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GOVERNMENT OF INDIA

MINISTRY OF FINANCE

DEPARTMENT OF REVENUE

(CENTRAL BOARD OF DIRECT TAXES)

**NOTIFICATION**

New Delhi, the 29<sup>th</sup> November, 2012.

**(INCOME-TAX)**

**S.O. 2805(E).**— In exercise of the powers conferred by section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:-

1. (1) These rules may be called the Income-tax (**15<sup>th</sup> Amendment**) Rules, 2012.  
(2) They shall come into force on the date of their publication in the Official Gazette.
  
2. In the Income-tax Rules, 1962, (hereinafter referred to as the said rules), in rule 11U,—
  - (A) for clauses (a) and (b), the following clauses shall respectively be substituted, namely:-  

‘(a) "accountant" , -

    - (i) for the purposes of sub-rule (2) of rule 11UA, means a fellow of the Institute of Chartered Accountants of India within the meaning of the Chartered Accountants Act, 1949 (38 of 1949) who is not appointed by the company as an auditor under Section 44AB of the Act or under Section 224 of the Companies Act , 1956 ( 1 of 1956); and
    - (ii) in any other case, shall have the same meaning as assigned to it in the *Explanation* below sub-section (2) of section 288 of the Act;
  
  - (b) "balance-sheet", in relation to any company, means, -
    - (i) for the purposes of sub-rule (2) of rule 11UA, the balance-sheet of such company (including the notes annexed thereto and forming part of the accounts) as drawn up on the valuation date which has been audited by the

auditor of the company appointed under section 224 of the Companies Act, 1956 (1 of 1956) and where the balance-sheet on the valuation date is not drawn up, the balance-sheet (including the notes annexed thereto and forming part of the accounts) drawn up as on a date immediately preceding the valuation date which has been approved and adopted in the annual general meeting of the shareholders of the company; and

(ii) in any other case, the balance-sheet of such company (including the notes annexed thereto and forming part of the accounts) as drawn up on the valuation date which has been audited by the auditor appointed under section 224 of the Companies Act, 1956 (1 of 1956);;

(B) for clause (j), the following clause shall be substituted, namely:-

‘(j) "valuation date" means the date on which the property or consideration, as the case may be, is received by the assessee.’.

3. The rule 11UA of the said rules shall be renumbered as sub-rule (1) thereof,-

(i) in sub-rule (1) as so renumbered, in clause (c), for sub-clause (b), the following shall be substituted, namely:-

“(b) the fair market value of unquoted equity shares shall be the value, on the valuation date, of such unquoted equity shares as determined in the following manner, namely:—

$$\text{the fair market value of unquoted equity shares} = \frac{(A - L)}{(PE)} \times (PV),$$

where,

A = book value of the assets in the balance-sheet as reduced by any amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act and any amount shown in the balance-sheet as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;

L = book value of liabilities shown in the balance-sheet, but not including the following amounts, namely:—

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

(ii) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;

(iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;

(iv) any amount representing provision for taxation, other than amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;

(v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;

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

PE = total amount of paid up equity share capital as shown in the balance-sheet;

PV = the paid up value of such equity shares;”;

(ii) after the sub-rule (1) as so renumbered, the following sub-rule shall be inserted, namely:-

“(2) Notwithstanding anything contained in sub-clause (b) of clause (c) of sub-rule (1), the fair market value of unquoted equity shares for the purposes of sub-clause (i) of clause (a) of *Explanation* to clause (vii b) of sub-section (2) of section 56 shall be the value, on the valuation date, of such unquoted equity shares as determined in the following manner under clause (a) or clause (b), at the option of the assessee, namely:—

$$(a) \text{ the fair market value of unquoted equity shares} = \frac{(A - L)}{(PE)} \times (PV),$$

where,

A = book value of the assets in the balance-sheet as reduced by any amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act and any amount shown in the balance-sheet as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;

L = book value of liabilities shown in the balance-sheet, but not including the following amounts, namely:—

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

(ii) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;

(iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;

(iv) any amount representing provision for taxation, other than amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund as refund under the Income-tax Act, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;

(v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;

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

PE = total amount of paid up equity share capital as shown in the balance-sheet;

PV = the paid up value of such equity shares; or

(b) the fair market value of the unquoted equity shares determined by a merchant banker or an accountant as per the Discounted Free Cash Flow method.”.

[Notification No. 52/2012, F.No.142/19/2012-SO(TPL)]

(Rajesh Kumar Bhoot)  
Director

**Note:** *The principal rules were published vide notification number S.O. 969(E), dated the 26<sup>th</sup> March, 1962 and last amended vide notification number S.O. 2365 (E), dated 04/10/2012.*