

START UP SHARE PREMIUM TAX



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SHARE PREMIUM TAXATION

- ✘ **S. 56(2) (viib) – w.e.f. AY 2013-14**
- ✘ **Where a company, not being a company in which the public are substantially interested, receives, in any PY, from any person being a resident, any consideration for issue of shares that exceeds face value of such shares, the aggregate consideration received for such shares as exceeds the FMV of the shares:**

SHARE PREMIUM TAXATION

- ✘ Provided that this clause shall not apply where the consideration for issue of shares is received—**
 - + (i) by a venture capital undertaking from a venture capital company or a venture capital fund; or**
 - + (ii) by a company from a class or classes of persons as may be notified by the Central Government in this behalf.**

SHARE PREMIUM TAXATION

- × **Explanation.—For purposes of this clause,—**
 - + **FMV of shares shall be value higher of:**
 - × (i) as may be determined in accordance with such method as may be prescribed; or
 - × (ii) as may be substantiated by company to the satisfaction of AO, based on the value, on date of issue of shares, 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

START UP COMPANIES

- × **Notified companies – start-up companies – Not. No. 45/2016 dated 14.6.2016 as amended from time to time**

START - UP

- ✘ Notification No. G.S.R. 127(E) dated 19th February, 2019. It would be startup if:**
 - + 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 FYs has not exceeded 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.**
 - + Not formed by splitting or reconstruction of existing business**

CEASE TO BE START - UP

- × Shall cease to be a Startup on:**
 - + Completion of 10 years from the date of its incorporation/ registration or**
 - + If its turnover for any previous year exceeds Rs. 100 Crs**

CONDITIONS FOR 56(2) BENEFIT

- + A Start-up shall be eligible for notification u/s 56(2)(viib)(ii) if it fulfils following :**
 - × It has been recognised by DPIIT under para 2(iii)(a) or as per any earlier notification**
 - × Aggregate amount of paid up share capital & share premium of start-up after issue or proposed issue, does not exceed Rs. 25 Crs**
 - × However in computing aggregate amount of paid up share capital & share premium of Rs. 25 Crs shares issued to a non-resident or a VC Company or a VC fund shall not be included**

CONDITIONS FOR 56(2) BENEFIT

- + Also considerations received by such startup for shares issued or proposed to be issued to a specified company shall also be exempt and shall not be included in computing aggregate amount of paid up capital & premium of 25 Crs**
- + Specified company - company whose shares are frequently traded within meaning of SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 2011 and whose net worth on last date of FY preceding the year in which shares are issued exceed Rs. 100 Crs or turnover exceeds Rs. 250 Crs**

CONDITIONS FOR 56(2) BENEFIT

+It has not invested in any of following assets nor it invests in 7 years from end of latest FY in which shares are issued at premium:

- × Building or land appurtenant thereto, being a **residential house**, other than that used by Startup for purposes of renting or held by it as stock-in-trade, in ordinary course of business;
- × Land or building, or both, **not being a residential house**, other than that occupied by Startup for its business or used by it for purposes of renting or held by it as stock-in-trade, in ordinary course of business;

CONDITIONS FOR 56(2) BENEFIT

- × **Loans and advances**, other than loans or advances extended in the ordinary course of business by the Startup where the lending of money is substantial part of its business;
- × **Capital contribution** made to any other entity;
- × **Shares** and securities;
- × **A motor vehicle, aircraft**, yacht or any other mode of transport, the actual cost of which exceeds **Rs. 10 Lacs**, other than that held by Startup for purpose of plying, hiring, leasing or stock-in-trade in ordinary course of business;

CONDITIONS FOR 56(2) BENEFIT

- × **Jewellery** other than that held by the Startup as stock-in-trade in the ordinary course of business;
- × **Any other asset**, whether in nature of capital asset or otherwise, of nature specified in sub-clauses (iv) to (ix) of clause (d) of Explanation to section 56 (2) (vii) of the Act.
 - * (iv) archaeological collections;
 - * (v) drawings;
 - * (vi) paintings;
 - * (vii) sculptures;
 - * (viii) any work of art; or
 - * (ix) bullion;

CONDITIONS FOR 56(2) BENEFIT

- + Declaration be filed by startup fulfilling conditions mentioned in para 4 (i) and para 4 (ii) in Form 2 to DIPP that it fulfills the conditions mentioned in para 4.**
- + On receipt of such declaration, the DPIIT shall forward the same to the CBDT.**

