

GCA TIMES

Stay Updated. Stay Ahead.

GOPAL CHOPRA & ASSOCIATES
Chartered Accountants

October 2023

Chartered Accountants
www.gca-associates.com

Valuation Rules for Angel Tax

Angel tax is the tax levied when a closely-held company issues shares to an investor at a price that is more than its fair market value. Under section 56(2)(viib) of the Income Tax Act 1961, the surplus amount of the issue price over the fair value is subject to taxation as income from other sources. Before the Government's Budget 2023, only investments by resident investors over and above the fair market value were liable to angel tax. However, Finance Act 2023 lays down provisions to extend the angel tax to investments by non-resident investors (except in DPIIT recognized startups), as of April 1, 2024.

The computation of the fair market value of unquoted equity shares for the purpose of section 56(2)(viib) is governed by Rule 11UA of the Income-tax Rules, 1962 under which fair valuation could be done by Net Asset Value (NAV) method and Discounted Cash Flow method.

The Central Board of Direct Taxes (CBDT) vide Notification G.S.R. 685(E) dated 25th September 2023 has amended Rule 11UA of the IT Rules 1962 and introduced five alternative valuation methods for the fair market valuation of unquoted equity shares, thereby offering taxpayers flexibility through multiple valuation methods.

Framework for meeting Financing Needs of Large Corporates

The Securities and Exchange Board of India (SEBI), in their 202nd meeting of the Board on 21st September 2023, approved a flexible framework for large corporates for meeting their financing needs.



As per SEBI's Operational Circular SEBI/HO/DDHS/P/CIR/2021/613 dated 10th August, 2021, Chapter XII pertaining to 'Fund raising by issuance of debt securities by large corporate' (earlier circular SEBI/HO/DDHS/CIR/P/2018/144 dated 26th November, 2018), 'Large Corporates' (LC) (a listed entity, fulfilling the specified criteria in the Circular were considered as a LC) need to raise 25% of their incremental borrowings through the issuance of debt securities. 'Incremental borrowings' shall mean any borrowing done during a particular financial year, of original maturity of more than one year, irrespective of whether such borrowing is for refinancing/repayment of existing debt or otherwise and shall exclude external commercial borrowings and inter-corporate borrowings between a parent and subsidiary.

Vide the Press Release PR No. 21/2023 dated 21st September, 2023, SEBI communicated that the approval of the proposal to provide flexibility in the framework for Large Corporates (LCs) for meeting incremental financing needs through issuance of debt securities and the addition of following measures to the existing LC framework in this regard:

- A higher monetary threshold has been specified for defining LCs, thereby reducing the number of entities qualifying as LCs.
- Removal of penalty on LCs which are not able to raise a certain percentage of incremental borrowing from the debt market; and
- Introduction of incentives and moderated disincentives

Compliance with the framework will be met over a contiguous block of three years. Further, it has been decided to dispense with the requirement on LCs for filing a statement identifying itself as an LC and statement regarding compliance with the framework.

Regulatory Reporting by AIFs

All Alternate Investment Funds (AIFs) have to submit report on their activity as an AIF to the Securities and Exchange Board of India (SEBI) on quarterly basis in specified formats. SEBI vide Circular No. SEBI/HO/AFD/SEC-1/P/CIR/2023/0155 dated September 14, 2023 issued a revised Quarterly Reporting Format for AIFs, in order to enable the AIF industry to have uniform compliance standards, ease compliance reporting and for regulatory and developmental purposes. There will be periodic review of this format and in case of any revisions to the same, it will be made available on the websites of Indian Venture and Alternate Capital Association (IVCA) and Equalifi, at least one month prior to end of the quarter.

AIFs need to submit their quarterly report in the revised quarterly reporting format on the SEBI Intermediary Portal (SI Portal) online. However, to begin with and carry out a trial run, SEBI has specified (i) quarterly report for the June 2023 quarter may be submitted in the revised format by October 15, 2023, (ii) quarterly report for the quarter ending September 30, 2023 may be submitted in the revised format by November 15, 2023, and (iii) quarterly report for quarter ending December 31, 2023 onwards, must be submitted in the revised format within 15 calendar days from the end of each quarter.

