, b, c, d or e

**10% excess
allowed in case
of a or b**

**10% excess
allowed in case
of a or b or d**

11UA(2)(a)

- **NAV**

11UA(2)(b)

- **DFCF from Merchant Banker**

11UA(2)(c)

- **If VC undertaking receives from FC fund or specified fund, then at that rate from any other in 90 days from issue of those shares.**

ISSUE - FV UNDER FEMA

- ✖ **Not less than** the fair value worked out as per any internationally accepted pricing methodology for valuation on an arm's length basis, duly certified by:
 - + a Chartered Accountant; or
 - + a SEBI registered Merchant Banker; or
 - + a practicing Cost Accountant.

BALANCE SHEET

- ✖ **Which B/s date is to be taken for valuation?**
- ✖ **For issue of shares [Rule 11U(b)(i)]:**
 - + **Audited B/S (including the notes) as drawn up on valuation date; or**
 - + **Where the B/S on the valuation date is not drawn:**
 - ✖ **B/S (including the notes) drawn up as on a date immediately preceding the valuation date which has been approved & adopted in AGM**

BALANCE SHEET

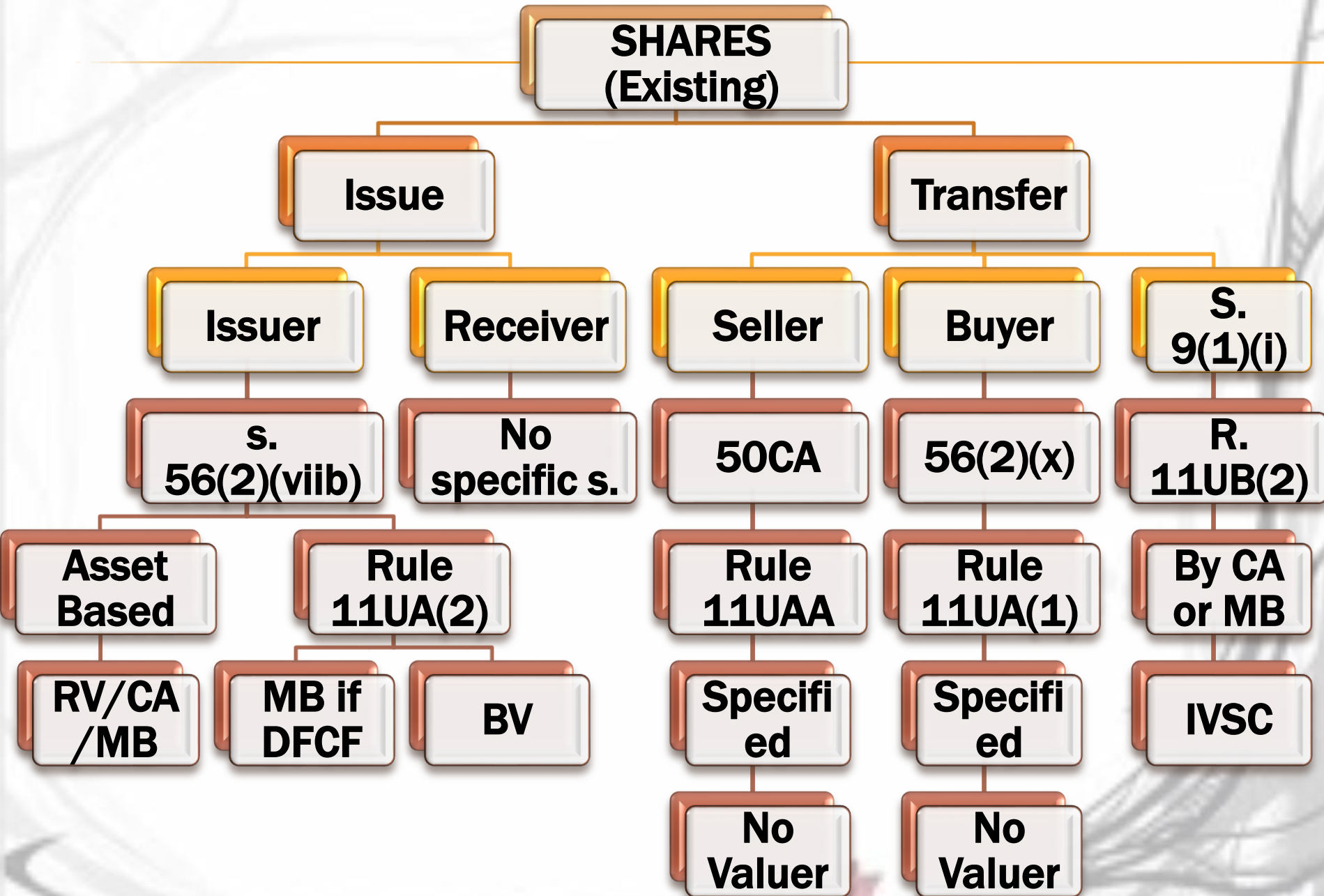
- ✖ **For transfer of shares Rule 11U(b)(ii):**
 - + **Audited B/S of such Indian company (including the notes) as drawn up on valuation date audited by statutory auditor**
 - + **For other than Indian Company audited by auditor, if any appointed under foreign law (AY 2019-20)**
- ✖ **"valuation date" means date on which shares, is received by the assessee.**
- ✖ **Proposed - Where date of valuation report by merchant banker is not more than 90 days prior to date of issue of shares, such date may, at the option of the assessee, be deemed to be the valuation date**



