

Circular No. 10/2018

Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

North Block, New Delhi, the 31st of December, 2018

Subject: Clarification regarding applicability of section 56(2)(viiia) of the Income-tax Act, 1961 for issue of shares by a company in which public are not substantially interested-reg.

Section 56(2)(viiia) of the **Income-tax Act, 1961** ('Act') provides for taxation of income where a company in which public are not substantially interested ('specified company') or a firm **receives** shares of a specified company from a person for no or inadequate consideration.

2. It has been represented before the Board that the term '**receives**' used in section 56(2)(viiia) of the Act, being of wider import and might lead to taxation of income in the cases where the shares are received by a firm or a specified company as a result of the fresh issuance of shares including by way of issue of bonus shares, rights shares and preference shares or transactions of similar nature by the specified company.

3. The matter has been examined. Clause (viiia) was inserted in the section 56(2) of the Act vide Finance Act, 2010. The Memorandum explaining the provisions of Finance Bill, 2010 inter alia provided the following legislative intent for insertion of the said clause:-

*".....In order to prevent the practice of **transferring** unlisted shares at prices much below their fair market value, it is proposed to amend **section 56** to also include within its ambit transactions undertaken in shares of a company (not being a company in which public are substantially interested) either for inadequate consideration or without consideration where the recipient is a firm or a company (not being a company in which public are substantially interested)....."*

4. It is apparent from the legislative intent that clause(viiia) was inserted in section 56(2) of the Act as an anti-abuse provision to prevent the practice of transferring shares of a specified company for no or inadequate consideration. Thus, the intention was never to apply these provisions of said clause (viiia) to the fresh issuance of shares as mentioned in para 2 above, by the specified company. Keeping in view the legislative intent to apply anti-abuse provision contained in section 56(2)(viiia) to transfer of shares for no or inadequate consideration, **it is**

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hereby clarified that section 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 section 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 as mentioned in para 2 above, by the specified company.

5. Hindi version to follow.

(Vinay Sheel Gautam)

Under Secretary-ITA.I, CBDT

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