Board nomination rights to unitholders of REITs

A Real Estate Investment Trust (REIT) means a trust registered under the Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014 and a 'Manager' of the REIT means a company or limited liability partnership (LLP) or body corporate incorporated in India which manages assets and investments of the REIT and undertakes operational activities of the REIT.

The SEBI had provided vide the Securities and Exchange Board of India (Real Estate Investment Trusts) (Second Amendment) Regulations, 2023, with effect from 17th August, 2023, that unitholder(s) holding not less than ten percent of the total outstanding units of the REIT, either individually or collectively, shall be entitled to nominate one director on the board of directors of the Manager, in the manner as may be specified by the Board.

Hence, vide Circular SEBI/HO/DDHS-PoD-2/P/CIR/2023/154 dated 11th September, 2023, the framework to exercise board nomination rights by the Eligible Unitholder(s) has been specified by SEBI.

According to the framework, the eligible unitholder, i.e. the unitholder(s) holding ten percent or more of the total outstanding units of the REIT, either individually or collectively, shall be entitled to nominate only one non-independent director as unitholder nominee director. The procedure to be followed for nomination by unitholders on an annual basis, for first time nomination and subsequent nominations, is given in the circular. The Circular also enumerates the eligibility requirements to be fulfilled by the candidates proposed to be considered for appointment as Unitholder Nominee Directors. The Manager may supplement these requirements as it deems fit, through the specified policy adopted. The Board of Directors of the Manager shall formulate and adopt a policy in relation to the qualifications and criteria for appointment and evaluation parameters of individuals nominated for Unitholder Nominee Director

For ease of reporting and monitoring, the Manager of the REIT shall, within ten days from the end of each calendar month, review whether the eligible unitholder(s) who have exercised the board nomination right, continue to have/hold the required number of units of REIT and make a report of the same. The Manager of the REIT shall submit such report to the Trustee of the REIT.

Extension of Due date for Charitable Institutions etc.

Vide Circular No. 16/2023 dated 18th September 2023, the Central Board of Direct Taxes (CBDT) has extended the timelines for filing of Form 10B/10BB and Form ITR-7 for the Assessment year 2023-24.

Thereby, the due date to file Income tax audit report in case of the following has been extended from 30th September 2023 to 31st October 2023 for Assessment year 2023-24:

- Form 10B: The form is an audit report which has to be furnished by charitable or religious trust or institution that is registered u/s 12A of the Income Tax Act 1961 or which has submitted application for registration by filing Form 10A
- Form 10BB: The form is an audit report by any fund or institution or trust or any university or other educational institution or any hospital or other medical institution, meeting criteria set forth u/s 10(23C) of the Income Tax Act 1961

The due date of furnishing of Return of Income in Form ITR-7 for Assessment Year 2023-24, which is 31st October 2023 is also extended to 30th November 2023. ITR-7 is income tax return to be filed in case of income of charitable and religious trusts (section 139(4A)), political parties (section 139 (4B)), scientific research institutions (section 139 (4C)) and university, college or other institution (section 139 4(D))

Holding of Meeting through Video Conference (VC) or Other Audio Visual Means (OAVM):

A company (other than One Person Company) must mandatorily hold a general meeting known as its Annual General Meeting (AGM) within a period of six months from the end of the financial year, however, the first annual general meeting of the company can be held in nine months from the end of the first financial year. All general meetings other than AGMs are called Extraordinary General Meetings (EGMs).

In 2020 during the covid-19 pandemic, in view of the continuing restrictions on the movement of persons at several places in the country, the Ministry of Corporate Affairs (MCA) had through various circulars allowed companies to conduct their AGM/EGM through video conferencing (VC) or other audio visual means (OAVM), the timeline of which had been extended through further circulars in this regard.