FMV FOR ISSUE OF SHARES

- ✘ **FMV to be on the date of issue of shares higher of :**
 - + **Method prescribed i.e. Rule 11UA / 11U; or**
 - + **Satisfaction of AO based 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

× Rule 11UA(2) – at option of the assessee

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

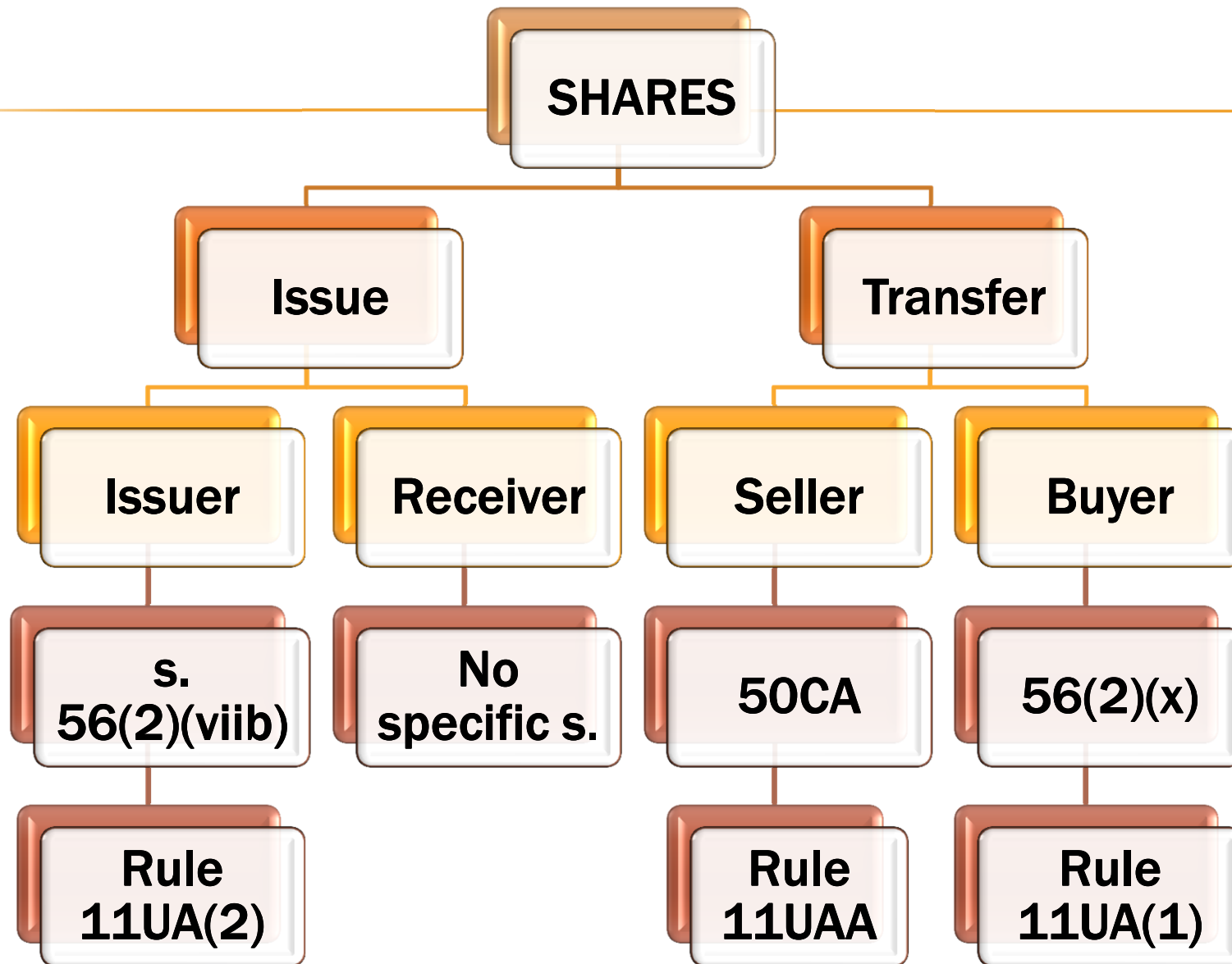
× A= Book value of all assets in B/S as reduced by

× 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



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