- ✖ **ABC Pvt Ltd. incorporated in FY 2016-17**
- ✖ **Has adequate profits**
- ✖ **Has immovable property**
- ✖ **Face Value Rs. 10/-**
- ✖ **FMV u/r 11UA(1) – Rs. 100/-**
- ✖ **FMV being Book Value u/r 11UA(2) – Rs. 50/-**
- ✖ **At what value should ABC Pvt. Ltd issue shares so that there is no tax implication on company / shareholder?**

FMV FOR SHARES U/S 9(1)(I)

- ✖ **Rule 11UB(3) – S. 9(1)(i) – Held by Foreign Company or entity**
- ✖ **Where asset is a unlisted share of an Indian company, FMV of share shall be its FMV on specified date as determined by merchant banker or an accountant in accordance with any internationally accepted valuation methodology for valuation of shares on arm's length basis as increased by liability, if any, considered in such determination.**



A one stop place where all your Queries can be answered by various Experts throughout the Country

www.expertspanel.in

ExpertsPanel.in

Questions



Questions

Categories

Experts

Ask a Question

Sign Up

Login

A Place to Share Knowledge

for and by Professionals in Law, Tax, Accounts, Finance

Recent Questions

Articles

Presentations

Videos

Notifications

All Categories

Goods and Services
Tax (GST)

(6,618)

Income Tax

(5,254)

Corporate
Matters/LLP

(1,904)

Audit & Assurance and
Accounting Standards

(208)

Bank / Insurance /
Stock / Debtors Audit

(60)

Recent Questions

Question added **5 minutes** ago **Income Tax** By **jabir contractor**, CA, mumbai

1

answer

Q. Rate of TDS on Car lease charges

Answered By **CA PRAMOD JAIN**

5 views

Question added **1 hour** ago **Income Tax** By **Vijay Kumar**, CA, New delhi

0

answers

Q. How I file income tax return

11 views

Ask a question:

Next

Concept by
CA Pramod Jain



**This Presentation would be available
on**

www.lunawat.com

**Also may download free mobile app
“LUNAWAT”**

**For all updates & Ready to use
Charts since year 2007**

Thank You!



CA. Pramod Jain

www.capramodjain.com

pramodjain@lunawat.com

+91 9811073867



© 2023 CA. Pramod Jain, Lunawat & Co.