Now, vide General Circular 09/2023 dated 25th September 2023, the MCA has extended the timeline for holding AGMs and EGMs through VC or OAVM until September 30, 2024. Companies whose AGMs are due in the Year 2023 or 2024, can conduct their AGMs through VC or OAVM on or before September 30, 2024 in accordance with the specified requirements. It is to be noted that the circular should not be construed as conferring any extension of statutory time for holding of AGMs by the companies under the Companies Act, 2013.

Further, companies can conduct their EGMs through VC or OAVM or transact items through postal ballot in accordance with specified framework up to September 30, 2024.

Revision of Regulatory Framework for IDF-NBFCs

An Infrastructure Debt Fund-Non Banking Finance Company (IDF-NBFC) means a non-deposit taking NBFC which is permitted to – (i) refinance post commencement operations date infrastructure projects that have completed at least one year of satisfactory commercial operations; and (ii) finance toll operate transfer projects as the direct lender.

Vide Circular RBI/2023-24/54 DoR.SIG.FIN.REC.31/03.10.001/2023-24 dated 18th August, 2023, the Reserve Bank of India (RBI) has reviewed the regulatory framework and guidelines applicable to IDF-NBFC.

The main aspects of the revised regulatory framework for IDF-NBFCs as highlighted in the Circular are as follows:

- Requirement of net owned fund of at least ₹300 crore, and
- Requirement of capital-to-risk weighted assets ratio of minimum 15% (with minimum Tier 1 capital of 10%)
- Raising of funds through bond route and loan route
- Exposure limits shall be 30% of their Tier 1 capital for single borrower/ party and 50% of their Tier 1 capital for single group of borrowers/ parties
- Shareholders of IDF-NBFCs shall be subjected to scrutiny as applicable to other NBFCs
- All other regulatory norms including income recognition, asset classification and provisioning norms as applicable to Non-Banking Finance Companies-Investment and Credit Companies (NBFC-ICCs) shall be applicable to IDF-NBFCs
- Guidelines with respect to sponsorship of Infrastructure Debt Funds-Mutual Funds (IDF-MFs) by NBFCs with prior approval of the RBI subject to certain specified conditions

Highlights of the Digital Personal Data Protection Act 2023

Receiving Presidential assent on 11th August 2023 and being published in the Official Gazette of India on 12th August 2023, India's data protection law viz. The Digital Personal Data Protection Act 2023, came into force. Different dates may be appointed for the enforcement of the different provisions of this Act, thus notification of sections of the Act for implementation is awaited.

The following are some of the main highlights of the Act:

- The Act has been laid down to provide for the processing of digital personal data
- It will apply to the processing of digital personal data within India where such personal data is collected in digital form, or in non-digital form and digitized subsequently. It will also apply to processing of digital personal data outside India, if such processing is in connection with offering goods or services within India.
- It will not apply to personal data processed by individuals for any personal or domestic purpose and personal data that is publicly available
- The Act allows transfer of personal data outside India, except to countries restricted by the central government through notification.
- The Act introduces terms like Data Fiduciary, Data Principal, Data Processor, Data Protection Officer and defines the same.
- Data Fiduciaries, being persons who process data, have been mandated certain obligations w.re.to digital personal data in the Act and may process data in accordance with the provisions of the Act and that too for lawful purpose.
- Processing of personal data is permissible only for a lawful purpose and that too only after obtaining consent of the Data Principal or processing may be done for legitimate purposes.
- Data Principal, that is, the person to whom the personal data relates has certain rights and duties as laid down in the Act
- Data Protection Board of India will be established as the regulatory body to adjudicate on non-compliance with the provisions of the Act.
- Substantial financial penalties extending up to Rs.250 crores have been prescribed for breaches of provisions of this Act



Thank You

Team Gopal Chopra & Associates
Chartered Accountants
Email: info@gca-associates.com
URL: <http://www.gca-associates.com>

34, Babar Lane, Bengali Market,
New Delhi - 110001.
Tel: +91-11-23350585, 23350137;
+91-11-41526668

Disclaimer:

This is a newsletter on taxation and regulatory updates. The contents of this email are solely for the purpose of knowledge upgradation and does not constitute professional advice on any manner whatsoever and should not be construed as same. If you do not wish to receive this communication, please notify us by mail/telephone.